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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 June 30, 2009

or

o **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	58-2086934
(State or other jurisdiction of incorporation or organization)	(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 o

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 o NO o

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

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

YES o NO ☑

Class	Outstanding at July 31, 2009
Common Stock, $0.001 par value	39,248,648 shares

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 our Quarterly Report on Form 10-Q for the quarter ended March 31, 2009 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 final outcome of various 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 and fulfillment of the obligations in the Deferred Prosecution Agreement and other settlement agreements and consent orders with governmental authorities;
- 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;
- the cost and availability of insurance and surety bonds;
- 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)

	June 30, 2009	September 30, 2008
ASSETS		
Cash and cash equivalents	**$ 464,949**	$ 584,334
Restricted cash	**11,902**	297
Accounts receivable (net of allowance of $6,129 and $8,915, respectively)	**26,185**	46,555
Income tax receivable	**13,957**	173,500
Inventory		
Owned inventory	**1,397,181**	1,545,006
Consolidated inventory not owned	**58,542**	106,655
Total inventory	**1,455,723**	1,651,661
Investments in unconsolidated joint ventures	**29,905**	33,065
Deferred tax assets	**22,109**	20,216
Property, plant and equipment, net	**30,071**	39,822
Goodwill	**—**	16,143
Other assets	**53,788**	76,206
Total assets	**$ 2,108,589**	$ 2,641,799
LIABILITIES AND STOCKHOLDERS' EQUITY		
Trade accounts payable	**$ 76,461**	$ 90,371
Other liabilities	**248,973**	358,592
Obligations related to consolidated inventory not owned	**31,764**	70,608
Senior Notes (net of discounts of $2,013 and $2,565, respectively)	**1,407,486**	1,522,435
Junior subordinated notes	**103,093**	103,093
Other secured notes payable	**34,122**	50,618
Model home financing obligations	**46,908**	71,231
Total liabilities	**1,948,807**	2,266,948
Stockholders' equity:		
Preferred stock (par value $.01 per share, 5,000,000 shares authorized, no shares issued)	**—**	—
Common stock (par value $0.001 per share, 80,000,000 shares authorized, 42,605,804 and 42,612,801 issued and 39,248,648 and 39,270,038 outstanding, respectively)	**43**	43
Paid-in capital	**565,037**	556,910
Retained earnings (accumulated deficit)	**(221,329)**	1,845
Treasury stock, at cost (3,357,156 and 3,342,763 shares, respectively)	**(183,969)**	(183,947)
Total stockholders' equity	**159,782**	374,851
Total liabilities and stockholders' equity	**$ 2,108,589**	$ 2,641,799

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 June 30,		Nine Months Ended June 30,	
	2009	2008	**2009**	2008
Total revenue	**$ 224,653**	$ 455,578	**$ 645,340**	$ 1,361,649
Home construction and land sales expenses	**207,176**	407,512	**580,920**	1,223,252
Inventory impairments and option contract abandonments	**11,856**	95,482	**76,320**	451,854
Gross profit (loss)	**5,621**	(47,416)	**(11,900)**	(313,457)
Selling, general and administrative expenses	**51,357**	83,517	**174,596**	245,696
Depreciation and amortization	**4,957**	6,046	**13,079**	18,250
Goodwill impairment	**—**	4,365	**16,143**	52,470
Operating loss	**(50,693)**	(141,344)	**(215,718)**	(629,873)
Equity in loss of unconsolidated joint ventures	**(4,041)**	(18,568)	**(13,795)**	(75,069)
Gain on extinguishment of debt	**55,214**	—	**58,788**	—
Other expense, net	**(22,370)**	(13,489)	**(59,958)**	(20,907)
Loss from continuing operations before income taxes	**(21,890)**	(173,401)	**(230,683)**	(725,849)
Provision for (benefit from) income taxes	**5,990**	(63,707)	**(7,981)**	(249,771)
Loss from continuing operations	**(27,880)**	(109,694)	**(222,702)**	(476,078)
Loss from discontinued operations, net of tax	**(96)**	(148)	**(472)**	(1,893)
Net loss	**$ (27,976)**	$ (109,842)	**$ (223,174)**	$ (477,971)
Weighted average number of shares:				
Basic	**38,815**	38,551	**38,666**	38,546
Diluted	**38,815**	38,551	**38,666**	38,546
Earnings (loss) per share:				
Basic loss per share from continuing operations	**$ (0.72)**	$ (2.85)	**$ (5.76)**	$ (12.35)
Basic loss per share from discontinued operations	**$ —**	$ —	**$ (0.01)**	$ (0.05)
Basic loss per share	**$ (0.72)**	$ (2.85)	**$ (5.77)**	$ (12.40)
Diluted loss per share from continuing operations	**$ (0.72)**	$ (2.85)	**$ (5.76)**	$ (12.35)
Diluted loss per share from discontinued operations	**$ —**	$ —	**$ (0.01)**	$ (0.05)
Diluted loss per share	**$ (0.72)**	$ (2.85)	**$ (5.77)**	$ (12.40)

See Notes to Unaudited Condensed Consolidated Financial Statements.

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

	Nine Months Ended June 30,	
	2009	2008
Cash flows from operating activities:		
Net loss	**$ (223,174)**	$ (477,971)
Adjustments to reconcile net loss to net cash provided by operating activities:		
Depreciation and amortization	**13,079**	18,415
Stock-based compensation expense	**8,865**	8,694
Inventory impairments and option contract abandonments	**76,320**	451,854
Goodwill impairment	**16,143**	52,470
Deferred income tax benefit	**(1,893)**	(118,817)
Excess tax benefit from equity-based compensation	**2,267**	454
Equity in loss of unconsolidated joint ventures	**13,795**	75,069
Cash distributions of income from unconsolidated joint ventures	**2,991**	2,096
Gain on extinguishment of debt	**(58,788)**	—
Provision for doubtful accounts	**(2,786)**	3,349
Changes in operating assets and liabilities:		
Decrease (increase) in accounts receivable	**23,156**	(8,996)
Decrease (increase) in income tax receivable	**159,543**	(80,563)
Decrease in inventory	**90,833**	261,324
Decrease in other assets	**21,832**	41,324
Decrease in trade accounts payable	**(13,910)**	(28,176)
Decrease in other liabilities	**(126,760)**	(169,673)
Other changes	**(13)**	(6,354)
Net cash provided by operating activities	**1,500**	24,499
Cash flows from investing activities:		
Capital expenditures	**(5,484)**	(7,949)
Investments in unconsolidated joint ventures	**(9,042)**	(11,137)
Changes in restricted cash	**(11,605)**	4,268
Net cash used in investing activities	**(26,131)**	(14,818)
Cash flows from financing activities:		
Repurchase of Senior Notes	**(54,836)**	—
Repayment of other secured notes payable	**(11,995)**	(100,472)
Repayment of model home financing obligations	**(24,323)**	(27,728)
Debt issuance costs	**(1,311)**	(21,135)
Common stock redeemed	**(22)**	(27)
Excess tax benefit from equity-based compensation	**(2,267)**	(454)
Net cash used in financing activities	**(94,754)**	(149,816)
Decrease in cash and cash equivalents	**(119,385)**	(140,135)
Cash and cash equivalents at beginning of period	**584,334**	454,337
Cash and cash equivalents at end of period	**$ 464,949**	$ 314,202

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). We evaluated events that occurred after the balance sheet date but before the financial statements were issued or are available to be issued for accounting treatment and disclosure in accordance with Statement of Financial Standards No. 165, *Subsequent Events*. Any applicable subsequent events have been evaluated through August 6, 2009, the date these financial statements were available to be issued.

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 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 June 30, 2009, we used discount rates of 17% to 20%, in our estimated discounted cash flow impairment calculations. During the three and nine months ended June 30, 2009, we recorded impairments of our inventory of $6.3 million and $53.4 million, respectively, for land under development and homes under construction. For the three and nine months ended June 30, 2008, we recorded impairments of our inventory of $46.8 million and $273.9 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 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 nine months ended June 30, 2009, we recorded inventory impairments on land held for sale of approximately $4.5 million and $18.9 million, respectively, compared to $21.0 million and $110.1 million, respectively, for the three and nine months ended June 30, 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 $4.4 million and $52.5 million for the three and nine months ended June 30, 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 June 30, 2009 were as follows.

(in thousands)	September 30, 2007	Fiscal 2008 Impairments	September 30, 2008	**Fiscal 2009 Impairments**	**June 30, 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 June 30, 2009 and September 30, 2008, there was $9.2 million and $13.5 million, respectively, of total unrecognized compensation cost related to nonvested stock awards. The cost remaining at June 30, 2009 is expected to be recognized over a weighted average period of 2.9 years. For the three and nine months ended June 30, 2009, our total stock-based compensation expense, included in selling, general and administrative expenses ("SG&A"), was approximately $2.6 million and $8.9 million, respectively. For the three and nine months ended June 30, 2008, our total stock-based compensation expense, included in selling, general and administrative expenses ("SG&A"), was approximately $3.5 million ($2.4 million net of tax) and $8.7 million ($6.1 million net of tax), respectively. Activity relating to nonvested stock awards for the three and nine months ended June 30, 2009 is as follows:

	Three Months Ended June 30, 2009		Nine Months Ended June 30, 2009	
	Shares	Weighted Average Grant Date Fair Value	Shares	Weighted Average Grant Date Fair Value
Beginning of period	635,661	$47.85	782,866	$46.80
Granted	—	—	—	—
Vested	(51,342)	26.83	(152,522)	31.48
Forfeited	(762)	22.28	(46,787)	60.17
End of period	583,557	$49.73	583,557	$49.73

In addition, during the three and nine months ended June 30, 2009, employees surrendered 2,055 shares and 14,393 shares, respectively, to us in payment of minimum tax obligations upon the vesting of 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 $3,000 and $21,000 for the three and nine months ended June 30, 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 or nine months ended June 30, 2009 or 2008. The following table summarizes stock options and SSARs outstanding as of June 30, 2009, as well as activity during the three and nine months then ended:

	Three Months Ended June 30, 2009		Nine Months Ended June 30, 2009	
	Shares	Weighted-Average Exercise Price	Shares	Weighted-Average Exercise Price
Outstanding at beginning of period	1,814,651	$ 45.82	1,848,995	$ 45.78
Granted	—	—	—	—
Exercised	—	—	—	—
Expired	(38,733)	43.05	(43,063)	44.72
Forfeited	(2,826)	43.10	(32,840)	43.91
Outstanding at end of period	1,773,092	$ 45.84	1,773,092	$ 45.84
Exercisable at end of period	984,110	$ 40.68	984,110	$ 40.68
Vested or expected to vest in the future	1,501,194	$ 43.71	1,501,194	$ 43.71

At June 30, 2009, the weighted-average remaining contractual life for all options/SSARs outstanding, currently exercisable, and vested or expected to vest in the future was 3.4 years, 2.8 years and 3.3 years, respectively.

At June 30, 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 $1.83 as of June 30, 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 nine months ended June 30, 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. Subsequent to June 30, 2009, the Compensation Committee of the Board of Directors approved the initiation of the exchange program. On August 4, 2009, the Company offered to exchange stock options/SSARs to purchase 310,011 shares of the Company's common stock with exercise prices ranging from $26.51 to $62.02 per share for newly issued restricted shares of common stock based on the exercise price of the eligible awards exchanged. This exchange has been structured to be a value for value exchange. Eligible employees may voluntary elect to accept the offer of exchange through August 31, 2009, unless the offer is extended. The new restricted stock awards will be granted on the next business day after the expiration date of the exchange program. The newly issued restricted stock awards will vest 50% on the first anniversary of the grant date and the remaining 50% will vest on the second anniversary of the grant date.

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.

In April 2009, the FASB issued FSP 107-1 and Accounting Principles Board Opinion ("APB") 28-1, *Interim Disclosures about Fair Value of Financial Instruments*. FSP 107-1 amends SFAS 107, *Disclosures about Fair Value Instruments* and APB 28, *Interim Financial Reporting*, to require disclosures about fair value of financial instruments during interim reporting periods. The Company adopted the provisions of FSP 107-1 and APB 28-1 during the quarter ended June 30, 2009 and has included the required disclosures in this Quarterly Report on Form 10-Q.

In May 2009, the FASB issued SFAS No. 165, *Subsequent Events*, which establishes general standards of accounting for and disclosures of events that occur after the balance sheet date but before financial statements are issued or are available to be issued. SFAS 165 also requires the disclosure of the date through which subsequent events have been evaluated and the basis for that date. The Company adopted the provisions of SFAS 165 during the quarter ended June 30, 2009.

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.

In June 2009, the FASB issued SFAS No. 167, *Amendments to FASB Interpretation No. 46(R)*, which revises the approach to determining the primary beneficiary of a variable interest entity ("VIE") to be more qualitative in nature and requires companies to more frequently reassess whether they must consolidate a VIE. SFAS 167 also requires enhanced disclosures to provide more information about an enterprise's involvement in a variable interest entity. SFAS 167 is effective for the Company's fiscal year beginning October 1, 2010. The Company is currently reviewing the effect of SFAS 167 on its condensed consolidated financial statements.

In June 2009, the FASB issued SFAS No. 168, *The FASB Accounting Standards Codification and the Hierarchy of Generally Accepted Accounting Principles, a replacement of FASB Statement No. 162*, ("SFAS 168"). SFAS 168 establishes the FASB Accounting Standards Codification as the source of authoritative accounting principles recognized by the FASB to be applied by nongovernmental entities in the preparation of financial statements in conformity with GAAP. SFAS 168 is effective for the Company's September 30, 2009 consolidated financial statements. SFAS 168 does not change GAAP and will not have a material impact on the Company's consolidated financial statements.

(2) Supplemental Cash Flow Information

During the nine months ended June 30, 2009 and 2008, we paid interest of $111.8 million and $122.9 million, respectively. In addition, we paid income taxes of $9.6 and $0.8 million for the nine months ended June 30, 2009 and 2008, respectively. During the nine months ended June 30, 2009 and 2008, we received tax refunds totaling $169.1 million and $56.6 million, respectively. We also had the following non-cash activity (in thousands):

	Nine Months Ended June 30,	
	2009	2008
Supplemental disclosure of non-cash activity:		
Decrease in consolidated inventory not owned	**$(38,844)**	$(94,926)
Land acquired through issuance of notes payable	**1,319**	32,786
Issuance of stock under deferred bonus stock plans	**1,529**	94
Decrease in retained earnings from FIN 48 adoption	—	(10,112)

(3) Investments in Unconsolidated Joint Ventures

As of June 30, 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 June 30, 2009 and September 30, 2008:

(in thousands)	**June 30, 2009**	September 30, 2008
Beazer's investment in joint ventures	**$ 29,905**	$ 33,065
Total equity of joint ventures	**334,057**	340,674
Total outstanding borrowings of joint ventures	**465,658**	524,431
Beazer's estimate of its portion of loan-to-value maintenance guarantees (1)	**8,601**	5,839
Beazer's estimate of its portion of repayment guarantees (2)	**20,263**	39,166

(1) Accruals of loan-to value maintenance guarantees as of June 30, 2009 totaled $3.2 million. Subsequent to June 30, 2009, as a result of a modification of its debt agreement one of our joint ventures obtained a complete release of its obligations under its loan-to value guarantee, related to which we estimated a maximum potential exposure to Beazer of $5.4 million.

(2) Subsequent to June 30, 2009, as a result of a modification of its debt agreement, a joint venture obtained a complete release of its obligations under a repayment guarantee, related to which we estimated a maximum potential exposure to Beazer of $4.5 million.

Beazer's investment in these unconsolidated joint ventures was $29.9 million and $33.1 million at June 30, 2009 and September 30, 2008, respectively. The reduction in investments in unconsolidated joint ventures at June 30, 2009 as compared to September 30, 2008 resulted primarily from impairments totaling $14.4 million and distributions of earnings totaling $3.0 million which were offset by $9.0 million of additional investments and $4.6 million of accrued liabilities for guarantee payments and deferred income.

For the three and nine months ended June 30, 2009, the impairments of our investments in certain of our other unconsolidated joint ventures, totaling $4.8 million and $14.4 million, respectively, were recorded in accordance with APB 18, *The Equity Method of Accounting for Investments in Common Stock*. Similar impairments of our investments in certain joint ventures totaled $18.3 million and $62.8 million for the three and nine months ended June 30, 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 $4.0 million and $13.8 million for the three and nine months ended June 30, 2009, respectively and $18.6 million and $75.1 million for the three and nine months ended June 30, 2008, respectively.

The aggregate debt of the unconsolidated joint ventures was $465.7 million and $524.4 million at June 30, 2009 and September 30, 2008, respectively. At June 30, 2009, total borrowings outstanding include $327.9 million related to one joint venture in which we are a 2.58% partner. The $58.8 million reduction in total outstanding joint venture debt during the nine months ended June 30, 2009 resulted primarily from the cancellation of $48.6 million of debt of three joint ventures, and debt payments of $30.7 million in accordance with loan agreements offset by loan draws of $20.5 million to fund the development activities of the joint ventures.

Several of our joint ventures are in default under their respective debt obligations. During the second quarter of fiscal 2009, we paid $3.0 million to settle our obligations under guarantees for three ventures which we had previously estimated at a maximum potential obligation of $16.6 million. As part of the settlement agreements, the lenders also cancelled $48.6 million of the outstanding debt of these three joint ventures. Additionally in the second quarter of fiscal 2009 we reached agreement with a lender to another joint venture to settle our obligations under a loan-to-value maintenance guarantee for $3.2 million in release of the loan obligation of $10.9 million. We are currently in discussions with the lenders in our other joint ventures where defaults exist under their debt agreements.

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. In December 2008, 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 at June 30, 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 June 30, 2009 was $8.6 million in this joint venture. Given the inherent uncertainties in this litigation, as of June 30, 2009, no accrual has been recorded, as losses, if any, related to this matter are not both probable and reasonably estimable.

Two of our other joint ventures were at risk of defaulting under their debt agreements as of June 30, 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 June 30, 2009, no accrual has been recorded, as obligations to Beazer, if any, related to these matters were not both probable and reasonably estimable.

Subsequent to the end of the quarter ended June 30, 2009, a joint venture completed a modification of its loan agreement with its lender, which resulted in, among other things, an extension of its maturity, enhanced guarantees from our joint venture partner and the release of Beazer under all guarantees related to this joint venture. Beazer contributed $9.7 million as an additional investment in the joint venture as part of the loan modification.

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 June 30, 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. No accrual has been recorded, as losses, if any, related to construction completion guarantees are not both probable and reasonably estimable.

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. During the three months ended June 30, 2009 and 2008, we were not required to make any payments on the LTV guarantees.

Our estimate of the Company’s portion of LTV guarantees of the unconsolidated joint ventures was $8.6 million at June 30, 2009 and $5.8 million at September 30, 2008. As of June 30, 2009, we had accrued $3.2 million relating to a tentative settlement with the lender of one of our joint ventures that will result in full satisfaction and release under the LTV guarantee. We expect this agreement to be finalized during the fourth quarter of fiscal 2009. In addition, subsequent to the end of June 30, 2009, another of our joint ventures completed a modification of its loan agreement that resulted in, among other things, the release of Beazer under all guarantees, including the LTV guarantee. Beazer contributed $9.7 million as an additional investment in the joint venture which was used to reduce the loan balance of the joint venture.

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 only in the event the joint venture defaults on its obligations under the borrowing or in some cases only in the event the joint venture files for bankruptcy. During the three and nine months ended June 30, 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. Subsequent to quarter end, this joint venture completed a modification of its loan agreement which resulted in, among other things, an extension of the loan maturity for two years and the release of all of the Company’s guarantees related to this joint venture. The Company contributed $9.7 million to the joint venture which was used to pay down outstanding debt and which increased our investment in the joint venture.

Our estimate of Beazer’s portion of repayment guarantees related to the outstanding debt of its unconsolidated joint ventures was $20.3 million and $39.2 million at June 30, 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 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 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 three and nine months ended June 30, 2009 and 2008, we were not required to make any payments related to environmental indemnities. No accrual has been recorded, as losses, if any, related to environmental indemnities are not both probable and reasonably estimable

(4) Inventory

(in thousands)	**June 30, 2009**	September 30, 2008
Homes under construction	**$ 289,985**	$ 338,971
Development projects in progress	**559,373**	618,252
Land held for future development	**415,309**	407,320
Land held for sale	**59,922**	85,736
Model homes	**72,592**	94,727
Total owned inventory	**$ 1,397,181**	$ 1,545,006

Homes under construction includes homes finished and ready for delivery and homes in various stages of construction. We had 234 ($39.8 million) and 408 ($76.2 million) completed homes that were not subject to a sales contract at June 30, 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 June 30, 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):

	June 30, 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	$338,821	$342,853	$18,179	$ 699,853	$ 348,475	$341,784	$26,515	$ 716,774
East Segment	352,300	48,769	9,234	410,303	394,643	44,387	3,642	442,672
Southeast Segment	149,204	23,687	423	173,314	165,231	21,149	14,841	201,221
Other	3,468	—	32,086	35,554	15,302	—	40,738	56,040
Unallocated	78,157	—	—	78,157	128,299	—	—	128,299
Total	$921,950	$415,309	$59,922	$1,397,181	$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.

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

	Quarter Ended June 30,		Nine Months Ended June 30,	
	2009	2008	**2009**	2008
Development projects and homes in process (Held for Development)				
West	**$ 3,534**	$19,269	**$31,021**	$135,237
East	**1,260**	6,928	**7,884**	58,892
Southeast	**1,234**	15,078	**10,874**	40,475
Other	**—**	2,432	**93**	19,475
Unallocated	**241**	3,053	**3,515**	19,790
Subtotal	**$ 6,269**	$46,760	**$53,387**	$273,869
Land Held for Sale				
West	**$ 4,279**	$ 6,910	**$ 7,236**	$ 7,714
East	**—**	8,500	**307**	17,671
Southeast	**141**	804	**2,452**	34,608
Other	**64**	4,752	**8,922**	50,066
Subtotal	**$ 4,484**	$20,966	**$18,917**	$110,059
Lot Option Abandonments				
West	**$ 11**	$14,090	**$ 87**	$ 14,921
East	**1,092**	135	**2,808**	7,543
Southeast	**—**	1,176	**927**	18,415
Other	**—**	12,355	**194**	27,047
Subtotal	**$ 1,103**	$27,756	**$ 4,016**	$ 67,926
Total	**$11,856**	$95,482	**$76,320**	$451,854

The inventory impaired during the three months ended June 30, 2009 represented 117 lots in 4 communities with an estimated fair value of $5.9 million compared to 2,430 lots in 44 communities with an estimated fair value of $164.2 million for the three months ended June 30, 2008. For the nine months ended June 30, 2009, the inventory impaired represented 2,208 lots in 32 communities with an estimated fair value of $72.5 million compared to 8,850 lots in 191 communities with an estimated fair value of $556.2 million for the comparable period of the prior year. During the current period, for certain communities we determined that it was prudent to reduce sales prices or further increase sales incentives 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. The impairments recorded on our held for development inventory for the nine months ended June 30, 2009 and 2008, primarily resulted from the continued decline in the homebuilding environment in those specific submarkets.

During the three and nine months ended June 30, 2009, as a result of challenging market conditions 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 nine months ended June 30, 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 $41.5 million at June

30, 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 $334.5 million as of June 30, 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 nine months ended June 30, 2009 of $1.1 million and $4.0 million, respectively, compared to $27.8 million and $67.9 million related to the three and nine months ended June 30, 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 VIEs 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 June 30, 2009 and September 30, 2008 reflect consolidated inventory not owned of $58.5 million and $106.7 million, respectively. We consolidated $46.8 million and $46.9 million of lot option agreements as consolidated inventory not owned pursuant to FIN 46R as of June 30, 2009 and September 30, 2008, respectively. In addition, as of June 30, 2009 and September 30, 2008, we recorded $11.7 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 $31.8 million at June 30, 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):

	Three Months Ended June 30,		Nine Months Ended June 30,	
	2009	2008	**2009**	2008
Capitalized interest in inventory, beginning of period	**$ 45,466**	$ 78,665	**$ 45,977**	$ 87,560
Interest incurred	**35,806**	34,234	**103,059**	105,214
Capitalized interest impaired	**(160)**	(1,875)	**(2,113)**	(12,468)
Interest expense not qualified for capitalization and included as other expense	**(23,727)**	(15,873)	**(65,986)**	(35,866)
Capitalized interest amortized to house construction and land sales expenses	**(12,999)**	(26,693)	**(36,551)**	(75,982)
Capitalized interest in inventory, end of period	**$ 44,386**	$ 68,458	**$ 44,386**	$ 68,458

(6) Earnings Per Share

In computing diluted loss per share for the three and nine months ended June 30, 2009 and June 30, 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 June 30, 2009 and September 30, 2008 we had the following long-term debt *(in thousands)*:

	Maturity Date	**June 30, 2009**	September 30, 2008
Secured Revolving Credit Facility	July 2011	**$ —**	$ —
8 5/8% Senior Notes*	May 2011	**175,000**	180,000
8 3/8% Senior Notes*	April 2012	**312,599**	340,000
6 1/2% Senior Notes*	November 2013	**182,990**	200,000
6 7/8% Senior Notes*	July 2015	**315,240**	350,000
8 1/8% Senior Notes*	June 2016	**250,670**	275,000
4 5/8% Convertible Senior Notes*	June 2024	**173,000**	180,000
Junior subordinated notes	July 2036	**103,093**	103,093
Other secured notes payable	Various Dates	**34,122**	50,618
Model home financing obligations	Various Dates	**46,908**	71,231
Unamortized debt discounts		**(2,013)**	(2,565)
Total		**$ 1,591,609**	$ 1,747,377

* 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 was 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) fell 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 extended to the filing of this Form 10-Q for the period ending June 30, 2009, the waiver agreement 1) preserved the facility size at $150 million, rather than shrinking to $100 million as required based on the Company’s reported Tangible Net Worth, 2) maintained, the collateral coverage in the secured borrowing base at 4.5x, 3) maintained the current facility pricing at the Eurodollar Margin of 5.0% and 4) waived a potential breach of an investments covenant in the facility as of March 31, 2009. There were no amounts outstanding under the Secured Revolving Credit Facility at June 30, 2009 or September 30, 2008; however, as of

June 30, 2009, we had provided $11.3 million of cash in addition to pledged real estate assets to supplementally collateralize our outstanding letters of credit of $46.5 million. The Company has decided to amend and restructure its Secured Revolving Credit Facility and recognized expense of $3.3 million of previously capitalized unamortized debt issuance costs related to the Secured Revolving Credit Facility for the three and nine months ended June 30, 2009, which is included in other expense, net in the unaudited condensed consolidated statements of operations.

As part of this restructuring, the current Secured Revolving Credit Facility was reduced to $22 million and will be provided by one lender. The restructured facility will continue to provide for future working capital and letter of credit needs collateralized by either cash or assets of the Company at the Company's option, conditioned upon certain conditions and covenant compliance. We also entered into three stand-alone, cash-secured, letter of credit agreements with banks to maintain the pre-existing letters of credit that had been under the current Secured Revolving Credit Facility. At closing on August 5, 2009, we elected to secure all of our letters of credit using cash collateral which required additional cash in restricted accounts of $37.8 million.

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 June 30, 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 $123.6 million for the first time based on the principal outstanding at June 30, 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*.

During the three and nine months ended June 30, 2009, we repurchased in several individual open market transactions, $115.5 million principal amount of Senior Notes ($5.0 million of 8 5/8% Senior Notes due 2011, $27.4 million of 8 3/8% Senior Notes due 2012, $17.0 million of 6 1/2% Senior Notes due 2013, $34.8 million of 6 7/8% Senior Notes due 2015, $24.3 million of 8 1/8% Senior Notes due 2016, and $7.0 million of Convertible Senior Notes due 2024). The aggregate purchase price for these repurchases was $58.2 million plus accrued and unpaid interest. These repurchases resulted in a gain on extinguishment of debt of $55.2 million, net of the write-off of unamortized discounts and debt issuance costs related to these notes. The gain from the repurchases is included in the unaudited condensed consolidated statements of operations for the three and nine months ended June 30, 2009 as gain on extinguishment of debt.

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 June 30, 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 June 30, 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 $3.6 million gain on debt extinguishment which is included in gain on extinguishment of debt in the accompanying unaudited condensed consolidated statement of operations for the nine months ended June 30, 2009.

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 June 30, 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 $46.9 million and $71.2 million of debt as of June 30, 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, 4.8% as of June 30, 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 June 30, 2009 and consequently, during the nine months ended June 30, 2009, we determined that an additional valuation allowance of $66.5 million was warranted. As of June 30, 2009, our deferred tax valuation allowance was $467.1 million.

Our tax provision of $6.0 million for the three months ended June 30, 2009 primarily resulted from the revision of our estimate of the future sources of taxable income that warranted additional valuation allowance on our deferred tax assets. Our tax benefit of $8.0 million for the nine months ended June 30, 2009, primarily resulted from the additional valuation allowance referred to above and a 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 third quarter of fiscal 2009, 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 nine months ended June 30, 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. The principal difference between our effective rate and the U.S. federal statutory rate for the three and nine months ended June 30, 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.

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.

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.

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 Chinese drywall.

During the quarter ended June 30, 2009, we accrued $2.4 million in our warranty reserves for the repair of approximately 30 homes in southwest Florida where certain of our subcontractors installed defective Chinese drywall in homes that were delivered during our 2006 and 2007 fiscal years. We are inspecting additional homes in order to determine whether they also contain the defective Chinese drywall. The outcome of these inspections may require us to increase our warranty reserve in the future. However, the amount of additional liability, if any, is not reasonably estimable.

We have experienced a significant number of moisture intrusion 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 June 30, 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 June 30, 2009, we have completed remediation of 1,877 homes related to 1,882 total Trinity claims. Our warranty reserves at June 30, 2009 and September 30, 2008 include accruals of $0.6 million and $2.8 million, respectively, for our estimated costs to assess and remediate all homes for which Trinity had received complaints related to moisture intrusion.

As a result of our analyses, we adjust our estimated warranty liabilities. While we believe that our warranty reserves are adequate as of June 30, 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 are as follows (in thousands):

	Three Months Ended June 30,		Nine Months Ended June 30,	
	2009	2008	**2009**	2008
Balance at beginning of period	**$32,379**	$47,103	**$ 40,822**	$ 57,053
Provisions	**2,481**	631	**3,200**	6,863
Payments	**(2,972)**	(5,558)	**(12,134)**	(21,740)
Balance at end of period	**$31,888**	$42,176	**$ 31,888**	$ 42,176

Investigations

United States Attorney, State and Federal Agency Investigations. On July 1, 2009, the Company announced that it had resolved the 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. The Company has entered into a

deferred prosecution agreement ("DPA") with the U.S. Attorney and a settlement agreement with the U.S. Department of Housing and Urban Development ("HUD") and the civil division of the Department of Justice. In addition, certain of the Company's subsidiaries have entered into a settlement agreement with the North Carolina Real Estate Commission ("NCREC"). Also, as previously disclosed, Beazer Mortgage Corporation ("Beazer Mortgage") has entered into a settlement agreement with the North Carolina Office of the Commissioner of Banks ("OCOB"), under which Beazer Mortgage consented, without admitting the alleged violations, to the entry of a consent order which provides that Beazer Mortgage will provide approximately $2.5 million in restitution to certain borrowers in respect of the alleged violations. The settlement agreement concludes the OCOB's investigation into these matters with respect to Beazer Mortgage.

Under the DPA, the U.S. Attorney has agreed not to prosecute the Company in connection with the matters that were the subject of the Investigation and are set forth in a Bill of Information filed with the United States District Court for the Western District of North Carolina, provided that the Company satisfies its obligations under the DPA over the next 60 months. The term of the DPA may be less than 60 months in the event certain conditions, as described more fully in the DPA, are met. The DPA recognizes the cooperation of the Company, its voluntary disclosure and its adoption of remedial measures.

Under the terms of the DPA, in fiscal year 2009, the Company contributed $7.5 million to a restitution fund established to compensate those Beazer customers who can demonstrate that they were injured by certain of the practices identified in the Bill of Information. For fiscal year 2010 the Company will contribute to the restitution fund the greater of $1.0 million or an amount equal to 4% of the Company's fiscal 2010 adjusted EBITDA as defined in the DPA. The Company's liability in each of the fiscal years after 2010 will also be equal to 4% of the Company's adjusted EBITDA through a portion of fiscal year 2014, unless extended as described below. Under the terms of the DPA, the Company's total contributions to the restitution fund will not exceed $50.0 million.

Under the terms of the settlement agreement with HUD and the civil division of the Department of Justice, the Company made an immediate payment of $4.0 million to HUD to resolve civil and administrative investigations. In addition, on the first anniversary of the agreement, the Company will make a $1.0 million payment to HUD.

Under the agreement with HUD, if the amounts paid into the restitution fund with the U.S. Attorney described above do not reach $48.0 million at the end of 60 months, the restitution fund term will be extended using the adjusted EBITDA formula until the earlier of an additional 24 months or the time the Company's contribution reaches $48.0 million.

The amounts paid to the U.S. Attorney for contribution into the restitution fund and payments to HUD do not include the $2.5 million contributed to resolve the investigation by the OCOB, although this amount will be counted as part of the Company's maximum obligation to the restitution fund.

As previously disclosed, the Company recognized expense in the quarter ended March 31, 2009 of $10.5 million for the amounts yet to be paid in fiscal years 2009 and 2010. The Company recognized additional expense in the quarter ended June 30, 2009 of $3.0 million. In recognition of the financial challenges currently facing the Company, Ian McCarthy, president and chief executive officer, and Michael Furlow, executive vice president and chief operating officer, have voluntarily agreed to contribute to the Company an amount equal to the after-tax proceeds of their fiscal 2008 bonuses to defray part of its initial payment to the restitution fund.

The Company's payment obligations under the DPA and the settlement agreement with HUD are interrelated. The total amount of such obligations will be dependent on several factors; however, the maximum liability under both agreements and the agreement with the OCOB will not be less than $15.5 million and will not exceed $55.0 million.

With respect to the NCREC, Beazer/Squires Realty, Inc. ("Beazer/Squires") and Beazer Homes Corp. each has agreed to the entry of a consent order regarding violations of certain North Carolina statutes. Under the respective consent orders, the NCREC agreed that a reprimand of Beazer Homes would not be issued as long as Beazer Homes completed certain remedial measures and that the broker license held by Beazer/Squires is revoked. The broker license held by Beazer/Squires has been on inactive status since October 2007. There is no monetary payment by the Company or its subsidiaries under either of the consent orders. The consent orders conclude the investigation by the NCREC into these matters with respect to the Company.

As of June 30, 2009, $13.5 million is accrued related to these obligations. While we believe that our accrual for this liability is adequate as of June 30, 2009, positive adjusted EBITDA results in future years will require us to increase our accrual and incur additional expense. The amount of future liability in excess of amounts recorded to date, if any, are not reasonably estimable.

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 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 Glickenhaus & 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 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 June 30, 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 June 30, 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 June 30, 2009, no accrual has been recorded, as losses, if any, related to this matter are not both probable and reasonably estimable.

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 June 30, 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 in part 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. On June 18, 2009, the Company filed a supplemental motion to dismiss/demurrer regarding the remaining state law claims in the Second Amended Complaint. The Company intends to continue to vigorously defend against the action. Given the inherent uncertainties in this litigation, as of June 30, 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 lawsuits or the effect that any adverse findings 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. 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 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 June 30, 2009, no monetary penalties had been imposed in connection with such Administrative Orders. Consistent with its approach with other homebuilders, the EPA has contacted the Company about a possible resolution of these issues. Settlement negotiations are in the preliminary stages. 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.

On June 3, 2009, a purported class action complaint was filed by the owners of one of our homes in our Magnolia Lakes' community in Ft. Myers, Florida. The complaint names the Company and certain distributors and suppliers of drywall and was filed in the Circuit Court for Lee County, Florida on behalf of the named plaintiffs and other similarly situated owners of homes in Magnolia Lakes or alternatively in the State of Florida. The plaintiffs allege that the Company built their homes with defective drywall, manufactured in China, that contains sulfur compounds that allegedly corrode certain metals and that are allegedly capable of harming the health of individuals. Plaintiffs allege physical and economic damages and seek legal and equitable relief, medical monitoring and attorney's fees. On July 1, 2009, the Company filed a request to have this complaint removed to the United States District Court for the Middle District of Florida and on July 2, 2009 filed a motion to have the case transferred to the Eastern District of Louisiana pursuant to an order from the United States Judicial Panel on Multidistrict Litigation. The Company believes that the claims asserted in this complaint are governed by its home warranty or are without merit. Accordingly, the Company intends to vigorously defend against this litigation. Given the inherent uncertainties in this litigation, as of June 30, 2009, no accrual has been recorded, as losses specifically related to this litigation, if any, are not both probable and reasonably estimable.

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 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 $19.6 million and $17.9 million in other liabilities related to these matters as of June 30, 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 and complexities in this litigation, as of June 30, 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 $276.7 million and $46.5 million, respectively, at June 30, 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 June 30, 2009 or 2008. At June 30, 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 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 Annual Report.

	Three Months Ended June 30,		Nine Months Ended June 30,	
(in thousands)	**2009**	2008	**2009**	2008
Revenue				
West	**$ 87,328**	$ 144,913	**$ 264,428**	$ 437,369
East	**95,043**	161,241	**240,029**	472,507
Southeast	**41,343**	69,516	**123,250**	250,903
Other homebuilding	**582**	79,028	**16,476**	197,931
Financial Services	**357**	880	**1,157**	2,939
Consolidated total	**$ 224,653**	$ 455,578	**$ 645,340**	$ 1,361,649

(in thousands)	Three Months Ended June 30, 2009	Three Months Ended June 30, 2008	Nine Months Ended June 30, 2009	Nine Months Ended June 30, 2008
Operating (loss) income				
West	**$ (6,467)**	$ (37,572)	**$ (33,147)**	$ (140,550)
East	**(923)**	(3,632)	**(14,760)**	(63,026)
Southeast	**(3,877)**	(14,475)	**(20,546)**	(88,621)
Other homebuilding	**(1,931)**	(21,358)	**(12,730)**	(111,825)
Financial Services	**172**	202	**228**	1,012
Segment total	**(13,026)**	(76,835)	**(80,955)**	(403,010)
Corporate and unallocated (a)	**(37,667)**	(64,509)	**(134,763)**	(226,863)
Total operating loss	**(50,693)**	(141,344)	**(215,718)**	(629,873)
Equity in loss of unconsolidated joint ventures	**(4,041)**	(18,568)	**(13,795)**	(75,069)
Gain on early extinguishment of debt	**55,214**	—	**58,788**	—
Other expense, net	**(22,370)**	(13,489)	**(59,958)**	(20,907)
Loss from continuing operations before income taxes	**$ (21,890)**	$ (173,401)	**$ (230,683)**	$ (725,849)

(in thousands)	Three Months Ended June 30, 2009	Three Months Ended June 30, 2008	Nine Months Ended June 30, 2009	Nine Months Ended June 30, 2008
Depreciation and amortization				
West	**$ 1,765**	$ 1,879	**$ 4,536**	$ 5,581
East	**1,570**	1,913	**4,105**	5,632
Southeast	**515**	560	**1,156**	2,361
Other homebuilding	**(3)**	867	**145**	2,144
Financial Services	**—**	8	**9**	22
Segment total	**3,847**	5,227	**9,951**	15,740
Corporate and unallocated (a)	**1,110**	819	**3,128**	2,510
Consolidated total	**$ 4,957**	$ 6,046	**$ 13,079**	$ 18,250

(in thousands)	June 30, 2009	September 30, 2008
Assets (b)		
West	**$ 723,592**	$ 779,863
East	**453,661**	507,412
Southeast	**200,339**	225,125
Other homebuilding	**39,663**	64,123
Financial Services	**33,853**	38,156
Corporate and unallocated (c)	**657,363**	1,024,681
Discontinued operations	**118**	2,439
Consolidated total	**$ 2,108,589**	$ 2,641,799

(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 nine months ended June 30, 2009, corporate and unallocated also includes $2.5 million and $7.5 million of investigation-related costs and approximately $3 million and $16 million for obligations related to the government investigations (see Note 9), respectively. For the three and nine months ended June 30, 2008, corporate and unallocated includes $11.0 million and $28.2 million of investigation-related costs, respectively. Corporate and unallocated also includes goodwill impairment

charges of $0 and $16.1 million for the three and nine months ended June 30, 2009 and $4.4 and $52.5 million for the three and nine months ended June 30, 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 June 30, 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
June 30, 2009
(in thousands)

	Beazer Homes USA, Inc.	Guarantor Subsidiaries	Non-Guarantor Subsidiaries	Consolidating Adjustments	Consolidated Beazer Homes USA, Inc.
ASSETS					
Cash and cash equivalents	$ 463,427	$ 2,970	$ 2,751	$ (4,199)	$ 464,949
Restricted cash	11,327	575	—	—	11,902
Accounts receivable (net of allowance of $6,129)	—	26,139	46	—	26,185
Income tax receivable	13,957	—	—	—	13,957
Owned inventory	—	1,397,181	—	—	1,397,181
Consolidated inventory not owned	—	58,542	—	—	58,542
Investments in unconsolidated joint ventures	3,093	26,812	—	—	29,905
Deferred tax assets, net	22,109	—	—	—	22,109
Property, plant and equipment, net	—	30,071	—	—	30,071
Investments in subsidiaries	202,174	—	—	(202,174)	—
Intercompany	1,065,705	(1,073,731)	3,827	4,199	—
Other assets	26,440	23,153	4,195	—	53,788
Total assets	$1,808,232	$ 491,712	$10,819	$(202,174)	$2,108,589
LIABILITIES AND STOCKHOLDERS' EQUITY					
Trade accounts payable	$ —	$ 76,461	$ —	$ —	$ 76,461
Other liabilities	90,487	151,383	7,103	—	248,973
Intercompany	476	—	(476)	—	—
Obligations related to consolidated inventory not owned	—	31,764	—	—	31,764
Senior notes (net of discounts of $2,013)	1,407,486	—	—	—	1,407,486
Junior subordinated notes	103,093	—	—	—	103,093
Other notes payable	—	34,122	—	—	34,122
Model home financing obligations	46,908	—	—	—	46,908
Total liabilities	1,648,450	293,730	6,627	—	1,948,807
Stockholders' equity	159,782	197,982	4,192	(202,174)	159,782
Total liabilities and stockholders' equity	$1,808,232	$ 491,712	$10,819	$(202,174)	$2,108,589

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.
ASSETS					
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
Total assets	$2,181,795	$ 843,585	$10,202	$(393,783)	$2,641,799
LIABILITIES AND STOCKHOLDERS' EQUITY					
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
Total liabilities	1,806,944	454,607	5,397	—	2,266,948
Stockholders' equity	374,851	388,978	4,805	(393,783)	374,851
Total liabilities and stockholders' equity	$2,181,795	$ 843,585	$10,202	$(393,783)	$2,641,799

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.
Three Months Ended June 30, 2009					
Total revenue	$ —	$ 224,509	$ 144	$ —	$ 224,653
Home construction and land sales expenses	12,999	194,177	—	—	207,176
Inventory impairments and option contract abandonments	160	11,696	—	—	11,856
Gross (loss) profit	(13,159)	18,636	144	—	5,621
Selling, general and administrative expenses	—	51,485	(128)	—	51,357
Depreciation and amortization	—	4,957	—	—	4,957
Operating (loss) income	(13,159)	(37,806)	272	—	(50,693)
Equity in loss of unconsolidated joint ventures	—	(4,041)	—	—	(4,041)
Gain on extinguishment of debt	55,214	—	—	—	55,214
Other (expense) income, net	(23,728)	1,566	(208)	—	(22,370)
(Loss) income from continuing operations before income taxes	18,327	(40,281)	64	—	(21,890)
(Benefit from) provision for income taxes	7,615	(1,639)	14	—	5,990
Equity in loss of subsidiaries	(38,592)	—	—	38,592	—
(Loss) income from continuing operations	(27,880)	(38,642)	50	38,592	(27,880)
Loss from discontinued operations, net of tax	(96)	—	—	96	—
Equity in loss of subsidiaries	—	(96)	—	—	(96)
Net (loss) income	$ (27,976)	$ (38,738)	$ 50	$ 38,688	$ (27,976)
Nine Months Ended June 30, 2009					
Total revenue	$ —	$ 644,860	$ 480	$ —	$ 645,340
Home construction and land sales expenses	36,551	544,369	—	—	580,920
Inventory impairments and option contract abandonments	2,113	74,207	—	—	76,320
Gross (loss) profit	(38,664)	26,284	480	—	(11,900)
Selling, general and administrative expenses	—	174,631	(35)	—	174,596
Depreciation and amortization	—	13,079	—	—	13,079
Goodwill impairment	—	16,143	—	—	16,143
Operating (loss) income	(38,664)	(177,569)	515	—	(215,718)
Equity in loss of unconsolidated joint ventures	—	(13,795)	—	—	(13,795)
Gain on extinguishment of debt	55,214	3,574	—	—	58,788
Other (expense) income, net	(65,987)	6,241	(212)	—	(59,958)
(Loss) income from continuing operations before income taxes	(49,437)	(181,549)	303	—	(230,683)
(Benefit from) provision for income taxes	(17,071)	8,975	115	—	(7,981)
Equity in loss of subsidiaries	(190,336)	—	—	190,336	—
(Loss) income from continuing operations	(222,702)	(190,524)	188	190,336	(222,702)
Loss from discontinued operations, net of tax	(472)	—	—	472	—
Equity in loss of subsidiaries	—	(472)	—	—	(472)
Net (loss) income	$(223,174)	$(190,996)	$ 188	$190,808	$(223,174)

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.
Three Months Ended June 30, 2008					
Total revenue	$ —	$ 455,427	$151	$ —	$ 455,578
Home construction and land sales expenses	26,693	380,819	—	—	407,512
Inventory impairments and option contract abandonments	1,875	93,607	—	—	95,482
Gross (loss) profit	(28,568)	(18,999)	151	—	(47,416)
Selling, general and administrative expenses	—	83,452	65	—	83,517
Depreciation and amortization	—	6,046	—	—	6,046
Goodwill impairment	—	4,365	—	—	4,365
Operating (loss) income	(28,568)	(112,862)	86	—	(141,344)
Equity in loss of unconsolidated joint ventures	—	(18,568)	—	—	(18,568)
Other (expense) income, net	(14,083)	567	27	—	(13,489)
(Loss) income before income taxes	(42,651)	(130,863)	113	—	(173,401)
(Benefit from) provision for income taxes	(15,964)	(47,776)	33	—	(63,707)
Equity in loss of subsidiaries	(83,007)	—	—	83,007	—
(Loss) income from continuing operations	(109,694)	(83,087)	80	83,007	(109,694)
Loss from discontinued operations, net of tax	—	(148)	—	—	(148)
Equity in loss of subsidiaries	(148)	—	—	148	—
Net (loss) income	$(109,842)	$ (83,235)	$ 80	$ 83,155	$ (109,842)
Nine Months Ended June 30, 2008					
Total revenue	$ —	$1,361,146	$503		$1,361,649
Home construction and land sales expenses	75,982	1,147,270	—	—	1,223,252
Inventory impairments and option contract abandonments	12,468	439,386	—	—	451,854
Gross (loss) profit	(88,450)	(225,510)	503	—	(313,457)
Selling, general and administrative expenses	—	245,472	224	—	245,696
Depreciation and amortization	—	18,250	—	—	18,250
Goodwill impairment	—	52,470	—	—	52,470
Operating (loss) income	(88,450)	(541,702)	279	—	(629,873)
Equity in loss of unconsolidated joint ventures	—	(75,069)	—	—	(75,069)
Other (expense) income, net	(28,122)	7,036	179	—	(20,907)
(Loss) income before income taxes	(116,572)	(609,735)	458	—	(725,849)
(Benefit from) provision for income taxes	(43,633)	(206,298)	160	—	(249,771)
Equity in loss of subsidiaries	(403,139)	—	—	403,139	—
(Loss) income from continuing operations	(476,078)	(403,437)	298	403,139	(476,078)
Loss from discontinued operations, net of tax	—	(1,893)	—	—	(1,893)
Equity in loss of subsidiaries	(1,893)	—	—	1,893	—
Net (loss) income	$(477,971)	$ (405,330)	$298	$405,032	$ (477,971)

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

	Beazer Homes USA, Inc.	Guarantor Subsidiaries	Non-Guarantor Subsidiaries	Consolidating Adjustments	Consolidated Beazer Homes USA, Inc.
For the nine months ended June 30, 2009					
Net cash provided by (used in) operating activities	$ 61,635	$ (63,616)	$3,481	$ —	$ 1,500
Cash flows from investing activities:					
Capital expenditures	—	(5,484)	—	—	(5,484)
Investments in unconsolidated joint ventures	—	(9,042)	—	—	(9,042)
Changes in restricted cash	(11,327)	(278)	—	—	(11,605)
Net cash used in investing activities	(11,327)	(14,804)	—	—	(26,131)
Cash flows from financing activities:					
Repurchase of Senior Notes	(54,836)	—	—	—	(54,836)
Repayment of other secured notes payable	—	(11,995)	—	—	(11,995)
Repayment of model home financing obligations	(24,323)	—	—	—	(24,323)
Debt issuance costs	(1,311)	—	—	—	(1,311)
Common stock redeemed	(22)	—	—	—	(22)
Tax benefit from stock transactions	(2,267)	—	—	—	(2,267)
Advances to/from subsidiaries	(79,978)	78,579	(735)	2,134	—
Net cash (used in) provided by financing activities	(162,737)	66,584	(735)	2,134	(94,754)
(Decrease) increase in cash and cash equivalents	(112,429)	(11,836)	2,746	2,134	(119,385)
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	$ 463,427	$ 2,970	$2,751	$ (4,199)	$ 464,949
For the nine months ended June 30, 2008					
Net cash (used in) provided by operating activities	$(193,242)	$ 217,448	$ 293	$ —	$ 24,499
Cash flows from investing activities:					
Capital expenditures	—	(7,951)	2	—	(7,949)
Investments in unconsolidated joint ventures	—	(11,137)	—	—	(11,137)
Changes in restricted cash	—	4,268	—	—	4,268
Net cash (used in) provided by investing activities	—	(14,820)	2	—	(14,818)
Cash flows from financing activities:					
Repayment of other secured notes payable	—	(100,472)	—	—	(100,472)
Repayment of model home financing obligations	(27,728)	—	—	—	(27,728)
Debt issuance costs	(21,135)	—	—	—	(21,135)
Common stock redeemed	(27)	—	—	—	(27)
Tax benefit from stock transactions	(454)	—	—	—	(454)
Advances to/from subsidiaries	118,873	(102,979)	(111)	(15,783)	—
Net cash provided by (used in) financing activities	69,529	(203,451)	(111)	(15,783)	(149,816)
(Decrease) increase in cash and cash equivalents	(123,713)	(823)	184	(15,783)	(140,135)
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	$ 323,583	$ 8,877	$1,743	$(20,001)	$ 314,202

(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

joint venture interest in HFN was not owned by Beazer Mortgage Corporation and, therefore, the associated investment as of June 30, 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 June 30, 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 nine months ended June 30, 2009 and 2008 were as follows (dollars in thousands):

	Three Months Ended June 30,		Nine Months Ended June 30,	
	2009	2008	**2009**	2008
Total revenue	**$ —**	$ —	**$ —**	$ 3,497
Exit and disposal charges of mortgage origination business	—	(28)	—	(621)
Loss from discontinued operations before income taxes	**(96)**	(237)	**(472)**	(3,034)
Benefit from income taxes	—	(89)	—	(1,141)
Loss from discontinued operations, net of tax	**(96)**	(148)	**(472)**	(1,893)

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

	June 30, 2009	September 30, 2008
ASSETS		
Accounts receivable	**4**	2,305
Residential mortgage loans available-for-sale	**93**	94
Other	**21**	40
Assets of discontinued operations	**$ 118**	$ 2,439
LIABILITIES		
Trade accounts payable and other liabilities	**$ 300**	$ 360
Liabilities of discontinued operations	**$ 300**	$ 360

(14) Fair Value of Financial Instruments

The fair value of our cash and cash equivalents, restricted cash, accounts receivable, trade accounts payable, other liabilities, other secured notes payable and model home financing obligations approximate their carrying amounts due to the short maturity of these assets and liabilities and the variable interest rates on such obligations. Obligations related to consolidated inventory not owned are recorded at estimated fair value. The carrying values and estimated fair values of other financial assets and liabilities were as follows:

	As of June 30, 2009		As of September 30, 2008	
	Carrying Amount	**Fair Value**	Carrying Amount	Fair Value
Senior Notes	**$ 1,407,486**	**$ 761,189**	$ 1,522,669	$ 1,051,150
Junior subordinated notes	**103,093**	**42,909**	103,093	68,504
	$ 1,510,579	**$ 804,098**	$ 1,625,762	$ 1,119,654

The estimated fair values shown above for our publicly held Senior Notes have been determined using quoted market rates. The fair value of our publicly held junior subordinated notes is estimated by discounting scheduled cash flows through maturity. The discount

rate is estimated using market rates currently being offered on loans with similar terms and credit quality. Judgment is required in interpreting market data to develop these estimates of fair value. Accordingly, the estimates presented herein are not necessarily indicative of the amounts that we could realize in a current market exchange.

(15) Subsequent Events

On July 31, 2009, we adopted a Section 382 stockholder rights plan (the "Rights Plan"). The purpose of the stockholder rights plan is to protect stockholder value by preserving the value of certain deferred tax assets of the Company primarily associated with net operating loss carryforwards ("NOL") under Section 382 of the Internal Revenue Code. The Rights Plan was adopted to reduce the likelihood of an unintended "ownership change," as defined by Section 382, occurring as a result of ordinary buying and selling of the Company's common shares. We believe that the Rights Plan serves the interests of all stockholders by attempting to protect our ability to use our deferred tax assets to offset tax liabilities in the future. The Rights Plan was not adopted as an anti-takeover measure and once the deferred tax assets have been substantially realized, the Board of Directors intends to terminate the Rights Plan. Under the Rights Plan, one right will be distributed for each share of common stock of the Company outstanding as of August 10, 2009. Under the Rights Plan, if any person or group acquires 4.95% or more of the outstanding shares of common stock of the Company without the approval of the Board of Directors, there would be a triggering event causing significant dilution in the voting power of such person or group.

Effective August 6, 2009, Michael H. Furlow resigned his position as Executive Vice President and Chief Operating Officer of the Company and became the division president of our South Carolina homebuilding operations. In connection with this change in responsibilities, the Company has entered into new two-year employment and supplemental employment agreements with Mr. Furlow which, among other items, establishes his base salary during his employment term, entitles him to participate in the Company's incentive compensation and welfare plans available to division presidents, and amends the change in control provisions in his agreement to reflect his new two-year employment term.

As disclosed in Note 1, on August 4, 2009, we offered to exchange stock options/SSARs to purchase 310,011 shares of our common stock with exercise prices ranging from $26.51 to $62.02 per share for newly issued restricted shares of common stock based on the exercise price of the eligible awards exchanged. Eligible employees may voluntary elect to accept the offer of exchange through August 31, 2009, unless the offer is extended.

As disclosed in Note 3, subsequent to quarter end, one of our unconsolidated joint ventures completed a modification of its loan agreement which resulted in, among other things, an extension of the loan maturity for two years and the release of certain repayment, specific performance and loan-to-value maintenance guarantees, the Company portion of which was estimated at a maximum of $19.9 million. The Company contributed $9.7 million to the joint venture which was used to pay down outstanding debt and which increased our investment in the joint venture.

As disclosed in Note 7, on August 5, 2009, the Secured Revolving Credit Facility was reduced to $22 million, and will be used to provide for future letter of credit needs. The restructured facility will allow us to issue letters of credit collateralized by either cash or assets of the Company at the Company's option, conditioned upon certain conditions and covenant compliance. We also entered into three stand-alone, cash-secured, letter of credit agreements with banks to preserve the pre-existing letters of credit issued under the Secured Revolving Credit Facility and to issue new letters of credit.

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 against a backdrop of macroeconomic recession, declining consumer confidence and significant tightening in the availability of home mortgage credit. While we have begun to see signs that some negative market trends may be moderating at both local and national levels, key macroeconomic indicators remain soft or mixed. In addition, throughout fiscal 2009, the credit markets and the mortgage industry have experienced a period of 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. Although the supply of new and resale homes in the marketplace has decreased recently, it is still excessive for the current level of consumer demand and is challenged by an increased number of foreclosed homes offered at substantially reduced prices. These pressures in the marketplace have 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 throughout much of our fiscal 2009.

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.

During our second and third quarters of fiscal 2009, 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 June 30, 2009, these markets represented less than 2% 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, on July 1, 2009, the Company announced that it has resolved the 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 matters that were the subject of the Investigation discussed above. Based on the deferred prosecution agreement ("DPA") with the U.S. Attorney and a settlement agreement with HUD and the civil division of the Department of Justice and our settlement agreements with the North Carolina Real Estate Commission and North Carolina Office of the Commissioner of Banks, we recognized expense for the three and nine months ended June 30, 2009 of approximately $3 million and $16 million to cover payments that we believe are probable and reasonably estimable for fiscal years 2009 and 2010. Under the terms of the DPA, the Company's liability in each of the fiscal years after 2010 through a portion of fiscal 2014 (unless extended as described in Note 9) will also be equal to 4% of the Company's adjusted EBITDA (earnings before interest, taxes, depreciation and amortization as defined in the DPA). The total amount of such obligations will be dependent on several factors; however, the maximum liability under the DPA and other settlement agreements discussed above will not be less than $15.5 million

and will not exceed $55.0 million. While we believe that our accrual for this liability is adequate as of June 30, 2009, positive EBITDA results in future years may require us to increase our accrual and incur additional expense in the future.

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 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: In the third quarter of fiscal 2009, we have experienced sequential improvement in sales trends compared to our first and second quarters of fiscal 2009. Historically low interest rates, increased affordability and federal and state housing tax credits appear to have enticed more prospective buyers to purchase a new home. Together with a competitive environment characterized by much lower levels of competition from private builders, these factors offer a slight hint of improvement, though it is premature to conclude that a sustainable recovery is yet underway. Foreclosures are still having by far the most damaging impact on the market. In most of our markets, appraisals continue to be negatively impacted by foreclosure comparables which put additional pricing pressure on all home sales and limit financing availability. As a result, we expect that the fourth quarter of fiscal 2009 will continue to pose significant challenges for us and, as a result, it is likely that we will also incur additional net losses in the fourth quarter of 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 June 30, 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 first nine months of fiscal 2009, we fully satisfied a $16.5 million note, secured by a single property for $10.7 million and recognized a $3.6 million gain on debt extinguishment which is included in gain on extinguishment of debt in the unaudited condensed consolidated statement of operations.

There were no amounts outstanding under the Secured Revolving Credit Facility at June 30, 2009 or September 30, 2008; however, as of June 30, 2009, we had provided $11.3 million of cash in addition to pledged real estate assets to supplementally collateralize our outstanding letters of credit of $46.5 million. The Company has decided to amend and restructure its Secured Revolving Credit Facility and recognized expense of $3.3 million of previously capitalized unamortized debt issuance costs for the three and nine months ended June 30, 2009, which is included in other expense, net in the unaudited condensed consolidated statements of operations. As part of this restructuring, the current Secured Revolving Credit Facility was reduced to $22 million and will be provided by one lender. The restructured facility will continue to provide for future working capital and letter of credit needs, collateralized by either cash or

assets of the Company at the Company's option, conditioned upon certain conditions and covenant compliance. We also entered into three stand-alone, cash-secured, letter of credit agreements with banks to maintain the pre-existing letters of credit that had been under the current Secured Revolving Credit Facility. At closing on August 5, 2009, we elected to secure all of our letters of credit using cash collateral which required additional cash in restricted accounts of $37.8 million.

Obligations to consummate offers to purchase 10% of our non-convertible senior notes at par may be triggered if our consolidated tangible net worth (stockholders' equity less intangible assets, as defined) is less than $85 million at the end of any two consecutive fiscal quarters. As of June 30, 2009, our consolidated tangible net worth was $125.8 million. If triggered and fully subscribed in the future, this could result in our having to purchase $123.6 million of notes, based on amounts outstanding at June 30, 2009.

During the three months ended June 30, 2009, S&P lowered the Company's corporate credit rating from CCC+ to CCC and maintained its negative outlook. S&P also cut ratings on the company's senior unsecured notes from CCC to CCC-. On March 6, 2009 Moody's 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 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 June 30, 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 $28.9 million at June 30, 2009. See Note 3 to the unaudited condensed consolidated financial statements.

Our cash and cash equivalents at June 30, 2009 was $464.9 million. Although we expect to incur a net loss during the remainder of fiscal 2009, we believe our cash and cash equivalents as of June 30, 2009, cash generated from our operations during the remainder of fiscal 2009 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, tangible net worth and joint venture defaults, we would have cash requirements totaling approximately $210 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 third 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 June 30, **2009**	2008	Nine Months Ended June 30, **2009**	2008
Revenues:				
Homebuilding	**$ 223,219**	$ 431,723	**$ 641,087**	$ 1,324,166
Land and lot sales	**1,077**	22,975	**3,096**	34,544
Financial Services	**357**	880	**1,157**	2,939
Total	**$ 224,653**	$ 455,578	**$ 645,340**	$ 1,361,649
Gross profit (loss)				
Homebuilding	**$ 5,168**	$ (50,338)	**$ (13,122)**	$ (317,398)
Land and lot sales	**96**	2,042	**65**	1,002
Financial Services	**357**	880	**1,157**	2,939
Total	**$ 5,621**	$ (47,416)	**$ (11,900)**	$ (313,457)
Selling, general and administrative (SG&A) expenses:				
Homebuilding	**$ 51,172**	$ 82,847	**$ 173,676**	$ 243,790
Financial Services	**185**	670	**920**	1,906
Total	**$ 51,357**	$ 83,517	**$ 174,596**	$ 245,696
Depreciation and amortization	**$ 4,957**	$ 6,046	**$ 13,079**	$ 18,250
As a percentage of total revenue:				
Gross Margin	**2.5%**	-10.4%	**-1.8%**	-23.0%
SG&A — homebuilding	**22.8%**	18.2%	**26.9%**	17.9%
SG&A — Financial Services	**0.1%**	0.1%	**0.1%**	0.1%
Goodwill impairment	**$ —**	$ 4,365	**$ 16,143**	$ 52,470
Equity in loss of unconsolidated joint ventures from:				
Joint venture activities	**$ 758**	$ (302)	**$ 630**	$ (12,238)
Impairments	**(4,799)**	(18,266)	**(14,425)**	(62,831)
Equity in loss of unconsolidated joint ventures	**$ (4,041)**	$ (18,568)	**$ (13,795)**	$ (75,069)
Effective tax rate from continuing operations	**-27.4%**	36.7%	**3.5%**	34.4%

Three and Nine Month Periods Ended June 30, 2009 Compared to the Comparable Periods Ended June 30, 2008

Revenues. The continued deterioration of the housing industry contributed to 50.7% and 52.6% decreases in revenues for the three and nine months ended June 30, 2009 compared to the comparable periods ended June 30, 2008. Homes closed decreased by 43.4% to 950 from 1,677 for the quarters ended June 30, 2009 and 2008, respectively. For the nine months ended June 30, 2009 compared to the same period of the prior year, homes closed decreased by 48.5% primarily due to the tightening of mortgage credit availability, an increase in home foreclosures and other economic factors that impacted consumer homebuyers. Foreclosures are still having the most damaging impact on the market. In every market, appraisals continue to be negatively impacted by foreclosure comparables which put further pricing pressure on all home sales and limit financing availability. 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 9%

compared to the same quarter of the prior year due to increased price competition, changes in geographic concentrations of homes closed and additional price discounting and increased sales incentives employed subsequent to June 30, 2008 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 $1.1 million and $3.1 million of land sales for the three and nine months ended June 30, 2009 compared to $23.0 million and $34.5 million for the three and nine months ended June 30, 2008, respectively.

Gross Profit (Loss). Gross margin for three and nine months ended June 30, 2009 were 2.5% and - -1.8% (7.8% and 10.0% without impairments and abandonments) compared to gross margins of -10.4% and - -23.0% (10.6% and 10.2% 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 $95.5 million and $451.9 million for the three and nine months ended June 30, 2008 to $11.9 million and $76.3 million for the three and nine months ended June 30, 2009, as well as from cost reductions related to our cost control initiatives including renegotiated vendor pricing where possible, offset slightly by increased warranty expense for the three months ended June 30, 2009 compared to the prior year.

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 minimal profit on land sales of $96,000 and $65,000 for the three and nine months ended June 30, 2009 compared to profit on land sales of $2.0 million and $1.0 million for the three and nine months ended June 30, 2008, respectively.

Selling, General and Administrative Expense. Selling, general and administrative expense (“SG&A”) totaled $51.4 million and $83.5 million for the three months ended June 30, 2009 and 2008 and $174.6 million and $245.7 million for the nine months ended June 30, 2009 and 2008, respectively. The 38.5% and 28.9% decreases in SG&A expense during the fiscal 2009 three and nine 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 $3 million and $16 million in obligations related to the government investigations recorded in the three and nine months ended June 30, 2009, respectively (see Note 9 to the unaudited condensed consolidated financial statements). The three months ended June 30, 2009 and 2008 include $2.5 million and $11.0 million, respectively, of investigation related costs. For the nine months ended June 30, 2009 and 2008, investigation-related costs were $7.5 million and $28.2 million. As of June 30, 2009, we had reduced our overall number of employees by 626, or 40%, as compared to June 30, 2008, or a cumulative reduction of 78% since September 30, 2006.

Depreciation and Amortization. Depreciation and amortization (“D&A”) totaled $5.0 million and $13.1 million for the three and nine months ended June 30, 2009. D&A totaled $6.0 million and $18.3 million for the three and nine months ended June 30, 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 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 three and nine months ended June 30, 2008, we recorded goodwill impairment charges totaling $4.4 million and $52.5 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 June 30, 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 $4.8 million and $14.4 million during the three and nine months ended June 30, 2009, respectively (see Note 3 to the unaudited condensed consolidated financial statements where further discussed). Impairments of investments in our unconsolidated joint ventures totaled $18.3 million and $62.8 million for the three and nine months ended June 30, 2008, respectively. If these adverse market conditions continue or worsen, we may have to take further impairments 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 provision of $6.0 million for the three months ended June 30, 2009 primarily resulted from a revision of our estimate of future sources of taxable income that warranted additional valuation allowance on our deferred tax assets. Our tax benefit of $8.0 million for the nine months ended June 30, 2009, primarily resulted from the additional valuation allowance referred to above and a 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.

The principal difference between our effective rate and the U.S. federal statutory rate for the three and nine months ended June 30, 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 nine months ended June 30, 2008 is due to state income taxes incurred and the non-deductible goodwill impairment charge.

Segment Results for the Three and Nine Months Ended June 30, 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 June 30,					
	Homebuilding Revenues			Average Selling Price		
	2009	2008	Change	**2009**	2008	Change
West	**$ 87,204**	$ 144,913	-39.8%	**$ 219.1**	$ 241.9	-9.4%
East	**95,043**	161,107	-41.0%	**258.3**	312.2	-17.3%
Southeast	**40,648**	69,516	-41.5%	**223.3**	228.7	-2.4%
Other	**324**	56,187	-99.4%	**162.0**	217.8	-25.6%
Total	**$ 223,219**	$ 431,723	-48.3%	**$ 235.0**	$ 257.4	-8.7%

	Nine Months Ended June 30,					
	Homebuilding Revenues			Average Selling Price		
	2009	2008	Change	**2009**	2008	Change
West	**$ 263,799**	$ 433,450	-39.1%	**$ 224.3**	$ 248.7	-9.8%
East	**240,029**	469,853	-48.9%	**262.9**	281.0	-6.4%
Southeast	**122,510**	250,443	-51.1%	**220.3**	236.3	-6.8%
Other	**14,749**	170,420	-91.3%	**258.8**	218.5	18.4%
Total	**$ 641,087**	$ 1,324,166	-51.6%	**$ 237.3**	$ 252.0	-5.8%

Homebuilding revenues decreased for the three and nine months ended June 30, 2009 compared to comparable periods of the prior year due to a 43.4% and 48.5% 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, increased unemployment and a decline in consumer confidence in the majority of our markets further compounded the market pressures during the three and nine months ended June 30, 2009.

Homebuilding revenues in our West segment decreased 39.8% and 39.1%, respectively for the three and nine months ended June 30, 2009 compared to the comparable periods of fiscal 2008. These decreases were driven by decreased closings of 33.6% and 32.4%, and decreased average sales prices of 9.4% and 9.8%. 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 the majority of our markets in this segment.

For the three months ended June 30, 2009, our East segment homebuilding revenues decreased by 41.0% driven by a 28.7% decline in closings and a 17.3% decrease in average selling price which was particularly pronounced in our New Jersey and Virginia markets. For the nine months ended June 30, 2009 compared to the prior year, the decrease in homebuilding revenues was driven by a 45.4%

decrease in closings across all of our markets in this segment. These declines reflect the impact of excess capacity in the resale markets, the impact of credit tightening in the mortgage markets and a decline in consumer confidence.

Our Southeast segment continued to be challenged by significant declines in demand and excess capacity in both the new home and resale markets, driving decreases in homebuilding revenues of 41.5% and 51.1% for the three and nine months ended June 30, 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 40.1% and 47.5% for the three and nine months ended June 30, 2009 due to deteriorating market conditions and competitive pressures. The decrease in closings was driven by lower demand, higher available 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 June 30, 2009, we had one home in backlog related to these communities.

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

	Quarter Ended June 30,			Nine Months Ended June 30,		
	2009	2008	Change	**2009**	2008	Change
West	**$ 124**	$ —	n/a	**$ 629**	$ 3,919	-83.9%
East	**—**	134	-100.0%	**—**	2,654	-100.0%
Southeast	**695**	—	n/a	**740**	460	60.9%
Other	**258**	22,841	-98.9%	**1,727**	27,511	-93.7%
Total	**$ 1,077**	$ 22,975	-95.3%	**$ 3,096**	$ 34,544	-91.0%

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):

	Three Months Ended June 30,			
	2009		2008	
	Gross Profit (Loss)	**Gross Margin**	Gross (Loss) Profit	Gross Margin
West	**$ 7,667**	**8.8%**	$ (19,543)	-13.5%
East	**10,913**	**11.5%**	14,637	9.1%
Southeast	**2,094**	**5.2%**	(2,473)	-3.6%
Other	**(225)**	**-69.4%**	(13,168)	-23.4%
Corporate & unallocated	**(15,281)**	**n/a**	(29,791)	n/a
Total homebuilding	**5,168**	**2.3%**	(50,338)	-11.7%
Land and lot sales	**96**	**8.9%**	2,042	8.9%
Financial services	**357**	**100.0%**	880	100.0%
Total	**$ 5,621**	**2.5%**	$ (47,416)	-10.4%

	Nine Months Ended June 30,			
	2009		2008	
	Gross Profit (Loss)	**Gross Margin**	Gross (Loss) Profit	Gross Margin
West	**$ 11,777**	**4.5%**	$ (84,463)	-19.5%
East	**22,493**	**9.4%**	(5,161)	-1.1%
Southeast	**481**	**0.4%**	(51,568)	-20.6%
Other	**(7,805)**	**-52.9%**	(81,781)	-48.0%
Corporate & unallocated	**(40,068)**	**n/a**	(94,425)	n/a
Total homebuilding	**(13,122)**	**-2.0%**	(317,398)	-24.0%
Land and lot sales	**65**	**2.1%**	1,002	2.9%
Financial services	**1,157**	**100.0%**	2,939	100.0%
Total	**$ (11,900)**	**-1.8%**	$ (313,457)	-23.0%

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 $13.7 million and $39.4 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, net in the unaudited condensed consolidated financial statements. The three and nine months ended June 30, 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 and higher amortization of indirect construction costs.

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 June 30,			Nine Months Ended June 30,		
	2009	2008	Change	**2009**	2008	Change
West	**$ 51**	$ —	n/a	**$ (3)**	$ 1,630	-100.2%
East	**—**	1,559	-100.0%	**—**	1,564	-100.0%
Southeast	**20**	—	n/a	**59**	99	-40.4%
Other	**25**	483	-94.8%	**9**	(2,291)	100.4%
Total	**$ 96**	$ 2,042	-95.3%	**$ 65**	$ 1,002	-93.5%

Inventory Impairments. The following tables set forth, by reportable segment, the inventory impairments and lot option abandonment charges recorded for the three and nine months ended June 30, 2009 and 2008 (in thousands):

	Quarter Ended June 30,		Nine Months Ended June 30,	
	2009	2008	**2009**	2008
Development projects and homes in process (Held for Development)				
West	**$ 3,534**	$19,269	**$31,021**	$135,237
East	**1,260**	6,928	**7,884**	58,892
Southeast	**1,234**	15,078	**10,874**	40,475
Other	**—**	2,432	**93**	19,475
Unallocated	**241**	3,053	**3,515**	19,790
Subtotal	**$ 6,269**	$46,760	**$53,387**	$273,869
Land Held for Sale				
West	**$ 4,279**	$ 6,910	**$ 7,236**	$ 7,714
East	**—**	8,500	**307**	17,671
Southeast	**141**	804	**2,452**	34,608
Other	**64**	4,752	**8,922**	50,066
Subtotal	**$ 4,484**	$20,966	**$18,917**	$110,059
Lot Option Abandonments				
West	**$ 11**	$14,090	**$ 87**	$ 14,921
East	**1,092**	135	**2,808**	7,543
Southeast	**—**	1,176	**927**	18,415
Other	**—**	12,355	**194**	27,047
Subtotal	**$ 1,103**	$27,756	**$ 4,016**	$ 67,926
Total	**$11,856**	$95,482	**$76,320**	$451,854

The inventory impaired during the three months ended June 30, 2009 represented 117 lots in 4 communities with an estimated fair value of $5.9 million compared to 2,430 lots in 44 communities with an estimated fair value of $164.2 million for the three months ended June 30, 2008. For the nine months ended June 30, 2009, the inventory impaired represented 2,208 lots in 32 communities with an estimated fair value of $72.5 million compared to 8,850 lots in 191 communities with an estimated fair value of $556.2 million for the comparable period of the prior year. During the current period, for certain communities we determined that it was prudent to reduce sales prices or further increase sales incentives 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. The impairments recorded on our held for development inventory for the nine months ended June 30, 2009 and 2008, primarily resulted from the continued decline in the homebuilding environment in those specific submarkets.

During the three and nine months ended June 30, 2009, as a result of challenging market conditions 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 nine months ended June 30, 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 $41.5 million at June 30, 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 $334.5 million as of June 30, 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 nine months ended June 30, 2009 of $1.1 million and $4.0 million, respectively, compared to $27.8 million and $67.9 million related to the three and nine months ended June 30, 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

	Three Months Ended June 30,							
	New Orders, net			Cancellation Rates		Closings		
	2009	2008	Change	**2009**	2008	**2009**	2008	Change
West	**670**	813	-17.6%	**25.5%**	34.7%	**398**	599	-33.6%
East	**599**	386	55.2%	**23.1%**	48.3%	**368**	516	-28.7%
Southeast	**267**	417	-36.0%	**15.5%**	21.9%	**182**	304	-40.1%
Other	**1**	158	-99.4%	**n/a**	43.8%	**2**	258	-99.2%
Total	**1,537**	1,774	-13.4%	**23.0%**	36.8%	**950**	1,677	-43.4%

	Nine Months Ended June 30,							
	New Orders, net			Cancellation Rates		Closings		
	2009	2008	Change	**2009**	2008	**2009**	2008	Change
West	**1,434**	2,059	-30.4%	**33.9%**	37.8%	**1,176**	1,739	-32.4%
East	**1,238**	1,255	-1.4%	**27.8%**	46.1%	**913**	1,672	-45.4%
Southeast	**521**	1,101	-52.7%	**25.7%**	25.1%	**556**	1,060	-47.5%
Other	**18**	567	-96.8%	**45.5%**	43.0%	**57**	780	-92.7%
Total	**3,211**	4,982	-35.5%	**30.4%**	38.5%	**2,702**	5,251	-48.5%

New Orders and Backlog: New orders, net of cancellations, decreased 13.4% to 1,537 units for the three months ended June 30, 2009 compared to 1,774 units for the same period in the prior year. For the nine months ended June 30, 2009 and 2008, respectively, new orders, net of cancellations, decreased 35.5% to 3,211 units compared to 4,982 units for the same period in the prior year. Excluding the decrease in the Other Homebuilding segment which represents markets we decided to exit in fiscal 2008, net new orders declined 5.0% and 27.7% for the three and nine months ended June 30, 2009, respectively. The decrease in net new orders for the nine months ended June 30, 2009 compared to the prior year was driven by the weaker market conditions, including the tightening of mortgage credit availability, an increase in home foreclosures and other economic factors that have impacted homebuyers. Our 2009 fiscal third quarter net new orders reflect the sequential improvement in sales trends we have experienced compared to our 2009 first and second fiscal quarters. Historically low interest rates, increased affordability and federal and state housing tax credits appear to have enticed more prospective buyers to purchase a new home; however, foreclosures are still having a damaging impact on the market. In most of our markets, appraisals continue to be negatively impacted by foreclosure comparables which put additional pricing pressure on all home sales and limit financing availability.

For the three months ended June 30, 2009, we experienced cancellation rates of 23.0% compared to 36.8% 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 cancellation rate in our East Segment for the three and nine months ended June 30, 2008 were impacted by our sale of two large condominium projects in Virginia which resulted in the cancellation of 109 and 215 orders, respectively. Excluding these transactions, our cancellation rates in the East Segment were 33.6% and 36.9% for the three and nine months ended June 30, 2008. The decrease in cancellation rates across all markets reflects the impact of historically low interest rates, increased affordability and federal and state housing tax credits which appear to have enticed more prospective buyers to purchase a new home.

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 June 30, 2009 of $430.8 million decreased 35.5% from $668.1 million at June 30, 2008, related primarily to a 31.3% decrease in the number of homes in backlog from 2,716 units at June 30, 2008 to 1,867 units at June 30, 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 June 30,		
	2009	2008	Change
West	**785**	1,125	-30.2%
East	**810**	900	-10.0%
Southeast	**271**	531	-49.0%
Other	**1**	160	-99.4%
Total	**1,867**	2,716	-31.3%

Backlog has declined in all of our homebuilding segments due primarily to lower new orders caused by a competitive environment, increased foreclosures, the reduction in the availability of mortgage credit for our potential homebuyers and our decision to sell certain large projects and exit certain markets. Foreclosures are still having by far the most damaging impact on the market. In most of our markets, appraisals continue to be negatively impacted by foreclosure comparables which put additional pricing pressure on all home sales and limit financing availability. As the availability of mortgage loans stabilizes and the inventory of new and used homes decreases, backlog should increase; however, 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 June 30, 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 $119.4 million and $140.1 million in cash during the first nine months of fiscal 2009 and 2008, respectively, primarily for the payment of liabilities incurred during the fourth quarter of the prior fiscal year, the repurchase of a portion of our Senior Notes and the repayment of other secured notes payable. As of June 30, 2009, our liquidity position consisted of $464.9 million in cash and cash equivalents.

For the nine months ended June 30, 2009, net cash provided by operating activities was $1.5 million primarily due to income tax refunds, net of payments, totaling $159.5 million offset by significant reductions in trade accounts payable and other liabilities. For the nine months ended June 30, 2008, net cash provided by operating activities was $24.5 million. Based on the applicable year’s closings, as of June 30, 2009, our land bank includes a 6.4 year supply of owned and optioned land/lots for current and future development. Our ending land bank includes 32,904 owned and optioned lots and represents 17.0% and 28.8% decreases from the land bank as of September 30, 2008 and June 30, 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 June 30, 2008 to June 30, 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 $26.1 million compared to $14.8 million for the nine months ended June 30, 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 $94.8 million for the nine months ended June 30, 2009 related primarily to the repurchase of a portion of our Senior Notes, 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 $149.8 million for the comparable prior period of fiscal 2008 and consisted primarily of the repayment of $100.5 million of other secured notes payable, $21.1 million of debt issuance costs, and $27.7 million for the repayment of model home financing obligations.

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.

We fulfill our short-term cash requirements with cash generated from our operations. There were no amounts outstanding under the Secured Revolving Credit Facility at June 30, 2009 or September 30, 2008; however, we had $46.5 million and $61.2 million of letters of credit outstanding under the Secured Revolving Credit Facility at June 30, 2009 and September 30, 2008, respectively. We believe that the cash and cash equivalents at June 30, 2009 of $464.9 million, cash generated from our operations and availability of new debt financing, if any, will be adequate to meet our liquidity needs during the remainder of fiscal 2009 and into fiscal 2010. 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 $210 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, or amounts paid to fulfill obligations with governmental entities, 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 June 30, 2009 and September 30, 2008 we had the following long-term debt *(in thousands)*:

	Maturity Date	**June 30, 2009**	September 30, 2008
Secured Revolving Credit Facility	July 2011	**$ —**	$ —
8 5/8% Senior Notes*	May 2011	**175,000**	180,000
8 3/8% Senior Notes*	April 2012	**312,599**	340,000
6 1/2% Senior Notes*	November 2013	**182,990**	200,000
6 7/8% Senior Notes*	July 2015	**315,240**	350,000
8 1/8% Senior Notes*	June 2016	**250,670**	275,000
4 5/8% Convertible Senior Notes*	June 2024	**173,000**	180,000
Junior subordinated notes	July 2036	**103,093**	103,093
Other secured notes payable	Various Dates	**34,122**	50,618
Model home financing obligations	Various Dates	**46,908**	71,231
Unamortized debt discounts		**(2,013)**	(2,565)
Total		**$ 1,591,609**	$ 1,747,377

* 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 was 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) fell 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 extended to the filing of this Form 10-Q for the period ending June 30, 2009, the waiver agreement 1) preserved the facility size at $150 million, rather than shrinking to $100 million as required based on the Company's reported Tangible Net Worth, 2) maintained, the collateral coverage in the secured borrowing base at 4.5x, 3) maintained the current facility pricing at the Eurodollar Margin of 5.0% and 4) waived a potential breach of an investments covenant in the facility as of March 31, 2009. There were no amounts outstanding under the Secured Revolving Credit Facility at June 30, 2009 or September 30, 2008; however, as of June 30, 2009, we had provided $11.3 million of cash in addition to pledged real estate assets to supplementally collateralize our outstanding letters of credit of $46.5 million. The Company has decided to amend and restructure its Secured Revolving Credit Facility and recognized expense of $3.3 million of previously capitalized unamortized debt issuance costs related to the Secured Revolving Credit Facility for the three and nine months ended June 30, 2009, which is included in other expense, net in the unaudited condensed consolidated statements of operations.

As part of this restructuring, the current Secured Revolving Credit Facility was reduced to $22 million and will be provided by one lender. The restructured facility will continue to provide for future working capital and letter of credit needs collateralized by either cash or assets of the Company at the Company's option, conditioned upon certain conditions and covenant compliance. We also entered into three stand-alone, cash-secured, letter of credit agreements with banks to maintain the pre-existing letters of credit issued that had been under the current Secured Revolving Credit Facility. At closing on August 5, 2009, we elected to secure all of our letters of credit using cash collateral which required additional cash in restricted accounts of $37.8 million.

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 June 30, 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 $123.6 million for the first time based on the principal outstanding at June 30, 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*.

During the three and nine months ended June 30, 2009, we repurchased in several individual open market transactions, $115.5 million principal amount of Senior Notes ($5.0 million of 8 5/8% Senior Notes due 2011, $27.4 million of 8 3/8% Senior Notes due 2012, $17.0 million of 6 1/2% Senior Notes due 2013, $34.8 million of 6 7/8% Senior Notes due 2015, $24.3 million of 8 1/8% Senior Notes due 2016, and $7.0 million of Convertible Senior Notes due 2024). The aggregate purchase price for these repurchases was $58.2 million plus accrued and unpaid interest. These repurchases resulted in a gain on extinguishment of debt of $55.2 million, net of the write-off of unamortized discounts and debt issuance costs related to these notes. The gain from the repurchases is included in the unaudited condensed consolidated statements of operations for the three and nine months ended June 30, 2009 as gain on extinguishment of debt.

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 June 30, 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 June 30, 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 $3.6 million gain on debt extinguishment which is included in gain on extinguishment of debt in the accompanying unaudited condensed consolidated statement of operations for the nine months ended June 30, 2009.

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 June 30, 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 $46.9 million and $71.2 million of debt as of June 30, 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, 4.8% as of June 30, 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 June 30, 2009 or 2008. At June 30, 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 June 30, 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 June 30, 2009, we controlled 32,904 lots (a 6-year supply based on the last twelve months' closings). We owned 81%, or 26,666 lots, and 6,238 lots, 19%, 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 $41.5 million at June 30, 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 $334.5 million as of June 30, 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.

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 June 30, 2009 and September 30, 2008 reflect consolidated inventory not owned of $58.5 million and $106.7 million, respectively. We consolidated $46.8 million and $46.9 million of lot option agreements as consolidated inventory not owned pursuant to FIN 46R as of June 30, 2009 and September 30, 2008, respectively. In addition, as of June 30, 2009 and September 30, 2008, we recorded $11.7 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 $31.8 million at June 30, 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 $29.9 million and $33.1 million at June 30, 2009 and September 30, 2008, respectively.

Our joint ventures typically obtain secured acquisition and development financing. At June 30, 2009, our unconsolidated joint ventures had borrowings outstanding totaling $465.7 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 June 30, 2009, we had repayment guarantees of $20.3 million and loan-to-value maintenance guarantees of $8.6 million of debt of unconsolidated joint ventures. Several of our joint ventures are in default under their debt agreements at June 30, 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 June 30, 2009, we had accrued $3.2 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 $46.5 million and $276.7 million, respectively, at June 30, 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.

In April 2009, the FASB issued FSP 107-1 and Accounting Principles Board Opinion ("APB") 28-1, *Interim Disclosures about Fair Value of Financial Instruments*. FSP 107-1 amends SFAS 107, *Disclosures about Fair Value Instruments* and APB 28, *Interim Financial Reporting*, to require disclosures about fair value of financial instruments during interim reporting periods. The Company adopted the provisions of FSP 107-1 and APB 28-1 during the quarter ended June 30, 2009 and has included the required disclosures in this Quarterly Report on Form 10-Q.

In May 2009, the FASB issued SFAS No. 165, *Subsequent Events*, which establishes general standards of accounting for and disclosures of events that occur after the balance sheet date but before financial statements are issued or are available to be issued. SFAS 165 also requires the disclosure of the date through which subsequent events have been evaluated and the basis for that date. The Company adopted the provisions of SFAS 165 during the quarter ended June 30, 2009.

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 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.

In June 2009, the FASB issued SFAS No. 167, *Amendments to FASB Interpretation No. 46(R)*, which revises the approach to determining the primary beneficiary of a variable interest entity ("VIE") to be more qualitative in nature and requires companies to more frequently reassess whether they must consolidate a VIE. SFAS 167 also requires enhanced disclosures to provide more information about an enterprise's involvement in a variable interest entity. SFAS 167 is effective for the Company's fiscal year beginning October 1, 2010. The Company is currently reviewing the effect of SFAS 167 on its condensed consolidated financial statements.

In June 2009, the FASB issued SFAS No. 168, *The FASB Accounting Standards Codification and the Hierarchy of Generally Accepted Accounting Principles, a replacement of FASB Statement No. 162*, ("SFAS 168"). SFAS 168 establishes the FASB Accounting Standards Codification as the source of authoritative accounting principles recognized by the FASB to be applied by nongovernmental entities in the preparation of financial statements in conformity with GAAP. SFAS 168 is effective for the Company's September 30, 2009 consolidated financial statements. SFAS 168 does not change GAAP and will not have a material impact on the Company's consolidated financial statements.

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 June 30, 2009, we had $69.6 million of variable rate debt outstanding. Based on our average outstanding borrowings under our variable rate debt at June 30, 2009, a one-percentage point increase in interest rates would negatively impact our annual pre-tax earnings by approximately $0.7 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 June 30, 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 June 30, 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. On July 1, 2009, the Company announced that it had resolved the 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. The Company has entered into a deferred prosecution agreement ("DPA") with the U.S. Attorney and a settlement agreement with the U.S. Department of Housing and Urban Development ("HUD") and the civil division of the Department of Justice. In addition, certain of the Company's subsidiaries have entered into a settlement agreement with the North Carolina Real Estate Commission ("NCREC"). Also, as previously disclosed, Beazer Mortgage Corporation ("Beazer Mortgage") has entered into a settlement agreement with the North Carolina Office of the Commissioner of Banks ("OCOB"), under which Beazer Mortgage consented, without admitting the alleged violations, to the entry of a consent order which provides that Beazer Mortgage will provide approximately $2.5 million in restitution to certain borrowers in respect of the alleged violations. The settlement agreement concludes the OCOB's investigation into these matters with respect to Beazer Mortgage.

Under the DPA, the U.S. Attorney has agreed not to prosecute the Company in connection with the matters that were the subject of the Investigation and are set forth in a Bill of Information filed with the United States District Court for the Western District of North Carolina, provided that the Company satisfies its obligations under the DPA over the next 60 months. The term of the DPA may be less than 60 months in the event certain conditions, as described more fully in the DPA, are met. The DPA recognizes the cooperation of the Company, its voluntary disclosure and its adoption of remedial measures.

Under the terms of the DPA, in fiscal year 2009, the Company contributed $7.5 million to a restitution fund established to compensate those Beazer customers who can demonstrate that they were injured by certain of the practices identified in the Bill of Information. For fiscal year 2010 the Company will contribute to the restitution fund the greater of $1.0 million or an amount equal to 4% of the Company's fiscal 2010 adjusted EBITDA as defined in the DPA. The Company's liability in each of the fiscal years after 2010 will also be equal to 4% of the Company's adjusted EBITDA through a portion of fiscal year 2014, unless extended as described below. Under the terms of the DPA, the Company's total contributions to the restitution fund will not exceed $50.0 million.

Under the terms of the settlement agreement with HUD and the civil division of the Department of Justice, the Company made an immediate payment of $4.0 million to HUD to resolve civil and administrative investigations. In addition, on the first anniversary of the agreement, the Company will make a $1.0 million payment to HUD.

Under the agreement with HUD, if the amounts paid into the restitution fund with the U.S. Attorney described above do not reach $48.0 million at the end of 60 months, the restitution fund term will be extended using the adjusted EBITDA formula until the earlier of an additional 24 months or the time the Company's contribution reaches $48.0 million.

The amounts paid to the U.S. Attorney for contribution into the restitution fund and payments to HUD do not include the $2.5 million contributed to resolve the investigation by the OCOB, although this amount will be counted as part of the Company's maximum obligation to the restitution fund.

The Company's payment obligations under the DPA and the settlement agreement with HUD are interrelated. The total amount of such obligations will be dependent on several factors; however, the maximum liability under both agreements and the agreement with the OCOB will not be less than $15.5 million and will not exceed $55.0 million.

With respect to the NCREC, Beazer/Squires Realty, Inc. ("Beazer/Squires") and Beazer Homes Corp. each has agreed to the entry of a consent order regarding violations of certain North Carolina statutes. Under the respective consent orders, the NCREC agreed that a reprimand of Beazer Homes would not be issued as long as Beazer Homes completed certain remedial measures and that the broker license held by Beazer/Squires is revoked. The broker license held by Beazer/Squires has been on inactive status since October 2007. There is no monetary payment by the Company or its subsidiaries under either of the consent orders. The consent orders conclude the investigation by the NCREC into these matters with respect to the Company.

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 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 Glickenhaus & 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 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 Company filed a motion to dismiss the Second Amended Complaint. The federal court granted in part 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. On June 18, 2009, the Company filed a supplemental motion to dismiss/demurrer regarding the remaining state law claims in the Second Amended Complaint. . The Company intends to continue to vigorously defend against the action.

We cannot predict or determine the timing or final outcome of the lawsuits or the effect that any adverse findings 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. 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 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 June 30, 2009, no monetary penalties had been imposed in connection with such Administrative Orders. Consistent with its approach with other homebuilders, the EPA has contacted the Company about a possible resolution of these issues. Settlement negotiations are in the preliminary stages. 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.

On June 3, 2009, a purported class action complaint was filed by the owners of one of our homes in our Magnolia Lakes' community in Ft. Myers, Florida. The complaint names the Company and certain distributors and suppliers of drywall and was filed in the Circuit Court for Lee County, Florida on behalf of the named plaintiffs and other similarly situated owners of homes in Magnolia Lakes or alternatively in the State of Florida. The plaintiffs allege that the Company built their homes with defective drywall, manufactured in China, that contains sulfur compounds that allegedly corrode certain metals and that are allegedly capable of harming the health of individuals. Plaintiffs allege physical and economic damages and seek legal and equitable relief, medical monitoring and attorney's fees. On July 1, 2009, the Company filed a request to have this complaint removed to the United States District Court for the Middle District of Florida and on July 2, 2009 filed a motion to have the case transferred to the Eastern District of Louisiana pursuant to an order from the United States Judicial Panel on Multidistrict Litigation. The Company believes that the claims asserted in this complaint are governed by its home warranty or are without merit. Accordingly, the Company intends to vigorously defend against this litigation.

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).

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 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 5. Other Information

Effective August 6, 2009, Michael H. Furlow resigned his position as Executive Vice President and Chief Operating Officer of the Company and became the Division President-Charleston/Myrtle Beach/Savannah. As part of this change in responsibility, Mr. Furlow's employment agreements were amended and restated. Pursuant to his amended and restated employment agreement, Mr. Furlow's term of employment will end on August 6, 2011. Mr. Furlow's base salary for the first year of this term shall be $569,800 and his base salary for the second year of this term shall be $800,000. In addition, he will be entitled to participate in various incentive compensation and welfare plans to the same extent as other Division Presidents. Effective August 6, 2009, we also entered into an amended and restated supplemental employment agreement with Mr. Furlow, which pertains to certain employment and compensation matters in the event of a change in control of the Company. The principal change under Mr. Furlow's amended and restated supplemental employment agreement was to delete the automatic renewal mechanism of the agreement to reflect the new two year term of Mr. Furlow's employment.

Item 6. Exhibits

4.1	Section 382 rights Agreement, dated as of July 31, 2009, between Beazer Homes USA, Inc. and American Stock Transfer & Trust Company, LLC, as Rights Agent — incorporated herein by reference to Exhibit 10.1 of the Company's Form 8-K filed on August 3, 2009 (File No. 001-12822)
10.1	Fourth Amendment, dated August 4, 2009, to and under the Credit Agreement, dated as of July 25, 2007, among the Company, the lenders thereto and Wachovia Bank, National Association, as Agent
10.2	Amended and Restated Credit Agreement, dated August 5, 2009, between the Company, the lenders and issuers thereto and CITIBANK, N.A., as Swing Line Lender and Agent
10.3	Amended and restated employment agreement effective August 6, 2009 for Michael H. Furlow
10.4	Amended and rested supplemental agreement effective August 6, 2009 for Michael H. Furlow
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: August 7, 2009

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

FOURTH AMENDMENT

FOURTH AMENDMENT, dated as of August 4, 2009 (this "Fourth Amendment"), to the Credit Agreement, dated as of July 25, 2007 (as heretofore amended, supplemented or otherwise modified, the "Credit Agreement"), among Beazer Homes USA, Inc., a Delaware corporation (the "Borrower"), the several lenders from time to time parties thereto (the "Lenders") and Wachovia Bank, National Association, as agent (in such capacity, the "Agent") for the Lenders and the Issuers (as hereinafter defined).

W I T N E S S E T H:

WHEREAS, the Borrower, the Lenders and the Agent are parties to the Credit Agreement;

WHEREAS, the Borrower has requested that the Lenders 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, the Required Lenders, and the Agent agree as follows:

SECTION 1 DEFINITIONS. Unless otherwise defined herein, capitalized terms are used herein as defined in the Credit Agreement.

SECTION 2 AMENDMENTS.

2.1. Removal of Facility Letters of Credit.

(a) Notwithstanding anything to the contrary contained in the Credit Agreement, as of the Fourth Amendment Effective Date (as defined below), (i) each Facility Letter of Credit issued prior to the date hereof shall henceforth no longer be deemed to be a Facility Letter of Credit under the terms of the Credit Agreement, (ii) all participations of the Lenders in all such Facility Letter of Credit shall be terminated and of no further force and effect, and (iii)(A) each Facility Letter of Credit issued prior to the date hereof by JPMorgan Chase Bank, N.A. shall be deemed issued under an agreement dated on or about the date hereof between JPMorgan Chase Bank, N.A. and the Borrower with respect to such Facility Letters of Credit, (B) each Facility Letter of Credit issued prior to the date hereof by Regions Financial Corporation shall be deemed issued under that certain Letter of Credit Agreement dated on or about the date hereof between the Borrower and Regions Financial Corporation, and (C) each Facility Letter of Credit issued prior to the date hereof by Wachovia Bank, National Association ("Wachovia") shall be deemed issued under that certain Continuing Letter of Credit Agreement dated on or about the date hereof between the Borrower and Wachovia.

(b) The Borrower represents and warrants to the Lenders, Issuers and other parties to the Credit Agreement that the Borrower has entered into agreements with each of JPMorgan Chase Bank, N.A., Wachovia and Regions Financial Corporation (collectively, the "Resigning Issuers") whereby the Facility Letters of Credit (i) will remain outstanding on and after the Fourth Amendment Effective Date subject to bi-lateral reimbursement arrangements between the Borrower and each such Resigning Issuer and (ii) will cease to remain outstanding under the Credit Agreement.

(c) In connection with the bi-lateral arrangements with each of the Resigning Issuers, the Borrower may grant security interests to each of the Resigning Issuers in cash collateral and deposit accounts to secure the Borrower's obligations under the bi-lateral arrangements. The Agent and the Lenders hereby release such cash collateral and deposit accounts from the security interest of the Collateral Agreement, and such cash collateral and deposit accounts shall no longer secure the Loans, Notes, and obligations under the Credit Agreement but may secure the obligations of the Borrower under the bi-lateral arrangements with the Resigning Issuers.

2.2. Designation of Issuers.

(a) Notwithstanding anything to the contrary contained in the Credit Agreement, (i) the Resigning Issuers hereby resign as Issuers under the Credit Agreement effective as of the Fourth Amendment Effective Date, and (ii) Citibank, N.A. ("Citibank")is designated as an Issuer under the Credit Agreement, effective as of the Fourth Amendment Effective Date.

(b) As of the Fourth Amendment Effective Date, each of the Resigning Issuers (i) confirms that the obligations of the Borrower to such Resigning Issuer in respect of Facility Letters of Credit will remain outstanding under bi-lateral arrangements between such Resigning Issuer and the Borrower and will cease to be outstanding under the Credit Agreement, (ii) releases and discharges the Lenders, the other Issuers and the other parties to the Credit Agreement (other than the Borrower) from further obligations to such Resigning Issuer in respect of Facility Letters of Credit, (iii) agrees that its rights as against and duties and obligations of such other parties in respect of Facility Letters of Credit are permanently cancelled and terminated, and (iv) shall no longer have any duties or obligations as an Issuer under the Credit Agreement and all such duties and obligations of the Resigning Issuers are permanently cancelled and terminated.

2.3. Partial Termination of Aggregate Commitments. As of the Fourth Amendment Effective Date, (i) the Commitment of each Lender other than Citibank, N.A. shall be reduced to zero Dollars ($0.00), and (ii) the Commitment of Citibank, N.A. shall be reduced to Twenty-Two Million and No/100 Dollars ($22,000,000.00).

2.4. Termination of Lenders.

(a) As of the Fourth Amendment Effective Date, all Lenders other than Citibank, N.A. shall be terminated as Lenders (the "Terminating Lenders") under the Credit Agreement and, except as set forth in Section 2.5 below, all obligations of the Terminating Lenders under the Credit Agreement shall be terminated.

(b) Promptly following the Fourth Amendment Effective Date, each Terminating Lender shall use its best efforts to deliver its original Note to the Borrower for cancellation or, if a Terminating Lender cannot locate its original Note, a lost note affidavit and indemnity agreement substantially in the form adopted by The Loan Syndications and Trading Association, Inc.

2.5. Survival of Certain Provisions. Notwithstanding anything to the contrary contained herein, (i) with respect to the Resigning Issuers and the Terminating Lenders, the obligations of the Borrower under Sections 2.05(c), 2.14, 2.15, 2.17, 10.04 and 10.06 of the Credit Agreement shall survive effectiveness of this Amendment and the transactions contemplated hereby, and (ii) with respect to all Lenders the obligations of the Lenders under Section 9.05 of the Credit Agreement with respect to acts or omissions of the Agent prior to the Fourth Amendment Effective Date shall survive effectiveness of this Amendment and the transactions contemplated hereby.

2.6. Termination of Cash Collateral Agreement. As of the Fourth Amendment Effective Date, the Cash Collateral Agreement and the Agent's rights as secured party thereunder shall be terminated, the Cash Collateral Agreement shall no longer be a Security Document or Loan Document and the Accounts described in the Cash Collateral Agreement and any assets therein shall be released and no longer secure the Loans, Notes, and obligations under the Credit Agreement. Agent or any successor thereof may notify Evergreen Service Company, LLC that the Cash Collateral Agreement is terminated, and this Fourth Amendment shall constitute notice to the Borrower of the termination of the Cash Collateral Agreement.

SECTION 3 CONDITIONS PRECEDENT.

3.1. Effective Date. This Fourth Amendment shall become effective as of the date (the "Fourth Amendment Effective Date") on which all of the following conditions have been satisfied or waived:

(a) The Agent shall have received:

(1) this Fourth Amendment, executed and delivered by a duly authorized officer of the Borrower, the Required Lenders, the Issuers and the Agent;

(2) an Acknowledgment and Consent, in the form set forth as Exhibit A hereto, executed and delivered by a duly authorized officer of

each Guarantor (such Acknowledgment and Consent, together with this Fourth Amendment, the "Amendment Documents");

(3) execution and delivery of the Successor Agency and Amendment Agreement (the "Agency Agreement") dated as of the date hereof, by and among Wachovia, Citicorp North America, Inc., Citibank, the Borrower and the Guarantors;

(4) payment from the Borrower of all fees and expenses related to this Fourth Amendment and the Agency Agreement to be paid by Borrower; and

(5) payment from the Borrower of all accrued fees (including (A) commitment fees on the average daily unused portion of each Lender's Commitment pursuant to Section 2.9(b) of the Credit Agreement and (B) Facility Letter of Credit Fees) and expenses and other Obligations due and owing to any of the Lenders and to the Agent in accordance with the Credit Agreement.

(b) Each of the Resigning Issuers shall have received their applicable documents executed and delivered by the Borrower as set forth in clauses (i), (ii) and (iii) of Section 2.1.

(c) After giving effect to this Fourth Amendment, there shall be no Default or Event of Default.

SECTION 4 GENERAL.

4.1. Representations and Warranties.

(a) In order to induce the Agent, the Issuers and the Lenders to enter into this Fourth Amendment, the Borrower hereby represents and warrants to the Agents, the Issuers and the Lenders that (i) each of the Borrower and the Guarantors has all necessary corporate power and authority to execute and deliver the Amendment Documents, (ii) the execution and delivery by each such party of the Amendment Documents have been duly authorized by all necessary corporate action on its part, and (iii) the Amendment Documents have been duly executed and delivered by each such party and constitute each such party's legal, valid and binding obligation, enforceable in accordance with its terms.

(b) In order to induce the Agent, the Issuers and the Lenders to enter into this Fourth Amendment, the Borrower hereby represents and warrants to the Agent, the Issuers and the Lenders that after giving effect to this Fourth Amendment, there shall not exist or be continuing any Default or Event of Default.

4.2. 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 Loan Parties in connection with this Fourth Amendment 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, irrevocably releases and discharges the Agent and each Lender, all Affiliates of the Agent and each Lender, all officers, directors, employees, attorneys and agents of the Agent and each Lender or any of their Affiliates, and all of their predecessors in interest, from any and all claims, defenses, damages, losses, demands, liabilities, obligations and causes of action arising out of or in any way related to any of 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 Fourth Amendment.

4.3. Notice of Effectiveness. The Agent and Citibank shall promptly advise the Lenders and the Borrower that this Fourth Amendment has become effective and of the Fourth Amendment Effective Date, but such advice shall not be a representation by the Agent or Citibank that Section 3.1(c) is correct.

4.4. APPLICABLE LAW AND JURISDICTION. THE RIGHTS AND OBLIGATIONS OF THE PARTIES HERETO SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

4.5. Counterparts. This Fourth Amendment may be executed by the parties hereto in any number of separate counterparts and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Fourth Amendment by facsimile or other electronic image shall be effective as delivery of a manually executed counterpart of this Fourth Amendment.

4.6. Successors and Assigns. This Fourth Amendment shall be binding upon and inure to the benefit of the Borrower and its successors and assigns, and the Agent and the Lenders and each of their respective successors and assigns. The execution and delivery of this Fourth Amendment by any Lender prior to the Fourth Amendment Effective Date shall be binding upon its successors and assigns and shall be effective as to any loans or commitments assigned to it after such execution and delivery.

4.7. Continuing Effect. Except as expressly amended hereby, the Credit Agreement as amended by this Fourth Amendment shall continue to be and shall remain in full force and effect in accordance with its terms. This Fourth Amendment shall not constitute an amendment or waiver of any provision of the Credit Agreement not expressly referred to herein and shall not be construed as an amendment, waiver or consent to any action on the part of the Borrower that would require an amendment, waiver or consent of the Agent or the Lenders except as expressly stated herein. Any reference to the “Credit Agreement” in any Loan Document or any related documents

shall be deemed to be a reference to the Credit Agreement as amended by this Fourth Amendment.

4.8. Headings. Section headings used in this Fourth Amendment are for convenience of reference only, are not part of this Fourth Amendment and are not to affect the constructions of, or to be taken into consideration in interpreting, this Fourth Amendment.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Fourth Amendment to be executed and delivered by their respective duly authorized officers as of the date first above written.

BORROWER:

BEAZER HOMES USA, INC.,
a Delaware corporation

By: /s/ Jeffrey S. Hoza
Name: Jeffrey S. Hoza
Title: Vice President & Treasurer

WACHOVIA BANK, NATIONAL ASSOCIATION,
as Agent and as a Lender and as an Issuer

By: /s/ R. Scott Holtzapple
Name: R. Scott Holtzapple
Title: Director

CITIBANK, N.A., as a Lender and as an Issuer

By: /s/ Ricardo James
Name: Ricardo James
Title: Director

BNP PARIBAS, as a Lender

By: /s/ Duane Helkowski
Name: Duane Helkowski
Title: Managing Director

By: /s/ Berangere Allen
Name: Berangere Allen
Title: Vice President

THE ROYAL BANK OF SCOTLAND, as a Lender

By: /s/ Vlad Barshtak
Name: Vlad Barshtak
Title: Vice President

GUARANTY BANK, as a Lender

By: /s/ Charles Sebesta
Name: Charles Sebesta
Title: Senior Vice President

REGIONS FINANCIAL CORPORATION,
as a Lender and as an Issuer

By: /s/ Ronny Hudspeth
Name: Ronny Hudspeth
Title: Sr. Vice President

JPMORGAN CHASE BANK, N.A., as a Lender and
as an Issuer

By: /s/ Kimberly L. Turner
Name: Kimberly L. 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/ Luis Donoso
Name: Luis Donoso
Title: Vice President

UBS LOAN FINANCE, LLC, as a Lender

By: /s/ Marie A. Haddad /s/ Irja R. Otsa
Name: Marie A. Haddad Irja R. Otsa
Title: Associate Director Associate Director

COMERICA BANK, as a Lender

By: /s/ Sarah R. West
Name: Sarah R. West
Title: Vice President

EXHIBIT A

ACKNOWLEDGMENT AND CONSENT

Reference is made to the Fourth Amendment, dated as of August 4, 2009 (the "Fourth Amendment"), to and under the Credit Agreement, dated as of July 25, 2007 (as heretofore amended, supplemented or otherwise modified, the "Credit Agreement"), among Beazer Homes USA, Inc., a Delaware corporation, the several Lenders and Issuers from time to time parties thereto and Wachovia Bank, National Association, as Agent. Unless otherwise defined herein, capitalized terms used herein and defined in the Credit Agreement are used herein as therein defined.

Each of the undersigned parties to the Guaranty hereby (a) consents to the transactions contemplated by the Fourth Amendment, (b) acknowledges and agrees that the guarantees made by such party contained in the Guaranty and the grants of security interests made by such party in the Collateral Agreement are, and shall remain, in full force and effect after giving effect to the Fourth Amendment, and (c) on its own behalf and on behalf of each of its Affiliates, irrevocably releases and discharges the Agent and each Lender, all Affiliates of the Agent and each Lender, all officers, directors, employees, attorneys and agents of the Agent and each Lender or any of their Affiliates, and all of their predecessors in interest, from any and all claims, defenses, damages, losses, demands, liabilities, obligations and causes of action arising out of or in any way related to any of 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 undersigned or any Affiliate of the undersigned and that arise out of any one or more circumstances or events that occurred prior to the date of the Fourth Amendment.

GUARANTORS:

APRIL CORPORATION
BEAZER ALLIED COMPANIES HOLDINGS, INC.
BEAZER GENERAL SERVICES, INC.
BEAZER HOMES CORP.
BEAZER HOMES HOLDINGS CORP.
BEAZER HOMES INDIANA HOLDINGS CORP.
BEAZER HOMES SALES, INC.
BEAZER HOMES TEXAS HOLDINGS, INC.
BEAZER REALTY, INC.
BEAZER REALTY CORP.
BEAZER REALTY LOS ANGELES, INC.
BEAZER REALTY SACRAMENTO, INC.
BEAZER/SQUIRES REALTY, INC.
HOMEBUILDERS TITLE SERVICES, INC.
HOMEBUILDERS TITLE SERVICES OF VIRGINIA, INC.

By: /s/ Jeffrey S. Hoza (SEAL)
Name: Jeffrey S. Hoza
Title:

BEAZER MORTGAGE CORPORATION

By: /s/ Peggy Caldwell (SEAL)
Name: Peggy Caldwell
Title: Secretary

ARDEN PARK VENTURES, LLC
BEAZER CLARKSBURG, LLC
BEAZER COMMERCIAL HOLDINGS, LLC
BEAZER HOMES INVESTMENTS, LLC
BEAZER HOMES MICHIGAN, LLC
DOVE BARRINGTON DEVELOPMENT LLC

By: BEAZER HOMES CORP., its Sole Member

By: /s/ Jeffrey S. Hoza (SEAL)
Name: Jeffrey S. Hoza
Title:

BEAZER SPE, LLC

By: BEAZER HOMES HOLDINGS CORP.,
its Sole Member

By: /s/ Jeffrey S. Hoza (SEAL)
Name: Jeffrey S. Hoza
Title:

BEAZER HOMES INDIANA LLP

By: BEAZER HOMES INVESTMENTS, LLC,
its Managing Partner

By: BEAZER HOMES CORP.,
its Sole Member

Acknowledgement and Consent

By: /s/ Jeffrey S. Hoza (SEAL)
Name: Jeffrey S. Hoza
Title:

Acknowledgement and Consent

BEAZER REALTY SERVICES, LLC

By: BEAZER HOMES INVESTMENTS, LLC,
its Sole Member

By: BEAZER HOMES CORP.,
its Sole Member

By: /s/ Jeffrey S. Hoza (SEAL)
Name: Jeffrey S. Hoza
Title:

PARAGON TITLE, LLC
TRINITY HOMES, LLC

By: BEAZER HOMES INVESTMENTS, LLC,
a Member

By: BEAZER HOMES CORP.,
its Sole Member

By: /s/ Jeffrey S. Hoza (SEAL)
Name: Jeffrey S. Hoza
Title:

BEAZER HOMES TEXAS, L.P.
TEXAS LONE STAR TITLE, L.P.

By: BEAZER HOMES TEXAS HOLDINGS,
INC., its General Partner

By: /s/ Jeffrey S. Hoza (SEAL)
Name: Jeffrey S. Hoza
Title:

Acknowledgement and Consent

BH BUILDING PRODUCTS, LP

By: BH PROCUREMENT SERVICES, LLC,
its General Partner

By: BEAZER HOMES TEXAS, L.P.,
its Sole Member

By: BEAZER HOMES TEXAS HOLDINGS,
INC., its General Partner

By: /s/ Jeffrey S. Hoza (SEAL)
Name: Jeffrey S. Hoza
Title:

BH PROCUREMENT SERVICES, LLC

By: BEAZER HOMES TEXAS, L.P.,
its Sole Member

By: BEAZER HOMES TEXAS HOLDINGS,
INC., its General Partner

By: /s/ Jeffrey S. Hoza (SEAL)
Name: Jeffrey S. Hoza
Title:

Address for Notices to all Guarantors
c/o Beazer Homes USA, Inc.
1000 Abernathy Road
Suite 1200
Atlanta, Georgia 30328
Attention: President
Tel: (770) 829-3700
Fax: (770) 481-0431

Acknowledgement and Consent

Exhibit 10.2

AMENDED AND RESTATED CREDIT AGREEMENT

Dated as of August 5, 2009

BEAZER HOMES USA, INC.,

THE LENDERS PARTY HERETO,

THE ISSUERS PARTY HERETO,

CITIBANK, N.A.,
as Swing Line Lender,

and

CITIBANK, N.A.,
as Agent

CITIGROUP GLOBAL MARKETS INC.
Lead Arranger and Bookrunner

$22,000,000 364-DAY REVOLVING CREDIT FACILITY

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Exhibit G	Form of Officer’s Certification	Schedule IV

AMENDED AND RESTATED CREDIT AGREEMENT dated as of August 5, 2009 among BEAZER HOMES USA, INC., a Delaware corporation (the "Borrower"), the Lenders that are signatories hereto, the Issuers that are signatories hereto, CITIBANK, N.A., a national banking association, as Swing Line Lender, and CITIBANK, N.A., a Delaware corporation, as Agent (the "Agent") for the Lenders and the Issuers.

PRELIMINARY STATEMENTS

(1) The Borrower entered into that certain Credit Agreement dated as of July 25, 2007 (the "Original Credit Agreement"), among the Borrower, the several lenders party thereto as lenders and as issuers, and Wachovia Bank, National Association, as agent, as modified by (i) the First Amendment, (ii) that certain Second Limited Waiver dated as of June 30, 2009, (iii) the Second Amendment, (iv) the Third Amendment, (v) that certain Third Limited Waiver dated as of May 4, 2009, and (vi) the Fourth Amendment, each entered into among the Borrower, the several lenders party thereto as lenders and Wachovia Bank, National Association, as agent (the Original Credit Agreement, as so modified, and as heretofore otherwise amended, supplemented or otherwise modified, being hereinafter referred to as the "Existing Credit Agreement").

(2) Pursuant to that certain Successor Agency and Amendment Agreement dated as of the date hereof among Wachovia Bank, National Association, Citibank, N.A., the lenders and issuers under the Existing Credit Agreement, the Borrower and the Guarantors (as hereinafter defined), Wachovia Bank, National Association resigned as agent under the Existing Credit Agreement and Citibank, N.A. was appointed as successor agent.

(3) The Borrower, the Lenders, the Issuers and the Agent desire to amend and restate the Existing Credit Agreement in the manner hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties hereto hereby agree as follows:

ARTICLE I
DEFINITIONS AND ACCOUNTING TERMS

Section 1.01 Defined Terms. As used in this Agreement, the following terms have the following meanings (terms defined in the singular shall have the same meaning when used in the plural and vice versa):

"ABR Loan" means a Loan which bears interest at the Alternate Base Rate, other than a Swing Line Loan.

"Acceptable Appraisal" means an appraisal commissioned by and addressed to the Agent (reasonably acceptable to the Agent as to form, assumptions, substance, and appraisal

date), prepared by a qualified professional appraiser reasonably acceptable to the Agent, and complying in all material respects with the requirements of the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989.

"Acquisition" means any transaction, or any series of related transactions, consummated on or after the date of this Agreement by which the Borrower or any of its Subsidiaries (i) acquires any going concern or all or substantially all of the assets of any Person or division thereof, whether through purchase of assets, merger or otherwise or (ii) directly or indirectly acquires (in one transaction or as the most recent transaction in a series of transactions) at least a majority (in number of votes or by percentage of voting power) of the Common Equity of another Person.

"Adjusted Cash Flow from Operations" means, for any period of four consecutive fiscal quarters of the Borrower and its Subsidiaries (other than those Subsidiaries that are not Guarantors), the sum of (a) the cash generated by (or used in) operating activities, as calculated on the quarterly financial statements for the Borrower and its Subsidiaries, on a consolidated basis for such period, as determined in accordance with GAAP, such amount being reflected in the line item designated "Net Cash (used in) provided by operating activities" on the Borrower's quarterly financial statements, plus (b) Interest Incurred of the Borrower and its Subsidiaries, on a consolidated basis for such four consecutive fiscal quarters, as determined in accordance with GAAP.

"Adjusted LIBO Rate" means, with respect to any Eurodollar Loan for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/100 of 1%) equal to (a) the LIBO Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.

"Administrative Questionnaire" means an Administrative Questionnaire in a form supplied by the Agent.

"Affected Lender" is defined in Section 2.20(a).

"Affiliate" means, with respect to any Person, any other Person (1) which directly or indirectly controls, or is controlled by, or is under common control with, such Person or a Subsidiary of such Person; (2) which directly or indirectly beneficially owns or holds five percent (5%) or more of any class of voting equity interests of such Person or any Subsidiary of such Person; or (3) five percent (5%) or more of the voting equity interests of which is directly or indirectly beneficially owned or held by such Person or a Subsidiary of such Person. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Agent" has the meaning assigned to such term in the opening paragraph of this Agreement.

"Agent's Fee Letter" means that certain fee letter dated August 3, 2009 from the Agent and Arranger to the Borrower and accepted by the Borrower.

"Aggregate Commitment" means, at any time after the Effective Date, the aggregate Commitments of all the Lenders.

"Aggregate Outstanding Extensions of Credit" means, at any time, the sum of the aggregate principal amount of all Loans (including all Swing Line Loans) and the Facility Letter of Credit Obligations, in each case outstanding at such time.

"Agreement" means the Existing Credit Agreement, as amended and restated by this Amended and Restated Credit Agreement, as further amended, supplemented or otherwise modified from time to time; except that any reference to the date of this Agreement shall mean the date of this Amended and Restated Credit Agreement.

"Alternate Base Rate" means, for any day, the sum of (a) a rate per annum equal to the greater of (i) the Base Rate in effect on such day and (ii) the Federal Funds Effective Rate in effect on such day plus ½ of 1%, plus (b) the Applicable Margin. Any change in the Alternate Base Rate due to a change in the Prime Rate or the Federal Funds Effective Rate shall be effective from and including the effective date of such change in the Prime Rate or the Federal Funds Effective Rate, respectively.

"Amended and Restated Guaranty" means the Amended and Restated Guaranty dated as of the date hereof among each Guarantor identified on Schedule III and the Agent, substantially in the form attached as Exhibit A-1.

"Applicable Letter of Credit Rate" means, as at any date of determination, a rate per annum equal to the then effective Applicable Margin for Eurodollar Loans.

"Applicable Margin" means, as at any date of determination, the margin indicated below for the applicable type of Loan for each of the Cash Secured Option and the Secured Borrowing Base Option, as applicable:

Pricing Option	Eurodollar Loans	Base Rate Loans
Cash Secured Option	1.50%	0.50%
Secured Borrowing Base Option	6.00%	5.00%

"Appraised Value" means, with respect to any Real Property or any portion thereof, the appraised value of such Real Property or portion thereof set forth in the most-recent Acceptable Appraisal obtained by the Agent pursuant to the Loan Documents. The Appraised Value of (a) a Real Property shall be adjusted to take into account any portion that has been sold or otherwise transferred, and (b) a portion of a Real Property shall be calculated based upon the Acceptable Appraisal for such Real Property and allocated to such portion of such Real Property by the Borrower based upon a reasonable methodology approved by the Agent, including a methodology to reflect the value of ongoing or completed construction of Housing Units and improvements to Lots Under Development.

"Approved Electronic Communications" means each Communication that the Borrower or any Guarantor is obligated to, or otherwise chooses to, provide to the Agent pursuant to any Loan Document or the transactions contemplated therein, including any financial statement, financial and other report, notice, request, certificate and other information material; provided, however, that, solely with respect to delivery of any such Communication by the Borrower or any Guarantor to the Agent and without limiting or otherwise affecting either the Agent's right to effect delivery of such Communication by posting such Communication to the Approved Electronic Platform or the protections afforded hereby to the Agent in connection with any such posting, "Approved Electronic Communication" shall exclude (i) any notice of borrowing, letter of credit request, notice of conversion or continuation, and any other notice, demand, communication, information, document and other material relating to a request for a new, or a conversion of an existing, Borrowing, (ii) any notice of prepayment pursuant to Section 2.11 and any other notice relating to the payment of any principal or other amount due under any Loan Document prior to the scheduled date therefor, (iii) all notices of any Default or Event of Default and (iv) any notice, demand, communication, information, document and other material required to be delivered to satisfy any of the conditions set forth in Article III or any other condition to any Borrowing or other extension of credit hereunder or any condition precedent to the effectiveness of this Agreement.

"Approved Electronic Platform" is defined in Section 10.02(d).

"Approved Fund" means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"Arranger" means Citigroup Global Markets Inc.

"Assignment and Assumption" is defined in Section 11.02(b)(ii).

"Base Indenture 2001" has the meaning set forth in the definition of the term "Senior Notes".

"Base Indenture 2002" has the meaning set forth in the definition of the term "Senior Notes".

"Base Indenture 2004" has the meaning set forth in the definition of the term "Senior Notes".

"Base Rate" means the fluctuating rate of interest announced publicly by Citibank, N.A. in New York, New York from time to time as its base rate.

"Board" means the Board of Governors of the Federal Reserve System of the United States of America.

"BMC" means Beazer Mortgage Corporation, a Delaware corporation and Wholly-Owned Subsidiary of the Borrower.

"Borrowing" means a borrowing consisting of Loans of the same type made, renewed or converted on the same day.

"Business Day" means (i) with respect to any Borrowing, payment or rate selection of Eurodollar Loans, a day (other than a Saturday or Sunday) on which banks generally are open in New York City for the conduct of substantially all of their commercial lending activities and on which dealings in United States dollars are carried on in the London interbank market and (ii) for all other purposes, a day (other than a Saturday or Sunday) on which banks generally are open in New York City for the conduct of substantially all of their commercial lending activities.

"Capital Lease" means all leases which have been or should be capitalized on the books of the lessee in accordance with GAAP.

"Cash Collateral Account" means the Account (as such term is defined in the Cash Collateral Agreement) maintained under the Cash Collateral Agreement.

"Cash Collateral Agreement" means the Cash Collateral Agreement to be executed and delivered by the Borrower in accordance with Section 3.01, substantially in the form of Exhibit A-2.

"Cash Equivalents" means:

(a) certificates of deposit, time deposits, bankers acceptances, and other obligations placed with commercial banks organized under the laws of the United States of America or any state thereof, or branches or agencies of foreign banks licensed under the laws of the United States of America or any state thereof, having a short-term rating of not less than A- by each of Moody's and S&P at the time of acquisition, and having a maturities of not more than one year; provided that the aggregate principal Investment at any one time in any one such institution shall not exceed the Borrower's specified investment limit for such institution under the Borrower's investment policy as in effect from time to time;

(b) direct obligation of the United States or any agency thereof with maturities of one year or less from the date of acquisition;

(c) money market funds provided that such funds (A) have total net assets of at least $2 billion, (B) have investment objectives and policies that substantially conform with the Borrower's investment policy as in effect from time to time, (C) purchase only first-tier or U.S. government obligations as defined by Rule 2a-7 of the Securities and Exchange Commission promulgated under the Investment Company Act of 1940, and (D) otherwise comply with such Rule 2a-7; provided that the aggregate principal Investment at any one time in any one such money market fund shall not exceed $100,000,000, if the Investment is to be for more than three Business Days;

(d) investments in other short-term securities permitted as investments under the Borrower's investment policy in effect from time to time and consented to by Required Lenders.

"Cash Secured Option" means the option of the Borrower to designate pursuant to Section 2.03 that availability of the Facility will be conditioned upon Aggregate Outstanding Extensions of Credit at all times being fully secured by Unrestricted Cash Collateral under the Cash Collateral Agreement in an amount equal to or greater than 105% of the Aggregate Outstanding Extensions of Credit.

"Change of Control" means any of the following: (i) the sale, lease, conveyance or other disposition of all or substantially all of the assets of the Borrower or (except for an Internal Reorganization) of a Significant Guarantor or Significant Subsidiary, as an entirety or substantially as an entirety to any Person or "group" (within the meaning of Section 13(d)(3) of the Exchange Act) in one or a series of transactions; (ii) the acquisition by any Person or group of fifty percent (50%) or more of the aggregate voting power of all classes of Common Equity of the Borrower or (except for an Internal Reorganization) of a Significant Guarantor or Significant Subsidiary in one transaction or a series of related transactions; (iii) the liquidation or dissolution of the Borrower or (except for an Internal Reorganization) of a Significant Guarantor or Significant Subsidiary; (iv) any transaction or a series of related transactions (as a result of a

tender offer, merger, consolidation or otherwise but excluding an Internal Reorganization) that results in, or that is in connection with, (a) any Person or group acquiring "beneficial ownership" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of fifty percent (50%) or more of the aggregate voting power of all classes of Common Equity of the Borrower, a Significant Guarantor or a Significant Subsidiary, or of any Person or group that possesses "beneficial ownership" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of fifty percent (50%) or more of the aggregate voting power of all classes of Common Equity of the Borrower, a Significant Guarantor or a Significant Subsidiary, or (b) less than fifty percent (50%) (measured by the aggregate voting power of all classes) of the Common Equity of the Borrower being registered under Section 12(b) or 12(g) of the Exchange Act; (v) a majority of the Board of Directors of the Borrower, a Significant Guarantor or a Significant Subsidiary, not being comprised of persons who (a) were members of the Board of Directors of such Borrower, Significant Guarantor or Significant Subsidiary, as of the date of this Agreement ("Original Directors"), or (b) were nominated for election or elected to the Board of Directors of such Borrower, Significant Guarantor, or Significant Subsidiary, with the affirmative vote of at least a majority of the directors who themselves were Original Directors or who were similarly nominated for election or elected; or (vi) with respect to any Significant Guarantor or Significant Subsidiary which is not a corporation, any loss by the Borrower of the right or power directly, or indirectly through one or more intermediaries, to control the activities of any such Significant Guarantor or Significant Subsidiary. Nothing herein contained shall modify or otherwise affect the provisions of Section 6.06.

"Closing Date" is defined in Section 3.01.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, and the regulations and published interpretations thereof.

"Collateral" means all property of the Loan Parties, now owned or hereafter acquired, upon which a Lien is purported to be created by any Security Document.

"Collateral Agreement" means the Amended and Restated Collateral Agreement dated as of the date hereof among the Borrower, each Guarantor identified on Schedule III and the Agent, substantially in the form of Exhibit A-3.

"Collateral Shortfall Amount" has the meaning assigned to that term in Section 8.01.

"Commitment" means, for each of the Lenders, the obligation of such Lender to make Loans and to purchase participations in Facility Letters of Credit in the aggregate not exceeding the amount set forth in Schedule I hereto as its "Commitment," as such amount may be decreased from time to time pursuant to the terms of Section 2.02.1 or increased pursuant to

Section 2.02.2; provided, however, that the Commitment of a Lender may not be increased without its prior written approval.

"Commitment and Acceptance" is defined in Section 2.02.2(a).

"Common Equity" of any Person means any and all shares, rights to purchase, warrants or options (whether or not currently exercisable), participations, or other equivalents of or interests in (however designated) the equity (which includes, but is not limited to, common stock, preferred stock and partnership and joint venture interests) of such Person (excluding any debt securities convertible into, or exchangeable for, such equity) to the extent that the foregoing is entitled to (i) vote in the election of directors of such Person or (ii) if such Person is not a corporation, vote or otherwise participate in the selection of the governing body, partners, managers or other persons that will control the management and policies of such Person.

"Commonly Controlled Entity" means an entity, whether or not incorporated, which is under common control with the Borrower within the meaning of Section 414(b) or 414(c) of the Code.

"Communications" means each notice, demand, communication, information, document and other material provided for under this Agreement or under any other Loan Document or otherwise transmitted between the parties hereto relating this Agreement, the other Loan Documents, the Borrower or any Guarantor or their respective Affiliates, or the transactions contemplated by this Agreement or the other Loan Documents including, without limitation, all Approved Electronic Communications.

"Consolidated Debt" means the Debt of the Borrower and its Subsidiaries determined on a consolidated basis (but shall not include Debt of any Subsidiary which is not a Guarantor, except to the extent that such Debt is guaranteed by the Borrower or a Guarantor).

"Consolidated Tangible Assets" of the Borrower means, as of any date, the total amount of assets of the Borrower and its Subsidiaries (less applicable reserves) on a consolidated basis at the end of the fiscal quarter immediately preceding such date (or on such date if such date is the last day of the fiscal quarter), as determined in accordance with GAAP, less (i) Intangible Assets and (ii) appropriate adjustments on account of minority interests of other Persons holding equity Investments in Subsidiaries, in the case of each of clauses (i) and (ii) above, as would be reflected on a consolidated balance sheet of the Borrower and its Subsidiaries as of the end of the fiscal quarter immediately preceding such date (or on such date if such date is the last day of the fiscal quarter), prepared in accordance with GAAP.

"Consolidated Tangible Net Worth" of the Borrower means, at any date, the consolidated stockholders' equity of the Borrower determined in accordance with GAAP, less Intangible Assets, 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).

"Construction Inspector" means the architectural or engineering firm or such party which the Agent shall designate to perform various services on behalf of the Agent and the Lenders. The services to be performed by the Construction Inspector shall include inspections, review of the plans and all proposed changes to them, preparation of a "cost breakdown" construction analysis, periodic inspections of construction work for conformity with the plans, approval of draw requests and the issuance of reports and certifications solely for the benefit of the Agent and the Lenders and shall not impose upon the Agent or any Lender any obligation to make inspections, or to correct or require any other Person to correct any defects, or to notify any Person with respect to such defects.

"Debt" means, without duplication, with respect to any Person (1) indebtedness or liability for borrowed money, including, without limitation, subordinated indebtedness (other than trade accounts payable and accruals incurred in the ordinary course of business); (2) obligations evidenced by bonds, debentures, notes, or other similar instruments; (3) obligations for the deferred purchase price of property (including, without limitation, seller financing of any Inventory) or services, provided, however, that Debt shall not include (A) obligations with respect to options to purchase real property that have not been exercised, or (B) trade payables arising in the ordinary course of business that are no more than 90 days overdue; (4) obligations as lessee under Capital Leases to the extent that the same would, in accordance with GAAP, appear as liabilities in the Borrower's consolidated balance sheet; (5) current liabilities in respect of unfunded vested benefits under Plans and incurred withdrawal liability under any Multiemployer Plan; (6) reimbursement obligations under letters of credit (including contingent obligations with respect to letters of credit not yet drawn upon); (7) obligations under acceptance facilities; (8) all guaranties, endorsements (other than for collection or deposit in the ordinary course of business), and other contingent obligations to purchase, to provide funds for payment, to supply funds to invest in any other Person or entity, or otherwise to assure a creditor against loss, provided, however, that "Debt" shall not include guaranties of performance obligations; (9) obligations secured by any Liens on any property of such Person, whether or not the obligations have been assumed; and (10) net liabilities under interest rate swap, exchange or cap agreements (valued as the termination value thereof, computed in accordance with a method approved by the International Swaps and Derivatives Association and agreed to by such Person in the applicable agreement).

"Default" means any of the events specified in Section 8.01, whether or not any requirement for the giving of notice, the lapse of time, or both, or any other condition, has been satisfied.

"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.

"Deferred Tax Valuation Allowance" means any valuation allowance applied to deferred tax assets as determined in accordance with GAAP and included in the financial statements of the Borrower.

"Disqualified Stock" means any equity interest which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, in whole or in part, on or prior to the date which is six months after the Termination Date, (b) is convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) debt securities or (ii) any equity interests referred to in (a) above, in each case at any time on or prior to the date which is six months after the Termination Date, or (c) contains any repurchase obligation which may come into effect prior to payment in full of all Obligations and termination of all Commitments; provided, however, that any equity interests that would not constitute Disqualified Stock but for provisions thereof giving holders thereof (or the holders of any security into or for which such equity interests is convertible, exchangeable or exercisable) the right to require the issuer thereof to redeem such equity interests upon the occurrence of a change in control or an asset sale occurring prior to the Termination Date shall not constitute Disqualified Stock if such equity interests provide that the issuer thereof will not redeem any such equity interests pursuant to such provisions prior to the repayment in full of the Obligations and termination of all Commitments.

"Dollars" and the sign "$" mean lawful money of the United States of America.

"EBITDA" means, for any period, on a consolidated basis for the Borrower and its Subsidiaries (other than those Subsidiaries that are not Guarantors), the sum of the amounts for such period of (i) Net Income (but excluding from such Net Income for the applicable period any income derived from any Investment in a Joint Venture referred to in Section 6.07(10) to the extent that such income exceeds the cash distributions thereof received by the Borrower or its Subsidiaries (other than those Subsidiaries that are not Guarantors) in such period), plus (ii) charges against income for foreign, federal, state and local taxes, plus (iii) Interest Expense, plus

(iv) depreciation, plus (v) amortization expense, including, without limitation, amortization of goodwill and other intangible assets and amortization of deferred compensation expense, plus (vi) extraordinary losses (and all other non-cash items reducing Net Income, including but not limited to impairment charges for land and other long-lived assets and option deposit forfeitures), minus (vii) interest income, minus (viii) extraordinary gains (and any unusual gains and non-cash credits arising in or outside of the ordinary course of business not included in extraordinary gains that have been included in the determination of such Net Income), all determined in accordance with GAAP.

"Entitled Land" means all Lots that are neither Lots Under Development nor Finished Lots.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations and published interpretations thereof.

"Eurodollar Loan" means any Loan when and to the extent that the interest rate therefor is determined by reference to the Eurodollar Rate.

"Eurodollar Rate" means, with respect to a Eurodollar Loan for the relevant Interest Period, the sum of (a) the Adjusted LIBO Rate applicable to such Interest Period plus (b) the Applicable Margin.

"Event of Default" means any of the events specified in Section 8.01, provided that any requirement for the giving of notice, the lapse of time, or both, or any other condition, has been satisfied.

"Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time.

"Extension Request" is defined in Section 2.19(a).

"Facility" means the revolving credit and letter of credit facilities described in Section 2.01, together with the Swing Line facility described in Section 2.21.

"Facility Increase" is defined in Section 2.02.2(a).

"Facility Letter of Credit" means any Letter of Credit issued by an Issuer for the account of the Borrower in accordance with Section 2.22.

"Facility Letter of Credit Collateral Account" is defined in Section 2.22.13.

"Facility Letter of Credit Fee" means a fee, payable with respect to each Facility Letter of Credit issued by an Issuer, in an amount per annum equal to the product of (i) the

Applicable Letter of Credit Rate (determined as of the date on which the quarterly installment of such fee is due) and (ii) the undrawn outstanding amount of such Facility Letter of Credit, which fee shall be calculated in the manner provided in Section 2.22.7.

"Facility Letter of Credit Obligations" means, at any date, the sum of (i) the aggregate undrawn face amount of all outstanding Facility Letters of Credit, and (ii) the aggregate amount paid by an Issuer on any Facility Letters of Credit to the extent (if any) not reimbursed by the Borrower or by the Lenders under Section 2.22.4.

"Facility Letter of Credit Sublimit" means an amount equal to the Aggregate Commitment.

"Federal Funds Effective Rate" means, for each day, a fluctuating interest rate per annum equal to the weighted average of the rates on overnight Federal Funds transactions with members of the Federal Reserve System arranged by Federal Funds brokers, as published for such day (or, if such day is not a Business Day, for the immediately preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations at approximately 11:00 A.M. New York City time on such day on such transactions received by the Agent from three Federal Funds brokers of recognized standing selected by the Agent in its sole discretion.

"Financial Letter of Credit" means any Letter of Credit of the Borrower or a Guarantor that is not a Performance Letter of Credit.

"Finished Lots" means Lots in respect of which a building permit, from the applicable local governmental authority, has been or could be obtained; provided, however, that the term "Finished Lots" shall not include any Land upon which the construction of a Housing Unit has commenced.

"First Amendment" means the Waiver and First Amendment, dated as of October 10, 2007, to and under the Original Credit Agreement.

"First Amendment Effective Date" means the date that the First Amendment becomes effective in accordance with its terms.

"Fourth Amendment" means the Fourth Amendment, dated as of the date hereof, to and under the Original Credit Agreement.

"GAAP" means generally accepted accounting principles in the United States in effect from time to time (subject to the provisions of Section 1.02).

"Guarantor" means (a) the Subsidiaries of Borrower identified on Schedule III hereto and (b) any Person that, pursuant to a Supplemental Guaranty, guarantees the Obligations.

"Guaranty" means (a) the Amended and Restated Guaranty or (b) a Supplemental Guaranty.

"Housing Unit" means a dwelling, including the Land on which such dwelling is located, whether such dwelling is a Single Family Housing Unit or a Multifamily Housing Unit (including condominiums but excluding mobile homes), which dwelling is either under construction or completed and is (or, upon completion of construction thereof, will be) available for sale.

"Housing Unit Under Contract" means a Housing Unit owned by the Borrower or a Subsidiary as to which the Borrower or such Subsidiary has a bona fide contract of sale, in a form customarily employed by the Borrower or such Subsidiary and reasonably satisfactory to the Agent with a Person who is not an Affiliate, under which contract no defaults then exist and not less than $1,000.00 toward the purchase price has been paid; provided, however, that in the case of any Housing Unit the purchase of which is to be financed in whole or in part by a loan insured by the Federal Housing Administration or guaranteed by the Veterans Administration, the required minimum down payment shall be the amount (if any) required under the rules of the relevant agency.

"Housing Unit Closing" means a closing of the sale of a Housing Unit by the Borrower or a Subsidiary (including any company or other entity acquired in an Acquisition by the Borrower or a Subsidiary) to a bona fide purchaser for value that is not an Affiliate.

"Incur" means to, directly or indirectly, create, incur, assume, guarantee, extend the maturity of or otherwise become liable with respect to any Debt; provided, however, that neither the accrual of interest (whether such interest is payable in cash or kind) nor the accretion of original issue discount shall be considered an Incurrence of Debt.

"Intangible Assets" means, at any time, the amount (to the extent reflected in determining consolidated stockholders equity of the Borrower and its Subsidiaries) of (i) Investments in any Subsidiaries that are not Guarantors and (ii) all unamortized debt discount and expense, unamortized deferred charges, good will, patents, trademarks, service marks, trade names, copyrights and all other items which would be treated as intangibles on a consolidated balance sheet of the Borrower and its Subsidiaries prepared in accordance with GAAP.

"Interest Coverage Ratio" means, for any period, the ratio of (a) EBITDA to (b) the sum (on a consolidated basis for the Borrower and its Subsidiaries (other than those Subsidiaries that are not Guarantors)) of all interest incurred (whether expensed or capitalized), less the amount of interest income for such period.

"Interest Deficit" is defined in Section 2.08(b).

"Interest Expense" means, for any period, the total interest expense of the Borrower and its Subsidiaries (other than those Subsidiaries that are not Guarantors), whether paid directly or amortized through cost of sales (including the interest component of Capital Leases). Notwithstanding that GAAP may otherwise provide, the Borrower shall not be required to include in Interest Expense the amount of any premium paid to prepay Debt.

"Interest Incurred" means, for any period, the sum (on a consolidated basis for the Borrower and its Subsidiaries (other than those Subsidiaries which are not Guarantors)) of all interest incurred (whether expensed or capitalized) of the Borrower and its Subsidiaries, less the amount of interest income for such period.

"Interest Period" means, with respect to any Eurodollar Loan, the period commencing on the date of such Eurodollar Loan and ending on the numerically corresponding day in the calendar month that is one, two, three or six months thereafter, as the Borrower may elect; provided, that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless, in the case of a Eurodollar Loan only, such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (ii) any Interest Period pertaining to a Eurodollar Loan that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes, the date of a Eurodollar Loan initially shall be the date on which such Eurodollar Loan is made and thereafter shall be the effective date of the most recent conversion or continuation of such Eurodollar Loan.

"Internal Reorganization" means any reorganization between or among the Borrower and any Subsidiary or Subsidiaries or between or among any Subsidiary and one or more other Subsidiaries or any combination thereof by way of liquidations, mergers, consolidations, conveyances, assignments, sales, transfers and other dispositions of all or substantially all of the assets of a Subsidiary (whether in one transaction or in a series of transactions); provided that (a) the Borrower shall preserve and maintain its status as a validly existing corporation and (b) all assets, liabilities, obligations and guarantees of any Subsidiary party to such reorganization will continue to be held by such Subsidiary or be assumed by the Borrower or a Wholly-Owned Subsidiary of the Borrower.

"Inventory" means all Housing Units, Lots, goods, merchandise and other personal property wherever located to be used for or incorporated into any Housing Unit.

"Inventory Valuation Date" means the last day of the most recent calendar month of the Borrower with respect to which the Borrower is required to have delivered a Secured Borrowing Base Certificate pursuant to Section 5.08(6) and Section 2.01.2(b)(ix).

"Investment" has the meaning provided therefor in Section 6.07. The amount of any Investment shall include (a) in the case of any loan or advance, the outstanding amount of such loan or advance and (b) in the case of any equity Investment, the amount of the "net equity investment" as determined in accordance with GAAP.

"Issuance Date" means the date on which a Facility Letter of Credit is issued, amended or extended.

"Issuer" means, with respect to each Facility Letter of Credit Citibank, N.A. or such other Lender selected by the Borrower with the approval of the Agent to issue such Facility Letter of Credit, provided such other Lender consents to act in such capacity.

"Joint Venture" means any Person (other than a Subsidiary) in which the Borrower or a Subsidiary holds any stock, partnership interest, joint venture interest, limited liability company interest or other equity interest.

"Land" means land owned by the Borrower or a Subsidiary, which land is being developed or is held for future development or sale.

"Lenders" means each of the Persons listed on Schedule I and any other Person that shall have become a party hereto pursuant to a Commitment and Acceptance or pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

"Lending Office" means, with respect to any Lender, the Lending Office of such Lender (or of an affiliate of such Bank) heretofore designated in writing by such Lender to the Agent or such other office or branch of such Lender (or of an affiliate of such Lender) as that Lender may from time to time specify to the Borrower and the Agent as the office or branch at which its Loans (or Loans of a type designated in such notice) are to be made and maintained.

"Letter of Credit" of a Person means a letter of credit or similar instrument which is issued by a financial institution upon the application of such Person or upon which such Person is an account party or for which such Person is in any way liable.

"Lender Party" means any Lender, any Issuer or the Swing Line Lender.

"Leverage Ratio" means, as of any date, the ratio of (a) an amount equal to (i) Consolidated Debt minus (ii) the excess (if any) of (A) the average of the month-end balances of Unrestricted Cash for the fiscal quarter then, or most recently, ended, over (B) $20,000,000 to (b) Consolidated Tangible Net Worth.

"LIBO Rate" means, with respect to any Eurodollar Loan for any Interest Period, the rate appearing on Reuters Screen LIBOR01 Page, or on any successor or substitute page of

such service, or any successor to or substitute for such service, providing rate quotations comparable to those currently provided on such page of such service, as determined by the Agent from time to time for purposes of providing quotations of interest rates applicable to dollar deposits in the London interbank market, at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, as the rate for dollar deposits with a maturity comparable to such Interest Period. In the event that such rate is not available at such time for any reason, then the "LIBO Rate" with respect to such Eurodollar Loan for such Interest Period shall be the rate at which dollar deposits of $5,000,000 and for a maturity comparable to such Interest Period are offered by the principal London office of Citibank, N.A. in immediately available funds in the London interbank market at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period.

"Lien" means any mortgage, deed of trust, pledge, security interest, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), or preference, priority, or other security agreement or preferential arrangement, charge, or encumbrance of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction to evidence any of the foregoing).

"Loan" means, with respect to a Lender, a Loan made by such Lender pursuant to Section 2.01.1 and any conversion or continuation thereof and, unless the context otherwise indicates, shall include Swing Line Loans made pursuant to Section 2.21.

"Loan Documents" means this Agreement, the Notes, the Guaranties, the Security Documents, the Reimbursement Agreements, and any and all documents delivered hereunder or pursuant hereto.

"Loan Party" means the Borrower and each Guarantor.

"Lots" means all Land owned by the Borrower and/or a Subsidiary which is zoned by the municipality in which such real property is located for residential building and use, and with respect to which the Borrower or such Subsidiary has obtained all necessary approvals for its subdivision for Housing Units; provided, however, that the term "Lots" shall not include any Land upon which the construction of a Housing Unit has commenced.

"Lots Under Development" means Lots with respect to which construction of streets or other subdivision improvements has commenced but which are not Finished Lots.

"Moody's" means Moody's Investors Service, Inc.

"Mortgaged Property" means the real estate of the Loan Parties, as to which the Agent for the benefit of the Lenders has been granted a Lien pursuant to a Mortgage.

"Mortgages" means each of the mortgages, deeds of trust and similar instruments (including any spreader, amendment, restatement or similar modification of any existing Mortgage) made by any Loan Party in favor of the Agent or for the benefit of the Agent, for the benefit of the Lenders, in form and substance reasonably satisfactory to the Agent and the Borrower.

"Multiemployer Plan" means a plan described in Section 4001(a)(3) of ERISA in respect of which the Borrower, a Subsidiary or a Commonly Controlled Entity is an "employer" as defined in Section 3(5) of ERISA.

"Multifamily Housing Unit" means any residential dwelling that has twenty (20) or more units or four (4) or more stories**.**

"Net Income" means, for any period, the net earnings (or loss) after taxes of the Borrower and its Subsidiaries on a consolidated basis for such period.

"New Lender" means a Lender or other entity (in each case approved by the Agent, which approval shall not be unreasonably withheld) that elects, upon request by Borrower, to issue a Commitment or, in the case of an existing Lender, to increase its existing Commitment, pursuant to Section 2.02.2.

"Note" means a promissory note in substantially the form of Exhibit B hereto, executed and delivered by the Borrower payable to the order of a Lender in the amount of its Commitment, including any amendment, modification, restatement, renewal or replacement of such promissory note.

"Obligations" means (a) the due and punctual payment of principal of and interest on the Loans and the Notes, (b) the due and punctual payment of the Facility Letter of Credit Obligations, and (c) the due and punctual payment of fees, expenses, reimbursements, indemnifications and other present and future monetary obligations of the Borrower and each Guarantor to the Lenders or to any Lender, the Agent, any Issuer or any indemnified party, in each case arising under the Loan Documents.

"Participant" is defined in Section 11.03.

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

"Performance Letter of Credit" means any Letter of Credit of the Borrower or a Guarantor that is issued for the benefit of a municipality, other governmental authority, utility,

water or sewer authority, or other similar entity for the purpose of assuring such beneficiary of the Letter of Credit of the proper and timely completion of construction work.

"Permitted Acquisition" means any Acquisition (other than by means of a hostile takeover, hostile tender offer or other similar hostile transaction) of a business or entity engaged primarily in the business of home building; provided that, immediately before and after giving effect to such Acquisition, no Default or Event of Default has occurred and is continuing.

"Permitted Secured Debt Conditions" means, with respect to any Secured Debt permitted to be incurred under Section 6.02, the collective reference to the following conditions: (i) no Default or Event of Default shall have occurred and be continuing, (ii) all representations and warranties shall be true and correct in all material respects immediately prior to, and immediately after giving effect to, the incurrence of such Secured Debt and (iii) all covenants in Article VII shall continue to be in compliance immediately after giving effect to the incurrence of such Secured Debt.

"Person" means an individual, partnership, corporation, business trust, joint stock company, trust, limited liability company, unincorporated association, joint venture, governmental authority, or other entity of whatever nature.

"Plan" means any pension plan which is covered by Title IV of ERISA and in respect of which (a) the Borrower or a Subsidiary or a Commonly Controlled Entity is an "employer" as defined in Section 3(5) of ERISA and (b) the Borrower or a Subsidiary has any material liability; provided, however, that the term "Plan" shall not include any Multiemployer Plan.

"Prohibited Transaction" means any transaction set forth in Section 406 of ERISA or Section 4975 of the Code that could subject the Borrower or any Subsidiary to any material liability.

"Pro Rata Share" means, at any time for any Lender, the ratio that such Lender's Commitment bears to the Aggregate Commitment; provided, however, that if the Aggregate Commitment has terminated or been terminated in full, the Pro Rata Share shall be the ratio that (x) the sum of such Lender's outstanding Loans and Facility Letter of Credit Obligations bears to (y) the sum of all outstanding Loans and Facility Letter of Credit Obligations; and provided, further, that this definition is subject to the provisions of Section 2.02.2(c) (if and when applicable).

"Quarterly Payment Date" means October 1, 2009 and the first day of each January, April, July and October thereafter.

"Real Property" means all of those plots, pieces or parcels of land now owned, leased or hereafter acquired or leased by a Loan Party (the "Land"), together with the right, title and interest of such Loan Party in and to the streets, the land lying in the bed of any streets, roads or avenues, opened or proposed, in front of, the air space and development rights pertaining to the Land and the right to use such air space and development rights, all rights of way, privileges, liberties, tenements, hereditaments and appurtenances belonging or in any way appertaining thereto, all fixtures, all easements now or hereafter benefiting the Land and all royalties and rights appertaining to the use and enjoyment of the Land necessary for the residential development of such Land, together with all of the buildings and other improvements now or hereafter erected on the Land, and any fixtures appurtenant thereto. It is understood that any calculation of the book value of Real Property shall be calculated as of the month end last reported in a Secured Borrowing Base Certificate.

"Receivables" means the net proceeds payable to, but not yet received by, the Borrower or a Subsidiary following a Housing Unit Closing.

"Refinancing Debt" means Debt that refunds, refinances or extends any applicable Debt ("Refinanced Debt") but only to the extent that (i) the Refinancing Debt is subordinated in right of payment to or pari passu in right of payment with the Obligations to the same extent as such Refinanced Debt, if at all, (ii) such Refinancing Debt is in an aggregate amount that is equal to or less than the sum of (A) the aggregate amount then outstanding under the Refinanced Debt, plus (B) accrued and unpaid interest on such Refinanced Debt, plus (C) reasonable fees and expenses incurred in obtaining such Refinancing Debt, it being understood that this clause (ii) shall not preclude the Refinancing Debt from being a part of a Debt financing that includes other or additional Debt otherwise permitted herein, (iii) such Refinancing Debt is Incurred by the same Person that initially Incurred such Refinanced Debt or by another Person of which the Person that initially Incurred such Refinanced Debt is a Subsidiary, and (iv) such Refinancing Debt is Incurred within 60 days after such Refinanced Debt is so refunded, refinanced or extended.

"Register" is defined in Section 10.17.

"Regulation D" means Regulation D of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor thereto or other regulation or official interpretation of said Board of Governors relating to reserve requirements applicable to member banks of the Federal Reserve System.

"Regulation U" means Regulation U of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor or other regulation or official interpretation of said Board of Governors relating to the extension of credit by banks for the purpose of purchasing or carrying margin stocks applicable to member banks of the Federal Reserve System.

"Regulation X" means Regulation X of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor or other regulation or official interpretation of said Board of Governors relating to the extension of credit by foreign lenders for the purpose of purchasing or carrying margin stock (as defined therein).

"Reimbursement Agreement" means, with respect to a Facility Letter of Credit, such form of application therefor and form of reimbursement agreement therefor (whether in a single or several documents, taken together) as the applicable Issuer may employ in the ordinary course of business for its own account, with the modifications thereto as may be agreed upon by such Issuer and the Borrower and as are not materially adverse (in the reasonable judgment of such Issuer and the Agent) to the interests of the Lenders; provided, however, in the event of any conflict between the terms of any Reimbursement Agreement and this Agreement, the terms of this Agreement shall control.

"Rejecting Lender" is defined in Section 2.19(a).

"Rejecting Lender's Termination Date" is defined in Section 2.19(a).

"Related Parties" means, with respect to any Person, such Person's Affiliates and such Person's and such Person's Affiliates respective managers, administrators, trustees, partners, directors, officers, employees, agents, fund managers and advisors.

"Replacement Lender" is defined in Section 2.20.

"Reportable Event" means any of the events set forth in Section 4043 of ERISA with respect to a Plan (excluding any such event with respect to which the PBGC has waived the 30-day notice requirement).

"Required Lenders" means Lenders whose Pro Rata Shares are equal to or greater than 66-2/3%.

"S&P" means Standard & Poor's Rating Services.

"Second Amendment" means the Second Amendment, dated as of October 26, 2007, to and under the Original Credit Agreement.

"Secured Borrowing Base" means, with respect to any date of determination, an amount equal to the sum of (x) 100% of Unrestricted Cash then held in the Cash Collateral Account plus (y) 22.5% of all other Secured Borrowing Base Assets, valued at the lesser of book or Appraised Value; provided, however, that (i) if any Secured Borrowing Base Asset is subject to a Lien permitted under Section 6.01(7), the book and Appraised Value of such Secured Borrowing Base Asset shall be reduced by (A) the amount to be paid by the Borrower or any Subsidiary under any profit sharing, deferred consideration, marketing or similar agreement with

the seller of such Secured Borrowing Base Assets if the amount due under such agreement is a determined dollar amount or (B) if the amount to be paid by the Borrower or any Subsidiary under any profit sharing, deferred consideration, marketing or similar agreement with the seller of such Secured Borrowing Base Asset is a percentage of book value or gross sales price of such Secured Borrowing Base Asset, the agreed upon percentage multiplied by the book value of such Secured Borrowing Base Asset; (ii) if any Secured Borrowing Base Asset is subject to a Lien to secure a repurchase right permitted under Section 6.01(8), the book and Appraised Value of such Secured Borrowing Base Asset shall be reduced by the amount (if any) by which the value of such Secured Borrowing Base Asset in the Secured Borrowing Base exceeds the repurchase price; (iii) not more than 30% of the total aggregate Secured Borrowing Base shall be comprised of Finished Lots; and (iv) not more than 50% of the total aggregate Secured Borrowing Base shall be comprised of Speculative Housing Units.

"Secured Borrowing Base Assets" means those assets of the Loan Parties with respect to which the Secured Borrowing Base Conditions shall have been satisfied.

"Secured Borrowing Base Certificate" means a written certificate in a form acceptable to the Required Lenders setting forth the amount of the Secured Borrowing Base with respect to the calendar month most recently completed, certified as true and correct by the Chief Financial Officer or other officer of the Borrower.

"Secured Borrowing Base Conditions" means those conditions set forth on Schedule IV.

"Secured Borrowing Base Option" means the option of the Borrower to designate pursuant to Section 2.03 that availability of the Facility will be conditioned upon Aggregate Outstanding Extensions of Credit at all times being fully secured by Secured Borrowing Base Assets.

"Secured Debt" means all Debt of the Borrower or any of its Subsidiaries (excluding the Obligations and Debt owing to the Borrower or any of its Subsidiaries) that is secured by a Lien on assets of the Borrower or any of its Subsidiaries, including amounts owing under letter of credit reimbursement arrangements, purchase money indebtedness, secured project loans and junior Lien Debt.

"Security Documents" means the collective reference to the Cash Collateral Agreement, the Collateral Agreement, the Mortgages and all other security documents hereafter delivered to the Agent granting a Lien on any property of any Person to secure the Obligations of the Loan Parties under any Loan Document.

"Senior Debt" means the Senior Notes or, if the Senior Notes are refinanced, the Refinancing Debt with respect thereto.

"Senior Indentures" means the Base Indenture 2001, the Base Indenture 2002, the Base Indenture 2004, the Supplemental Indentures and any other Indenture hereafter entered into by the Borrower pursuant to which the Borrower Incurs any Refinancing Debt with respect to any of the Senior Notes.

"Senior Notes" means (i) the 8-3/8% Senior Notes due 2012 of the Borrower issued in the original principal amount of $350,000,000, pursuant to the Indenture dated April 17, 2002 (the "Base Indenture 2002") and First Supplemental Indenture dated April 17, 2002, (ii) the 8-5/8% Senior Notes due 2011 of the Borrower issued in the original principal amount of $200,000,000 pursuant to the Indenture dated May 21, 2001 (the "Base Indenture 2001") and First Supplemental Indenture dated May 21, 2001, (iii) the 6½% Senior Notes due 2013 of the Borrower issued in the original principal amount of $200,000,000 pursuant to the Base Indenture 2002 and Second Supplemental Indenture dated November 13, 2003, (iv) the 4-5/8% Convertible Senior Notes due 2024 of the Borrower issued in the original principal amount of $180,000,000 pursuant to the Indenture dated June 8, 2004 (the "Base Indenture 2004"), (v) the 6-7/8% Senior Notes due 2015 of the Borrower issued in the original principal amount of $350,000,000 pursuant to the Base Indenture 2002 and Fifth Supplemental Indenture dated June 8, 2005, and (vi) the 8.125% Senior Notes due 2016 of the Borrower issued in the original principal amount of $275,000,000 pursuant to the Base Indenture 2002 and the Eighth Supplemental Indenture dated June 6, 2006.

"Significant Guarantor" means, at any date of determination thereof, any Guarantor that (together with its Subsidiaries) accounts for ten percent (10%) or more of the Consolidated Tangible Assets as of the last day of the most recent fiscal quarter then ended and ten percent (10%) or more of the consolidated net revenues for the twelve-month period ending on the last day of the most recent fiscal quarter then ended, in each case of the Borrower and its Subsidiaries taken as a whole. Such percentage shall be determined on the basis of financial reports that shall be available not later than 25 days (or, in the case of the last fiscal quarter of the fiscal year, 35 days) following the end of such fiscal quarter.

"Significant Subsidiary" means, at any date of determination thereof, any Subsidiary that (together with its Subsidiaries) accounts for five percent (5%) or more of the Consolidated Tangible Assets as of the last day of the most recent fiscal quarter then ended and five percent (5%) or more of the consolidated net revenues for the twelve-month period ending on the last day of the most recent fiscal quarter then ended, in each case of the Borrower and its Subsidiaries taken as a whole. Such percentage shall be determined on the basis of financial reports that shall be available not later than 25 days (or, in the case of the last fiscal quarter of the fiscal year, 35 days) following the end of such fiscal quarter.

"Single Family Housing Unit" means any residential dwelling that is not a Multifamily Housing Unit.

"Speculative Housing Unit" means any Housing Unit owned by the Borrower or a Subsidiary that is not a Housing Unit Under Contract.

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

"Subsidiary" means, as to the Borrower or a Guarantor, in the case of a corporation, a corporation of which shares of stock having ordinary voting power (other than stock having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation are at the time owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by the Borrower or such Guarantor, as the case may be, or in the case of an entity which is not a corporation, the activities of which are controlled directly, or indirectly through one or more intermediaries, or both, by the Borrower or such Guarantor, as the case may be.

"Supplemental Guaranty" means a Supplemental Guaranty in the form provided for in, and attached to, the form of Amended and Restated Guaranty attached hereto as Exhibit A.

"Supplemental Indentures" means the Supplemental Indentures identified in the definition of the term "Senior Notes".

"Swing Line Commitment" means the commitment of the Swing Line Lender to make Swing Line Loans pursuant to Section 2.21(a). The Swing Line Commitment is in the amount of $5,000,000.

"Swing Line Lender" means Citibank, N.A. or any assignee to which Citibank, N.A. assigns the Swing Line Commitment in accordance with Section 11.02.

"Swing Line Loan" is defined in Section 2.21(a).

"Taxes" means any and all present or future taxes, duties, levies, imposts, deductions, charges or withholdings, and any and all liabilities with respect to the foregoing, imposed by the United States. but excluding, in the case of each Lender or applicable Lending Office, the Issuer and the Agent, (a) taxes imposed on or measured by its overall net income, and franchise taxes imposed on it, by (i) the jurisdiction under the laws of which such Lender, the Issuer or the Agent is incorporated or organized or (ii) the jurisdiction in which the Agent's, Issuer's or such Lender's principal executive office or such Lender's applicable Lending Office is located and (b) taxes that are in effect and would apply at the time such Person becomes a Lender, Issuer or Agent hereunder.

"Termination Date" means August 4, 2010, subject, however, to earlier termination in whole of the Aggregate Commitment pursuant to the terms of this Agreement and to extension of such date as provided in Section 2.19.

"Third Amendment" means the Third Amendment, dated as of August 7, 2008, to and under the Original Credit Agreement.

"Title Companies" means Security Title Insurance Company, a Vermont corporation, and Beazer Title Agency, LLC, a Nevada limited liability company, each of which is a Wholly-Owned Subsidiary of Borrower.

"UHIC" means United Homes Insurance Corporation, a Vermont corporation and Wholly-Owned Subsidiary of the Borrower.

"Unrestricted Cash" of a Person means the cash and Cash Equivalents of such Person that would not be identified as "restricted" on a balance sheet of such Person prepared in accordance with GAAP, except to the extent such cash is identified as "restricted" as a result of the Liens pursuant to the Security Documents.

"Wholly-Owned Subsidiary" of any Person means (i) a Subsidiary, of which one hundred percent (100%) of the outstanding Common Equity (except for directors' qualifying shares or certain minority interests owned by other Persons solely due to local law requirements that there be more than one stockholder, but which interest is not in excess of what is required for such purpose) is owned directly by such Person or through one or more other Wholly-Owned Subsidiaries of such Person, or (ii) any entity other than a corporation in which such Person, directly or indirectly, owns all of the outstanding Common Equity of such entity.

Section 1.02 Accounting Terms. (a) All accounting terms not specifically defined herein shall be construed in accordance with GAAP consistent with those applied in the preparation of the financial statements referred to in Section 4.04, and all financial data submitted pursuant to this Agreement shall be prepared in accordance with such principles.

(b) Notwithstanding anything to the contrary contained in this Agreement, in determining the Borrower's compliance with the provisions of Article VII hereof, GAAP shall not include modifications of generally accepted accounting principles that become effective after the date hereof.

Section 1.03 Rules of Construction. (a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined.

(b) Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms.

(c) The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation".

(d) The word "will" shall be construed to have the same meaning and effect as the word "shall".

(e) Unless the context requires otherwise (i) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (ii) any reference herein to any person shall be construed to include such person's successors and assigns (subject to any restrictions on such assignments set forth herein), (iii) the words "herein", "hereof" and "hereunder", and words of similar import shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (iv) all references herein to Articles, Sections, Schedules and Exhibits shall be construed to refer to Articles and Sections of, and Schedules and Exhibits to, this Agreement, (v) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, and (vi) any reference to any law, rule or regulation shall be construed to mean that law, rule or regulation as amended and in effect from time to time.

(f) Each covenant in this Agreement shall be given independent effect, and the fact that any act or omission may be permitted by one covenant and prohibited or restricted by any other covenant (whether or not dealing with the same or similar events) shall not be construed as creating any ambiguity, conflict or other basis to consider any matter other than the express terms hereof in determining the meaning or construction of such covenants and the enforcement thereof in accordance with their respective terms.

(g) This Agreement is being entered into by and between competent and sophisticated parties who are experienced in business matters and represented by legal counsel and other advisors, and has been reviewed by the parties and their legal counsel and other

advisors. Therefore, any ambiguous language in this Agreement will not be construed against any particular party as the drafter of the language.

ARTICLE II
AMOUNTS AND TERMS OF THE LOANS

Section 2.01 The Facility.

Section 2.01.1 Revolving Credit Facility. (a) On and after the Closing Date and prior to the Termination Date, upon the terms and conditions set forth in this Agreement and in reliance upon the representations and warranties of the Borrower herein set forth, each Lender severally agrees to make Loans to the Borrower, provided that (i) in no event may the aggregate principal amount of all outstanding Loans (including, in the case of the Swing Line Lender, outstanding Swing Line Loans) and the Facility Letter of Credit Obligations of any Lender exceed its Commitment, and (ii) in no event may the sum of the aggregate principal amount of all outstanding Loans, (including all outstanding Swing Line Loans) and the Facility Letter of Credit Obligations exceed the Aggregate Commitment.

(b) On and after the Closing Date and prior to the Termination Date, each Lender severally agrees, on the terms and conditions set forth in this Agreement and in reliance upon the representations and warranties of Borrower herein set forth, to participate in Facility Letters of Credit issued pursuant to Section 2.22 for the account of the Borrower, provided that (i) in no event may the aggregate principal amount of all outstanding Loans and Facility Letter of Credit Obligations of any Lender exceed its Commitment and (ii) in no event may the aggregate amount of all Facility Letter of Credit Obligations exceed the lesser of (A) the Facility Letter of Credit Sublimit and (B) an amount equal to the Aggregate Commitment minus the sum of all outstanding Loans (including all outstanding Swing Line Loans).

(c) Loans hereunder (other than Swing Line Loans) shall be made ratably by the several Lenders in accordance with their respective Pro Rata Shares. Participations in Facility Letters of Credit hereunder shall be ratable among the several Lenders in accordance with their respective Pro Rata Shares.

(d) All Obligations shall be due and payable by the Borrower on the Termination Date unless such Obligations shall sooner become due and payable pursuant to Section 8.01 or as otherwise provided in this Agreement.

(e) Each Borrowing which shall not utilize the Aggregate Commitment in full shall be in an amount not less than Two Hundred Fifty Thousand Dollars ($250,000) in the case of a Borrowing consisting of Eurodollar Loans and One Hundred Thousand Dollars ($100,000) in the case of a Borrowing consisting of ABR Loans. Each Borrowing shall consist of a Loan made by each Lender in the proportion of its Pro Rata Share. Within the limits of the Aggregate

Commitment, the Borrower may borrow, repay pursuant to Section 2.11, and reborrow Loans under this Section 2.01. On such terms and conditions, the Loans may be outstanding as ABR Loans or Eurodollar Loans. Each type of Loan shall be made and maintained at the applicable Lender's Lending Office for such type of Loan. The failure of any Lender to make any requested Loan to be made by it on the date specified for such Loan shall not relieve any other Lender of its obligation (if any) to make such Loan on such date, but no Lender shall be responsible for the failure of any other Lender to make such Loan to be made by such other Lender. The provisions of this Section 2.01.1(e) shall not apply to Swing Line Loans.

(f) No Loan shall be made at any time that any Swing Line Loan is outstanding, except for Loans that are used, on the day on which made, to repay in full the outstanding principal balance of the Swing Line Loans.

Section 2.01.2 Facility Options.

(a) **Cash Secured Option.**

(i) On and after the date that the conditions set forth in Section 3.02 have been satisfied or waived by the Agent and the Lenders, the Cash Secured Option shall apply to the Facility and be in effect when elected by the Borrower pursuant to Section 2.01.2(c). During all times that the Cash Secured Option applies to the Facility, no Loan shall be made, and no Facility Letter of Credit shall be issued or amended, if after giving effect to the incurrence of such Loan or the issuance or amendment of such Facility Letter of Credit, the amount of Unrestricted Cash held in the Cash Collateral Account under the Cash Collateral Agreement would be less than 105% of the Aggregate Outstanding Extensions of Credit at such date; provided that, a Loan shall not be deemed to have increased the amount of the Aggregate Outstanding Extensions of Credit to the extent that the proceeds of such Loan are immediately used to repay a Swing Line Loan theretofore included in the calculation of Aggregate Outstanding Extensions of Credit.

(ii) Not more than once during each calendar month, the Borrower may request that the Agent release any amount of Unrestricted Cash held in the Cash Collateral Account under the Cash Collateral Agreement in excess of an amount equal to 105% of the then Aggregate Outstanding Extensions of Credit to the Borrower and the Agent shall promptly release such excess amount, subject to the terms of the Cash Collateral Agreement.

(b) **Secured Borrowing Base Option.**

(i) On and after the date that the conditions set forth in Section 3.03 have been satisfied or waived by the Agent and the Lenders, the Borrower may elect

pursuant to Section 2.01.2(c) to have the Secured Borrowing Base Option apply to the Facility. During all times that the Secured Borrowing Base Option applies to the Facility, (A) the Secured Borrowing Base must exceed the Aggregate Outstanding Extension of Credit as of the most recent date of determination, and (B) no Loan shall be made, and no Facility Letter of Credit shall be issued or amended, if after giving effect to the incurrence of such Loan or the issuance or amendment of such Facility Letter of Credit, the then effective Secured Borrowing Base does not exceed the Aggregate Outstanding Extensions of Credit as of the most recent date of determination; provided that, a Loan shall not be deemed to have increased the amount of the Aggregate Outstanding Extensions of Credit to the extent that the proceeds of such Loan are immediately used to repay a Swing Line Loan theretofore included in the calculation of Aggregate Outstanding Extensions of Credit.

(ii) The Borrower may, upon not less than seven days' prior notice, request in writing that the Agent release its Liens on Mortgaged Properties or any portion thereof that the Borrower or the applicable Loan Party has a Housing Unit under Contract to be sold in the ordinary course of business with a closing date that is within thirty days of the requested release. In the event that the Agent receives such request in accordance herewith, then the Agent shall release its Liens on such Mortgaged Property (or the portion thereof, including any related personal property) within five Business Days prior to the date of the Housing Unit Closing so long as no Default has occurred. Upon the release of the Agent's Liens on any portion of the Mortgaged Properties, such portion of the Mortgaged Properties shall no longer be included in the calculation of the Secured Borrowing Base as reflected in the next Secured Borrowing Base Certificate to be delivered by the Borrower. The Borrower shall be deemed to have represented and warranted to the Agent and the Lenders that as of the effective date of each release the Secured Borrowing Base, after giving effect to such release and all other releases of Mortgaged Property since the date of the most recent Secured Borrowing Base Certificate, exceeds the Aggregate Outstanding Extensions of Credit as of the effective date of such release. Notwithstanding the foregoing, if the Secured Borrowing Base value of a Housing Unit requested to be released under this Section 2.01.2(b)(ii) plus the aggregate Secured Borrowing Base value of all Housing Units previously released by the Agent under this Section 2.01.2(b)(ii) during any period between delivery of the Secured Borrowing Base Certificate then in effect and the next Secured Borrowing Base Certificate scheduled to be delivered by the Borrower exceeds 10% of the value of the aggregate Borrowing Base Assets (excluding Unrestricted Cash) used in the calculation of the Secured Borrowing Base, then the Agent shall have no obligation to deliver such requested release until the Borrower shall have provided to the Agent an updated Secured Borrowing Base Certificate demonstrating that the Secured

Borrowing Base, after giving effect to such additional requested release, would exceed the Aggregate Outstanding Extensions of Credit.

(iii) With respect to Unrestricted Cash or Mortgaged Property included in the calculation of the Secured Borrowing Base, from time to time, the Borrower may request in writing (which in the case of any release of Unrestricted Cash in exchange for the pledge of Mortgaged Property, shall include a certification that any such Unrestricted Cash released shall be paid in immediately available funds to the Loan Party which shall have pledged such Mortgaged Property substituting therefor), that the Agent release its Lien on (x) such Unrestricted Cash, (y) such Mortgaged Property (or any portion thereof, including any related personal property) in order to substitute one or more Mortgaged Properties in lieu thereof or (z) on Unrestricted Cash or Mortgaged Property (or any portion thereof, including any related personal property), or any combination thereof as the Borrower may determine in its sole discretion at any time that the Secured Borrowing Base exceeds the Aggregate Outstanding Extensions of Credit as of the most recent date of determination in an amount not to exceed such excess. In the event that the Agent receives such request in accordance herewith, then (A) so long as no Event of Default has occurred and is continuing or would result therefrom and (B) either (I) after giving effect to such release and any substitution of Mortgaged Properties (or any portion thereof) the Aggregate Outstanding Extensions of Credit does not exceed the Secured Borrowing Base, or (II) the Required Lenders approve such release, the Agent shall, within ten days of such request, release its Lien on such Unrestricted Cash or such Mortgaged Property (or any portion thereof, including any related personal property); provided that (X) if Unrestricted Cash is subject to the request for release, (Y) in the case of a release described in clause (z) above or (Z) if Mortgaged Property subject to the request for a release constitutes more than 10% of the book value of the aggregate Secured Borrowing Base Assets used in the calculation of the Secured Borrowing Base, then the Borrower shall provide to the Agent an updated Secured Borrowing Base Certificate evidencing compliance with the Secured Borrowing Base as described above. Any Unrestricted Cash released hereunder in exchange for Mortgaged Property shall be paid in immediately available funds to the Loan Party which shall have pledged such Mortgaged Property substituting therefor. Upon the release of the Agent's Liens on any Unrestricted Cash or Mortgaged Property, such Unrestricted Cash or Mortgaged Property shall no longer be included in the calculation of the Secured Borrowing Base.

(iv) A Loan Party may, without the consent of any Lender, the Agent or any other Person, (A) make immaterial dispositions (including, but not limited to, lot line adjustments) of portions of any Mortgaged Property for dedication or public use to, or permit the creation of Liens to secure the levy of special assessments in favor of, governmental authorities, community development districts and property owners'

associations, (B) make immaterial dispositions of portions of the Mortgaged Property to third parties for the purpose of resolving any encroachment issues, (C) grant easements, restrictions, covenants, reservations and rights-of-way for resolving minor encroachment issues or for access, water and sewer lines, telephone, cable and internet lines, electric lines or other utilities or for other similar purposes, and (D) consent to or join in any land use or other development approval documents (including subdivision plats, easements and the like) provided that such disposition, grant or consent is usual and customary in the normal course of the Borrower's development business and otherwise does not materially impair the value, utility or operation of the applicable Mortgaged Property. In connection with any disposition or creation of any Lien or any grant or consent permitted pursuant to this Section, the Agent shall execute and deliver or cause to be executed and delivered any instrument reasonably necessary or appropriate in the case of the dispositions referred to above to release the portion of the Mortgaged Property affected by such disposition from the Lien of the applicable Mortgage, or to subordinate the Lien of the applicable Mortgage, or acknowledge that the Lien of any Mortgage is subordinate, to such Liens, easements, restrictions, covenants, reservations and rights-of-way or other similar grants, or to evidence such consent or joinder, in each case upon receipt by the Agent of (x) five Business Days' prior written notice thereof; (y) a copy of the applicable instrument or instruments of disposition or subordination; and (z) a certificate from an officer of the Borrower stating that such disposition is usual and customary in the normal course of the Borrower's development business and otherwise does not materially impair the value, utility or operation of the applicable Mortgaged Property.

(v) The Agent and the Lenders hereby agree that (A) upon satisfaction of the Permitted Secured Debt Conditions, all of the security interests and Liens shall be deemed to be forever released, discharged and terminated on the applicable Collateral being pledged to the secured party providing the Secured Debt only to the extent such Secured Debt is permitted under Section 6.02 (it being understood that, in the case of this clause (A), no Liens shall be released, discharged or terminated on Collateral included in the Secured Borrowing Base and the proceeds thereof) and (B) upon the occurrence of the Termination Date and payment in full of the all outstanding Obligations (or, with respect to outstanding Facility Letters of Credit, cash collateralization or other arrangements reasonably satisfactory to Issuer thereof and the Agent) all of the security interests in, and Liens on, the Collateral, shall be deemed to be forever released, discharged and terminated. From and after the date that the Permitted Secured Debt Conditions shall have been satisfied or the Termination Date shall have occurred and all outstanding Obligations shall have been paid in full (or, with respect to outstanding Facility Letters of Credit, cash collateralized or provided for pursuant to other arrangements reasonably satisfactory

to Issuer thereof and the Agent), the Agent shall (x) execute (as applicable) and deliver Uniform Commercial Code termination statements (and to, the extent permitted under the Uniform Commercial Code in effect in any relevant jurisdiction, does hereby authorize the Loan Parties from and after the date that the Permitted Secured Debt Conditions shall have been satisfied to file, or cause to be filed, such termination statements), intellectual property release documents and such other instruments of release and discharge pertaining to the security interests and other Liens granted to the Agent pursuant to the Security Documents in any of the Collateral being so released as the Borrower may reasonably request to effectuate, or reflect of public record, the release and discharge of all such security interests and Liens and (y) deliver promptly all Collateral in its possession to the extent that the Liens on such Collateral are being released, discharged or terminated. All of the foregoing deliveries shall be at the expense of the Borrower, with no liability to the Agent or any Lender, and with no representation or warranty by or recourse to the Agent or any Lender.

(vi) The Agent will be entitled to obtain, and at the request of Required Lenders shall obtain, at Borrower's expense a new Acceptable Appraisal of each Real Property (or any portion thereof) included in the Secured Borrowing Base, but not more than once every twelve (12) months during the term of this Agreement; provided that, in addition to the foregoing, the Agent will be entitled to obtain, at the Borrower's expense, additional Acceptable Appraisals of any such Real Property (or any portion thereof) if (x) an Event of Default exists or (y) an appraisal is required under applicable Law.

(vii) The Secured Borrowing Base shall be administered by the Agent in accordance with such requirements as may be established by the Agent from time to time. Administration of the Secured Borrowing Base shall include, without limitation:

(A) Inspections. The Agent, Construction Inspector or their respective employees, agents or representatives shall be entitled to inspect the Collateral included in the Secured Borrowing Base from time to time, as follows: (I) at the Agent's option, but typically no more than once each quarter, the Construction Inspector may review the inventory status from the financial records of the Loan Parties, which will include sales reports, copies of contracts, paid invoices, etc.; (II) at the Agent's option, a portion of the vertical construction will be selected at random, but extensions will not be predicated upon satisfactory inspections prior to the extension of such credit; (III) at the Agent's option, at least once each quarter, the Construction Inspector may review up to 5% of the Housing

Units of two divisions of the Loan Parties included in the Secured Borrowing Base; (IV) land development work for Mortgaged Properties in which Loan proceeds are requested to be advanced will be inspected periodically by the Construction Inspector at the Agent's sole discretion; and (V) material negative variances will be discussed with the Borrower and, if not satisfactorily resolved, will be reflected in the current month's Secured Borrowing Base Certificate. All inspections made by the Agent, Construction Inspector or their respective employees, agents or representatives, shall be made solely and exclusively for the protection and benefit of the Lenders and neither the Borrower nor any other Person shall be entitled to claim any loss or damage against the Agent, the Construction Inspector, any Lender or any of their respective employees, agents or representatives for failure to properly discharge any alleged duties of the Agent.

(B) Work-in-Progress Documentation. The Agent shall be entitled to inspect not more than once each quarter the documentation with respect to all work-in-progress including, without limitation, sales contracts, end loan commitments, buyer deposits, lot purchase closing statements, certificates of occupancy, notices of commencement, etc. Further, the Agent may request such documentation monthly with respect to a random sample pool of such documentation.

(C) Budget. Upon request of the Agent from time to time, a budget setting forth the estimates of the total cost of construction for specific Housing Units included in the Secured Borrowing Base shall be provided by the Borrower to the Agent, at the Borrower's sole expense.

(D) Plan and Cost Review. Upon request of the Agent from time to time, plans and cost budgets with respect to land development work in respect of Mortgaged Properties included in the Secured Borrowing Base shall be provided by the Borrower to the Agent, at the Borrower's expense.

(E) Title Updates. The Agent may require, from time to time, such title updates (including without limitation, ownership and encumbrance reports) with respect to the Collateral in the Secured Borrowing Base to confirm the lien status of such Collateral (in particular, that the Security Documents continue to constitute a

first lien on and security interest in such Collateral subject only to Permitted Encumbrances), as the Agent deems reasonably prudent all at the Borrower's sole expense.

(viii) The Borrower shall pay all reasonable fees and expenses associated with any of the actions taken under this Section 2.01.2(b) including, without limitation, (A) all reasonable fees and charges with respect to any appraisal, re-appraisal, and survey costs, (B) title insurance charges and premiums, (C) title search or examination costs, including abstracts, abstractors' certificates and uniform commercial code searches, (D) judgment and tax lien searches for each Loan Party, (E) reasonable fees and costs of environmental investigations site assessments and remediations, (F) recordation taxes, documentary taxes, transfer taxes and mortgage taxes, and (G) filing and recording fees.

(ix) The Secured Borrowing Base shall be calculated at the times and in the manner set forth below in this Section:

(A) Within thirty-five (35) days after the end of each calendar month, beginning with the calendar month ending July 31, 2009, and at such other times as the Agent or the Required Lenders may reasonably require, the Borrower shall provide the Agent with a Secured Borrowing Base Certificate showing the Borrower's calculations of the components of the Secured Borrowing Base together with all documentation and other data supporting such calculations as the Agent may require. The Agent shall have a period of five Business Days following receipt of a Secured Borrowing Base Certificate to notify the Borrower of its disapproval thereof. Failure of the Agent to so notify the Borrower within such five Business Day period shall be deemed approval and such Secured Borrowing Base as set forth in such Secured Borrowing Base Certificate shall be effective as of the date approved (or deemed approved) by the Agent. The amount so approved (or deemed approved) shall constitute the Secured Borrowing Base until such time as a new Secured Borrowing Base Certificate is delivered and approved in accordance with this Section.

(B) In the event that the Agent timely notifies the Borrower of its disapproval of a Secured Borrowing Base Certificate, then the Agent shall notify the Borrower in writing of the amount of the Secured Borrowing Base as reasonably determined by the Agent and the basis of such determination, and the effective date thereof

(which shall be the date of the giving of such notice by the Agent), and such amount shall thereupon and thereafter constitute the Secured Borrowing Base which shall remain in effect until such time as a new Secured Borrowing Base Certificate is delivered and approved in accordance with this Section.

(C) Each determination of the Secured Borrowing Base in accordance with this Section shall be binding and conclusive upon the parties hereto, provided that the Lenders are not bound to rely on information and figures provided by the Borrower if the Agent reasonably determines in good faith that it would be inappropriate to do so. Nothing contained herein shall be deemed to restrict the Borrower from submitting additional Secured Borrowing Base Certificates to the Agent for its approval at times other than those required hereunder.

(c) **Designation of Facility Option**. Not more than once during each calendar month, the Borrower may by written notice the Agent elect to designate that the Secured Borrowing Base Option shall apply in substitution for the Cash Secured Option then in effect, or designate that the Cash Secured Option shall apply in substitution for the Secured Borrowing Base Option then in effect, as the case may be. Any such notice designating that the Secured Borrowing Base Option shall apply shall be accompanied by a Secured Borrowing Base Certificate dated as of the date of such notice. Any such designation shall apply to the Facility until a different designation is made by the Borrower pursuant to this Section 2.01.3. No such designation shall be required for the Cash Secured Option to apply to the Facility prior to the date that the conditions set forth in Section 3.03 have been satisfied or waived by the Agent and the Lenders.

Section 2.02 Reductions of and Increases in Aggregate Commitment.

Section 2.02.1 Reduction of Aggregate Commitment. The Borrower shall have the right, upon at least three (3) Business Days' prior notice to the Agent, to terminate in whole or reduce in part the unused portion of the Aggregate Commitment, provided that each partial reduction shall be in the amount of at least Two Million Dollars ($2,000,000), and provided further that no reduction shall be permitted if, after giving effect thereto, and to any prepayment made therewith, the sum of (i) the outstanding and unpaid principal amount of the Loans and (ii) the Facility Letter of Credit Obligations shall exceed the Aggregate Commitment. Each reduction in part of the unused portion of each Lender's Commitment shall be made in the proportion that such Commitment bears to the total amount of the Aggregate Commitment. Any Commitment, once reduced or terminated, may not be reinstated (except as otherwise provided in Section 8.01(v)) and may not be increased (except in accordance with Section 2.02.2).

Section 2.02.2 Increase in Aggregate Commitment.

(a) **Request for Facility Increase**. The Borrower may, at any time and from time to time, request, by notice to the Agent, the Agent's approval of an increase of the Aggregate Commitment (a "Facility Increase") within the limitations hereafter described, which request shall set forth the amount of each such requested Facility Increase. Within twenty (20) days of such request, the Agent shall advise the Borrower of its approval or disapproval of such request; failure to so advise the Borrower shall constitute disapproval. If the Agent approves any such Facility Increase, then the Aggregate Commitment may be increased (up to the amount of such approved Facility Increase, in the aggregate) by having one or more New Lenders increase the amount of their then existing Commitments or become Lenders, subject to and in accordance with this provisions of this Section 2.02.2. Any Facility Increase shall be subject to the following limitations and conditions: (i) any increase (in the aggregate) in the Aggregate Commitment, any increase in any Commitment and any new Commitment shall (unless otherwise agreed to by the Borrower and the Agent) not be less than $5,000,000 (and (unless otherwise agreed to by the Borrower and the Agent) shall be in integral multiples of $1,000,000 if in excess thereof); (ii) no Facility Increase pursuant to this Section 2.02.2 shall increase the Aggregate Commitment to an amount in excess of $700,000,000; (iii) the Borrower and each New Lender shall have executed and delivered a commitment and acceptance (the "Commitment and Acceptance") substantially in the form of Exhibit C hereto, and the Agent shall have accepted and executed the same; (iv) the Borrower shall have executed and delivered to the Agent such Note or Notes as the Agent shall require to reflect such Facility Increase; (v) the Borrower shall have delivered to the Agent opinions of counsel (substantially similar to the forms of opinions provided for in Section 3.01(6), modified to apply to the Facility Increase and each Note and Commitment and Acceptance executed and delivered in connection therewith); (vi) the Guarantors shall have consented in writing to the Facility Increase and shall have agreed that their Guaranties continue in full force and effect; and (vii) the Borrower and each New Lender shall otherwise have executed and delivered such other instruments and documents as the Agent shall have reasonably requested in connection with such Facility Increase. The form and substance of the documents required under clauses (iii) through (vii) above shall be fully acceptable to the Agent. The Agent shall provide written notice to all of the Lenders hereunder of any Facility Increase.

(b) **New Lenders' Loans and Participation in Facility Letters of Credit**. Upon the effective date of any increase in the Aggregate Commitment pursuant to the provisions hereof (the "Increase Date"), which Increase Date shall be mutually agreed upon by the Borrower, each New Lender and the Agent, (i) such New Lender shall be deemed to have irrevocably and unconditionally purchased and received, without recourse or warranty from the Lenders, an undivided interest and participation in any Facility Letter of Credit then outstanding, ratably, such that each Lender (including each New Lender) holds a participation interest in each such Facility Letter of Credit in the amount of its then Pro Rata Share thereof; (ii) on such Increase Date, the Borrower shall repay all outstanding ABR Loans and reborrow an ABR Loan

in a like amount from the Lenders (including the New Lender); (iii) such New Lender shall not participate in any then outstanding Loan that is a Eurodollar Loan; (iv) if the Borrower shall at any time on or after such Increase Date convert or continue any Loan that is a Eurodollar Loan that was outstanding on such Increase Date, the Borrower shall be deemed to repay such Loan on the date of the conversion or continuation thereof and then to re-borrow as a Loan a like amount on such date so that the New Lender shall make a Loan on such date in the amount of its Pro Rata Share of such Borrowing; and (v) such New Lender shall make its Pro Rata Share of all Loans made on or after such Increase Date (including those referred to in clauses (ii) and (iv) above) and shall otherwise have all of the rights and obligations of a Lender hereunder on and after such Increase Date. Notwithstanding the foregoing, upon the occurrence of a Default prior to the date on which such New Lender is holding its Pro Rata Share of all Loans hereunder, such New Lender shall, upon notice from the Agent given on or after the date on which the Obligations are accelerated or become due following such Default, pay to the Agent (for the account of the other Lenders, to which the Agent shall pay their ratable shares thereof upon receipt) a sum equal to such New Lender's Pro Rata Share of each Loan that is a Eurodollar Loan then outstanding with respect to which such New Lender does not then hold an interest; such payment by such New Lender shall constitute an ABR Loan hereunder.

(c) **Required Lenders**. Solely for purposes of the calculation of Pro Rata Shares as used in the definition of "Required Lenders," until such time as a New Lender holds its Pro Rata Share of all outstanding Loans (if any), the amount of such New Lender's new Commitment or the increased amount of its Commitment shall be excluded from the amount of the Commitments and Aggregate Commitment and there shall be included in lieu thereof at any time an amount equal to the sum of the outstanding Loans and the participation interests in Facility Letters of Credit held by such New Lender with respect to its new Commitment or the increased amount of its Commitment.

(d) **No Obligation to Increase Commitment**. Nothing contained herein shall constitute, or otherwise be deemed to be, a commitment or agreement on the part of the Borrower or the Agent to give or grant any Lender the right to increase its Commitment hereunder at any time or a commitment or agreement on the part of any Lender to increase its Commitment hereunder at any time, and no Commitment of a Lender shall be increased without its prior written approval.

Section 2.03 Notice and Manner of Borrowing. The Borrower shall give the Agent notice of any Loans under this Agreement, on the Business Day of each ABR Loan, and at least three (3) Business Days before each Eurodollar Loan, specifying: (1) the date of such Loan; (2) the amount of such Loan; (3) the type of Loan (whether an ABR Loan or a Eurodollar Loan); and (4) in the case of a Eurodollar Loan, the duration of the Interest Period applicable thereto, provided, however, that (a) no Interest Period may extend beyond the Termination Date and (b) not more than eight (8) Interest Periods for Eurodollar Loans may be outstanding at any one time. All notices given by the Borrower under this Section 2.03 shall be irrevocable and shall be

given not later than 11:00 A.M. New York City time on the day specified above for such notice. The Agent shall notify each Lender of each such notice not later than noon New York City time on the date it receives such notice from the Borrower if such notice is received by the Agent at or before 11:00 A.M. New York City time. In the event such notice from the Borrower is received after 11:00 A.M. New York City time, it shall be treated as if received on the next succeeding Business Day, and the Agent shall notify each Lender of such notice as soon as practicable but not later than noon New York City time on the next succeeding Business Day. Not later than 2:00 P.M. New York City time on the date of such Loans, each Lender will make available to the Agent in immediately available funds, such Lender's Pro Rata Share of such Loans. After the Agent's receipt of such funds, on the date of such Loans and upon fulfillment of the applicable conditions set forth in Article III, the Agent will make such Loans available to the Borrower in immediately available funds by crediting the amount thereof to the Borrower's account with the Agent. The provisions of this Section 2.03 shall not apply to Swing Line Loans.

Section 2.04 Non-Receipt of Funds by Agent. (a) Unless the Agent shall have received notice from a Lender prior to the date (in the case of a Eurodollar Loan), or by 1:00 P.M. New York City time on the date (in the case of an ABR Loan), on which such Lender is to provide funds to the Agent for a Loan to be made by such Lender that such Lender will not make available to the Agent such funds, the Agent may assume that such Lender has made such funds available to the Agent on the date of such Loan in accordance with Section 2.03 and the Agent in its sole discretion may, but shall not be obligated to, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If and to the extent such Lender shall not have given the notice provided for above and shall not have made such funds available to the Agent, such Lender agrees to repay to the Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the Agent, at the Federal Funds Effective Rate for three (3) Business Days and thereafter at the Alternate Base Rate. If such Lender shall repay to the Agent such corresponding amount, such amount so repaid shall constitute such Lender's applicable Loan for purposes of this Agreement. If such Lender does not pay such corresponding amount forthwith upon Agent's demand therefor, the Agent shall promptly notify the Borrower, and the Borrower shall immediately pay such corresponding amount to the Agent with interest thereon, for each day from the date such amount is made available to the Borrower until the date such amount is repaid to the Agent, at the rate of interest applicable at the time to such proposed Loan. Nothing set forth in this Section shall affect the rights of the Borrower with respect to any Lender that defaults in the performance of its obligation to make a Loan hereunder.

(b) Unless the Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Lenders hereunder that the Borrower will not make such payment in full, the Agent may assume that the Borrower has made such payment in full to the Agent on such date and the Agent in its sole discretion may, but shall not be obligated to, in reliance upon such assumption, cause to be distributed to each Lender on such due date an

amount equal to the amount then due such Lender. If and to the extent the Borrower shall not have so made such payment in full to the Agent, each Lender shall repay to the Agent forthwith on demand such amount distributed to such Lender together with interest thereon, for each day from the date such amount is distributed to such Lender until the date such Lender repays such amount to the Agent, at the Federal Funds Effective Rate for three Business Days and thereafter at the Alternate Base Rate.

(c) The provisions of this Section 2.04 shall not apply to Swing Line Loans.

Section 2.05 [Intentionally Deleted].

Section 2.06 Conversions and Renewals. The Borrower may elect from time to time to convert all or a part of one type of Loan into another type of Loan or to renew all or part of a Loan by giving the Agent notice at least one (1) Business Day before conversion into an ABR Loan, and at least three (3) Business Days before the conversion into or renewal of a Eurodollar Loan, specifying: (1) the renewal or conversion date; (2) the amount of the Loan to be converted or renewed; (3) in the case of conversions, the type of Loan to be converted into; and (4) in the case of renewals of or a conversion into a Eurodollar Loan, the duration of the Interest Period applicable thereto; provided that (a) the minimum principal amount of each Eurodollar Loan outstanding after a renewal or conversion shall be One Million Dollars ($1,000,000) and the minimum amount of each ABR Loan outstanding after a renewal or conversion shall be Two Hundred Fifty Thousand Dollars ($250,000) and in each case in integral multiples of $100,000 if in excess of such minimum amounts; (b) Eurodollar Loans may be converted on a Business Day that is not the last day of the Interest Period for such Loan only if the Borrower pays on the date of conversion all amounts due pursuant to Section 2.17; (c) the Borrower may not renew a Eurodollar Loan or convert an ABR Loan into a Eurodollar Loan at any time that a Default has occurred that is continuing; (d) no Interest Period may extend beyond the Termination Date; and (e) not more than eight (8) Interest Periods for Eurodollar Loans may be outstanding at any one time. At all times that Secured Borrowing Base Option applies to the Facility, each such notice shall be accompanied by a Secured Borrowing Base Certificate dated as of the date of such notice. All conversions and renewals shall be made in the proportion of the Lenders' respective Pro Rata Shares. All notices given by the Borrower under this Section 2.06 shall be irrevocable and shall be given not later than 11:00 A.M. New York City time on the day which is not less than the number of Business Days specified above for such notice. The Agent shall notify each Lender of each such notice not later than noon Charlotte, North Carolina time on the date it receives such notice from the Borrower if such notice is received by the Agent at or before 11:00 A.M. New York City time. In the event such notice from the Borrower is received after 11:00 A.M. New York City time, it shall be treated as if received on the next succeeding Business Day, and the Agent shall notify each Lender of such notice as soon as practicable but not later than noon New York time on the next succeeding Business Day. Notwithstanding the foregoing, if the Borrower shall fail to give the Agent the notice as specified above for the renewal or conversion of a Eurodollar Loan prior to the end of the Interest Period with respect thereto, such

Eurodollar Loan shall automatically be converted into an ABR Loan on the last day of the Interest Period for such Loan. The provisions of this Section 2.06 shall not apply to Swing Line Loans.

Section 2.07 Interest. (a) The Borrower shall pay interest to the Agent, for the account of the applicable Lender or Lenders on the outstanding and unpaid principal amount of the Loans at the following rates:

(i) If an ABR Loan or Swing Line Loan, then at a rate per annum equal to the Alternate Base Rate in effect from time to time as interest accrues; and

(ii) If a Eurodollar Loan, then at a rate per annum for the Interest Period applicable to such Eurodollar Loan equal to the Eurodollar Rate for such Interest Period.

(b) Any change in the interest rate based on the Alternate Base Rate resulting from a change in the Alternate Base Rate shall be effective (without notice) as of the opening of business on the day on which such change in the Alternate Base Rate becomes effective. Interest on each Eurodollar Loan shall be calculated on the basis of a year of 360 days for the actual number of days elapsed. Interest on each ABR Loan and Swing Line Loan calculated on the basis of the Base Rate shall be calculated on the basis of a year of 365 or 366 days (as appropriate) for the actual number of days elapsed and interest on each ABR Loan and Swing Line Loan calculated based on the Federal Funds Effective Rate shall be calculated on the basis of a year of 360 days for the actual number of days elapsed.

(c) Interest on the Loans shall be paid (in an amount set forth in a statement delivered by the Agent to the Borrower, provided, however, that the failure of the Agent to deliver such statement shall not limit or otherwise affect the obligations of the Borrower hereunder) in immediately available funds to the Agent at the office of Agent from time to time designated by it in writing for the account of the applicable Lending Office of each applicable Lender as follows:

(1) For each ABR Loan and Swing Line Loan on the first day of each calendar month commencing on the first such date after such Loan is made;

(2) For each Eurodollar Loan, on the last day of the Interest Period with respect thereto, except that, if such Interest Period is longer than three months, interest shall also be paid on the last day of the third month of such Interest Period; and

(3) If not sooner paid, then on the Termination Date or such earlier date as the Loans may be due or declared due hereunder.

(d) Any principal amount of any Loan not paid when due (at maturity, by acceleration, or otherwise) shall bear interest thereafter until paid in full, payable on demand, at a rate per annum equal to the Alternate Base Rate or the applicable Eurodollar Rate, as the case may be, for such Loan in effect from time to time as interest accrues, plus two percent (2%) per annum.

Section 2.08 Interest Rate Determination. (a) The Agent shall determine each Adjusted LIBO Rate. The Agent shall give prompt notice to the Borrower and the Lenders of the applicable interest rate determined by the Agent pursuant to the terms of this Agreement.

(b) If the provisions of this Agreement or any Note would at any time require payment by the Borrower to a Lender of any amount of interest in excess of the maximum amount then permitted by the law applicable to any Loan, the interest payments to such Lender shall be reduced to the extent necessary so that such Lender shall not receive interest in excess of such maximum amount. If, as a result of the foregoing a Lender shall receive interest payments hereunder or under a Note in an amount less than the amount otherwise provided hereunder, such deficit (hereinafter called "Interest Deficit") will cumulate and will be carried forward (without interest) until the termination of this Agreement. Interest otherwise payable to a Lender hereunder and under a Note for any subsequent period shall be increased by the maximum amount of the Interest Deficit that may be so added without causing such Lender to receive interest in excess of the maximum amount then permitted by the law on the applicable Loans. The amount of the Interest Deficit relating to the Loans shall be treated as a prepayment premium (to the extent permitted by law) and paid in full at the time of any optional prepayment by the Borrower to the applicable Lenders of all the applicable Loans at that time outstanding pursuant to Section 2.11. The amount of the Interest Deficit relating to the applicable Loans at the time of any complete payment of the Loans at that time outstanding (other than an optional prepayment thereof pursuant to Section 2.11) shall be canceled and not paid.

Section 2.09 Fees. (a) The Borrower shall pay to each Issuer of a Facility Letter of Credit the fee to paid by the Borrower to such Issuer on the date of the issuance of such Facility Letter of Credit pursuant to Section 2.22.7.

(b) The Borrower agrees to pay to the Agent for the account of each Lender the Facility Letter of Credit Fees pursuant to Section 2.22.7.

(c) The Borrower shall pay to the Agent such additional fees as are specified in the Agent's Fee Letter.

Section 2.10 Notes. All Loans made by each Lender under this Agreement shall be evidenced by, and repaid with interest in accordance with, a single Note of the Borrower in substantially the form of Exhibit B hereto, in each case duly completed, dated the date of this Agreement and payable to such Lender for the account of its applicable Lending Office, such

Note to represent the obligation of the Borrower to repay the Loans made by such Lender. Each Lender is hereby authorized by the Borrower, but no Lender shall be required, to endorse on the schedule attached to the Note or Notes held by it the amount and type of such applicable Loan and each renewal, conversion, and payment of principal amount received by such applicable Lender for the account of its applicable Lending Office on account of its applicable Loans, which endorsement shall, in the absence of manifest error, be conclusive as to the outstanding balance of such Loans made by such Lender; provided, however, that the failure to make such notation with respect to any Loan or renewal, conversion, or payment shall not limit or otherwise affect the obligations of the Borrower under this Agreement or the Note or Notes held by such Lender. All Loans shall be repaid on the Termination Date.

Section 2.11 Prepayments. (a) The Borrower may, upon notice to the Agent not later than noon New York City time on the date of prepayment in the case of ABR Loans and at least three (3) Business Days' prior notice to the Agent in the case of Eurodollar Loans, prepay (including, without limitation, all amounts payable pursuant to the terms of Section 2.17) the Loans in whole or in part with accrued interest to the date of such prepayment on the amount prepaid, provided that (1) each partial payment shall be in a principal amount of not less than One Million Dollars ($1,000,000) in the case of a Eurodollar Loan and Two Hundred Fifty Thousand Dollars ($250,000) in the case of an ABR Loan; and (2) Eurodollar Loans may be prepaid only on the last day of the Interest Period for such Loans; provided, however, that such prepayment of Eurodollar Loans may be made on any other Business Day if the Borrower pays at the time of such prepayment all amounts due pursuant to Section 2.17. Upon receipt of any such prepayments, the Agent will promptly thereafter cause to be distributed the Pro Rata Share of such prepayment to each Lender for the account of its applicable Lending Office, except that prepayments of Swing Line Loans shall be made solely to the Swing Line Lender.

(b) The Borrower shall immediately upon a Change in Control prepay the Notes in full and all accrued interest to the date of such prepayment, and in the case of Eurodollar Loans all amounts due pursuant to Section 2.17.

(c) If (i) (A) during any time that the Cash Secured Option applies to the Facility, the amount of Unrestricted Cash held in the Cash Collateral Account under the Cash Collateral Agreement at any time is less than 105% of the Aggregate Outstanding Extensions of Credit at such time, or (B) during any time that the Secured Borrowing Base Option applies to the Facility, the amount of the Secured Borrowing Base as determined by the most recent Secured Borrowing Base Certificate is less than the Aggregate Outstanding Extensions of Credit, or (ii) at any time, the Aggregate Outstanding Extensions of Credit exceeds the Available Commitments, then the Borrower shall within two (2) Business Days thereafter prepay Loans and/or cash collateralize the Facility Letter of Credit Obligations in an aggregate amount equal to any such shortfall.

Section 2.12 Method of Payment. The Borrower shall make each payment under this Agreement and under any of the Notes not later than noon New York city time on the date when

due in lawful money of the United States to the Agent for the account of the applicable Lending Office of each Lender (or, in the case of Swing Line Loans, for the account of the Swing Line Lender) in immediately available funds. The Agent will promptly thereafter cause to be distributed (1) the Pro Rata Share of such payments of principal and interest with respect to Loans (other than Swing Line Loans) in like funds to each Lender for the account of its applicable Lending Office, (2) such payments of principal and interest with respect to Swing Line Loans solely to the Swing Line Lender and (3) other fees payable to any Lender to be applied in accordance with the terms of this Agreement. If any such payment is not received by a Lender on the Business Day on which the Agent received such payment (or the following Business Day if the Agent's receipt thereof occurs after 3:00 P.M. New York City time, such Lender shall be entitled to receive from the Agent interest on such payment at the Federal Funds Effective Rate for three Business Days and thereafter at the Alternate Base Rate (which interest payment shall not be an obligation for the Borrower's account, including under Section 10.04 or Section 10.06). The Borrower hereby authorizes each Lender, if and to the extent payment is not made when due under this Agreement or under any of the Notes, to charge from time to time against any account of the Borrower with such Lender any amount as due. Whenever any payment to be made under this Agreement or under any of the Notes shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall be included in the computation of the payment of interest and the commitment fee, as the case may be, except, in the case of a Eurodollar Loan, if the result of such extension would be to extend such payment into another calendar month, such payment shall be made on the immediately preceding Business Day.

Section 2.13 Use of Proceeds. The proceeds of the Loans hereunder shall be used by the Borrower (a) for working capital and general corporate purposes of the Borrower and the Guarantors to the extent permitted in this Agreement and (b) to repay Swing Line Loans. The Borrower will not, directly or indirectly, use any part of such proceeds for the purpose of repaying the Senior Notes or for purchasing or carrying any margin stock within the meaning of Regulation U or to extend credit to any Person for the purpose of purchasing or carrying any such margin stock, or for any purpose which violates, or is inconsistent with, Regulation X.

Section 2.14 Yield Protection. If any law or any governmental or quasi-governmental rule, regulation, policy, guideline or directive (whether or not having the force of law), or any interpretation thereof, or the compliance of any Lender or Issuer therewith,

(i) subjects any Lender or Issuer or any applicable Lending Office to any tax, duty, charge or withholding on or from payments due from the Borrower (excluding federal taxation of the overall net income of any Lender or Issuer or applicable Lending Office), or changes the basis of taxation of payments to any Lender or Issuer in respect of its Loans or Facility Letters of Credit or other amounts due it hereunder, or

(ii) imposes or increases or deems applicable any reserve, assessment, insurance charge, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender or Issuer or any applicable Lending Office (other than reserves and assessments taken into account in determining the interest rate applicable to Loans), or

(iii) imposes any other condition the result of which is to increase the cost to any Lender or Issuer or any applicable Lending Office of making, funding or maintaining loans or issuing or participating in letters of credit or reduces any amount receivable by any Lender or Issuer or any applicable Lending Office in connection with loans, or requires any Lender or Issuer or any applicable Lending Office to make any payment calculated by reference to the amount of loans held, letters of credit issued or interest received by it, by an amount deemed material by such Lender or Issuer,

then, within fifteen (15) days of demand by such Lender or Issuer, the Borrower shall pay such Lender or Issuer that portion of such increased expense incurred or reduction in an amount received which such Lender or Issuer reasonably determines is attributable to making, funding and maintaining its Loans and its Commitment and issuing or participating in Letters of Credit.

Section 2.15 Changes in Capital Adequacy Regulations. If a Lender or Issuer determines the amount of capital required or expected to be maintained by such Lender or Issuer, any Lending Office of such Lender or Issuer or any corporation controlling such Lender or Issuer is increased as a result of a Change, then, within 10 days of demand by such Lender or Issuer, the Borrower shall pay such Lender or Issuer the amount necessary to compensate for any shortfall in the rate of return on the portion of such increased capital which such Lender or Issuer determines is attributable to this Agreement, its Loans or its obligation to make Loans hereunder (after taking into account such Lender's or Issuer's policies as to capital adequacy); provided, however, that a Lender or Issuer shall impose such cost upon the Borrower only if such Lender or Issuer is generally imposing such cost on its other borrowers having similar credit arrangements. "Change" means (i) any change after the date of this Agreement in the Risk- Based Capital Guidelines or (ii) any adoption of or change in any other law, governmental or quasi-governmental rule, regulation, policy, guideline, interpretation, or directive (whether or not having the force of law) after the date of this Agreement which affects the amount of capital required or expected to be maintained by any Lender or Issuer or any Lending Office or any corporation controlling any Lender or Issuer. "Risk-Based Capital Guidelines" means (i) the risk-based capital guidelines in effect in the United States on the date of this Agreement, including transition rules, and (ii) the corresponding capital regulations promulgated by regulatory authorities outside the United States implementing the July 1988 report of the Basle Committee on Banking Regulation and Supervisory Practices Entitled "International Convergence of Capital Measurements and Capital Standards," including transition rules, and any amendments to such regulations adopted prior to the date of this Agreement.

Section 2.16 Availability of Eurodollar Loans. If any Lender determines that maintenance of its Eurodollar Loans at the Lending Office selected by the Lender would violate any applicable law, rule, regulation, or directive, whether or not having the force of law (and it is not reasonably possible for the Lender to designate an alternate Lending Office without being adversely affected thereby), or if the Required Lenders determine that (i) deposits of a type and maturity appropriate to match fund Eurodollar Loans are not available or (ii) the interest rate applicable to Eurodollar Loans does not accurately reflect the cost of making or maintaining such Eurodollar Loans, then the Agent shall suspend the availability of Eurodollar Loans and require any Eurodollar Loans to be repaid.

Section 2.17 Funding Indemnification. If any payment of a Eurodollar Loan occurs on a date which is not the last day of the applicable Interest Period, whether because of acceleration, prepayment or otherwise, or a Eurodollar Loan is not made on the date specified by the Borrower for any reason other than default by the Lenders, the Borrower will indemnify each Lender for any loss or cost incurred by it resulting therefrom, including, without limitation, any loss or cost in liquidating or employing deposits required to fund or maintain the Eurodollar Loan.

Section 2.18 Lender Statements; Survival of Indemnity. To the extent reasonably possible, each Lender shall designate an alternate Lending Office with respect to its Eurodollar Loans to reduce any liability of the Borrower to such Lender under Sections 2.14 and 2.15 or to avoid the unavailability of Eurodollar Loans. Each Lender shall deliver a written statement of such Lender as to the amount due, if any, under Sections 2.14, 2.15 or 2.17. Such written statement shall set forth in reasonable detail the calculations upon which such Lender determined such amount and shall be final, conclusive and binding on the Borrower in the absence of manifest error. Determination of amounts payable under such Sections in connection with a Eurodollar Loan shall be calculated as though each Lender funded its Eurodollar Loan through the purchase of a deposit of the type and maturity corresponding to the deposit used as a reference in determining the Eurodollar Rate applicable to such Loan, whether in fact that is the case or not. Unless otherwise provided herein, the amount specified in the written statement shall be payable on demand after receipt by the Borrower of the written statement. The obligations of the Borrower under Sections 2.14, 2.15 and 2.17 shall survive payment of the Obligations and termination of this Agreement.

Section 2.19 Extension of Termination Date. (a) Not more than once in any fiscal year of the Borrower, the Borrower may request an extension of the Termination Date to a date that is 364 days after the then scheduled Termination Date by submitting a request for an extension to the Agent not earlier than 45 days prior to the then scheduled Termination Date. At the time of or prior to the delivery of such request, the Borrower shall propose to the Agent the amount of the fees that the Borrower would agree to pay with respect to such extension if approved by the Lenders. Promptly upon (but not later than five Business Days after) the Agent's receipt and approval of the extension request and fee proposal (as so approved, the

"Extension Request"), the Agent shall deliver to each Lender a copy of; and shall request each Lender to approve, the Extension Request. Each Lender approving the Extension Request shall deliver its written approval no earlier than 30 days prior to the then scheduled Termination Date. If the written approval of the Extension Request by the Lenders whose Pro Rata Shares equal or exceed 66-2/3% in the aggregate is received by the then scheduled Termination Date, the Termination Date shall be extended to a date that is 364 days after the then scheduled Termination Date but only with respect to the Lenders that have given such written approval. Except to the extent that a Lender that did not give its written approval to such Extension Request ("Rejecting Lender") is replaced as provided in Section 2.20, prior to the Termination Date (as determined prior to such Extension Request), then on such date (the "Rejecting Lender's Termination Date") (i) the Commitment of each such Rejecting Lender shall terminate, (ii) the Aggregate Commitment shall be reduced by the aggregate amount of such terminated Commitments and (iii) all Loans and other Obligations to each such Rejecting Lender shall be paid in full by the Borrower. If the sum of the principal balance of all Loans outstanding and all Facility Letter of Credit Obligations following the payment provided for in clause (iii) above exceeds the Aggregate Commitment (as reduced as provided in clause (ii) above), the Borrower shall, on the Rejecting Lender's Termination Date, repay outstanding Loans or cause to be canceled, released and returned to the applicable Issuer outstanding Facility Letters of Credit in the amounts necessary to cause the sum of the principal balance of all Loans outstanding and all Facility Letter of Credit Obligations to equal but not exceed the Aggregate Commitment (as reduced).

(b) Within ten days of the Agent's notice to the Borrower that the Lenders whose Pro Rata Shares equal or exceed 66-2/3% in the aggregate have approved an Extension Request, the Borrower shall pay to the Agent for the account of each Lender that has approved the Extension Request the applicable extension fees specified in the Extension Request.

(c) If Lenders whose Pro Rata Shares equal or exceed 66-2/3% in the aggregate approve the Extension Request, the Borrower, upon notice to the Agent and any Rejecting Lender, may, subject to the provisions of the last sentence of Section 2.19(d), terminate the Commitment of such Rejecting Lender (or such portion of such Commitment as is not assigned to a Replacement Lender in accordance with Section 2.20), which termination shall occur as of a date set forth in such Borrower's notice but in no event more than thirty (30) days following such notice (subject to the provisions of Section 2.20(b)). The termination of a Rejecting Lender's Commitment shall be effected in accordance with Section 2.19(d).

(d) If the Borrower elects to terminate the Commitment of a Rejecting Lender pursuant to Section 2.19(c), the Borrower shall pay to the Rejecting Lender all Obligations due and owing to it hereunder or under any other Loan Document, including, without limitation, the aggregate outstanding principal amount of the Loans owed to such Rejecting Lender, together with accrued interest thereon through the date of such termination, amounts payable under Sections 2.14 and 2.15 and the fees payable to such Rejecting Lender under Section 2.09(b).

Upon request by the Borrower or the Agent, the Rejecting Lender will deliver to the Borrower and the Agent a letter setting forth the amounts payable to the Rejecting Lender as set forth above. Upon the termination of such Rejecting Lender's Commitment and payment of the amounts provided for in the immediately preceding sentence, the Borrower shall have no further obligations to such Rejecting Lender under this Agreement and such Rejecting Lender shall cease to be a Lender, provided, however, that such Rejecting Lender shall continue to be entitled to the benefits of Sections 2.14, 2.15, 2.17, 10.04 and 10.06, as well as to any fees accrued for its account hereunder not yet paid, and shall continue to be obligated under Section 9.05 with respect to obligations and liabilities accruing prior to the termination of such Rejecting Lender's Commitment. If, as a result of the termination of the Rejecting Lender's Commitment, any payment of a Eurodollar Loan occurs on a day which is not the last day of the applicable Interest Period, the Borrower shall pay to the Agent for the benefit of the Lenders (including any Rejecting Lender) any loss or cost incurred by the Lenders (including any Rejecting Lender) resulting therefrom in accordance with Section 2.17. Upon the effective date of the termination of the Rejecting Lender's Commitment, the Aggregate Commitment shall be reduced by the amount of the terminated Commitment of the Rejecting Lender, and each other Lender shall be deemed to have irrevocably and unconditionally purchased and received (subject to the provisions of the last sentence of this Section 2.19(d)), without recourse or warranty, from the Rejecting Lender, an undivided interest and participation in any Facility Letter of Credit then outstanding, ratably, such that each Lender (excluding the Rejecting Lender but including any Replacement Lender that acquires an interest in the Facility hereunder from such Rejecting Lender) holds a participation interest in each Facility Letter of Credit in proportion to the ratio that such Rejecting Lender's Commitment (upon the effective date of such termination of the Rejecting Lender's Commitment) bears to the Aggregate Commitment (as reduced by the termination of such Rejecting Lender's Commitment or a part thereof). Notwithstanding the foregoing, if, upon the termination of the Commitment of such Rejecting Lender under this Section 2.19(d), the sum of the outstanding principal balance of the Loans and the Facility Letter of Credit Obligations would exceed the Aggregate Commitment (as reduced), the Borrower may not terminate such Rejecting Lender's Commitment unless the Borrower, on or prior to the effective date of such termination, prepays, in accordance with the provisions of this Agreement, outstanding Loans or causes to be canceled, released and returned to the applicable Issuer outstanding Facility Letters of Credit in sufficient amounts such that, on the effective date of such termination, the sum of the outstanding principal balance of the Loans and the Facility Letter of Credit Obligations does not exceed the Aggregate Commitment (as reduced).

Section 2.20 Replacement of Certain Lenders. (a) In the event a Lender ("Affected Lender"): (i) shall have requested compensation from the Borrower under Sections 2.14 or 2.15 to recover additional costs incurred by such Lender that are not being incurred generally by the other Lenders, (ii) shall have delivered a notice pursuant to Section 2.16 claiming that such Lender is unable to extend Eurodollar Loans to the Borrower for reasons not generally applicable to the other Lenders, (iii) shall have invoked Section 10.13 or (iv) is a Rejecting Lender pursuant

to Section 2.19, then, in any such case, the Borrower or the Agent may effect the replacement of such Affected Lender in accordance with the provisions of this Section 2.20, provided, however, that if the replacement of such Affected Lender is by reason of clause (iv) above, the replacement of such Affected Lender shall be subject to the provisions of Section 2.20(b). The Borrower or the Agent may elect to replace an Affected Lender and make written demand on such Affected Lender (with a copy to the Agent in the case of a demand by the Borrower and a copy to the Borrower in the case of a demand by the Agent) for the Affected Lender to assign, and, if a Replacement Lender (as hereinafter defined) notifies the Affected Lender of its willingness to purchase the Affected Lender's interests in the Facility and the Agent and the Borrower consent thereto in writing, then such Affected Lender shall assign pursuant to one or more duly executed Assignment and Assumption in substantially and in all material respects in the form and substance of Exhibit F five (5) Business Days after the date of such demand, to one or more financial institutions that comply with the provisions of Section 11.02 that the Borrower or the Agent, as the case may be, shall have engaged for such purpose (each a "Replacement Lender"), all (or, to the extent required or permitted under Section 2.20(b), a part) of such Affected Lender's rights and obligations (from and after the date of such assignment) under this Agreement and the other Loan Documents in accordance with Section 11.02. The Agent agrees, upon the occurrence of such events with respect to an Affected Lender and upon the written request of the Borrower, to use its reasonable efforts to obtain commitments from one or more financial institutions to act as a Replacement Lender. As a condition to any such assignment, the Affected Lender shall have concurrently received, in cash, all amounts (except as otherwise provided in Section 2.20(b)) due and owing to the Affected Lender hereunder or under any other Loan Document, including, without limitation, the aggregate outstanding principal amount of the Loans owed to such Lender, together with accrued interest thereon through the date of such assignment, amounts payable under Sections 2.14 and 2.15 with respect to such Affected Lender and the fees payable to such Affected Lender under Section 2.09(b); provided that upon such Affected Lender's replacement, such Affected Lender shall (except as otherwise provided in Section 2.20(b)) cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.14, 2.15, 2.17, 10.04 and 10.06, as well as to any fees accrued for its account hereunder and not yet paid, and shall continue to be obligated under Section 9.05 with respect to obligations and liabilities accruing prior to the replacement of such Affected Lender.

(b) In the event that the Affected Lender is a Rejecting Lender, the Borrower may elect to have a part of the Rejecting Lender's rights and obligations under this Agreement and the other Loan Documents assigned pursuant to this Section 2.20, provided that the Borrower also elects, pursuant to Section 2.19(c), to terminate the entire amount of such Rejecting Lender's Commitment not so assigned, which termination shall be effective on the date on which such assignment of the Rejecting Lender's rights and obligations is consummated under this Section 2.20.

(c) Notwithstanding anything to the contrary contained in this Agreement, each Replacement Lender must be approved by the Agent in its sole discretion.

Section 2.21 Swing Line. (a) The Swing Line Lender agrees, on the terms and conditions hereinafter set forth, to make loans ("Swing Line Loans") to the Borrower from time to time during the period from the date of this Agreement, up to but not including the Termination Date, in an aggregate principal amount not to exceed at any time outstanding the lesser of (i) the Swing Line Commitment or (ii) the amount by which the Swing Line Lender's Commitment exceeds the sum of (A) the outstanding principal amount of the Loans made by the Swing Line Lender pursuant to Section 2.01.1 and (B) the Swing Line Lender's Pro Rata Share of the outstanding Facility Letter of Credit Obligations, subject in each case to the limitations set forth in Section 2.01.3.

(b) Each Swing Line Loan which shall not utilize the Swing Line Commitment in full shall be in an amount not less than One Million Dollars ($1,000,000) and, if in excess thereof, in integral multiples of One Million Dollars ($1,000,000). Within the limits of the Swing Line Commitment, the Borrower may borrow, repay and reborrow under this Section 2.21.

(c) The Borrower shall give the Swing Line Lender notice of any request for a Swing Line Loan not later than 3:00 p.m. New York City time on the Business Day of such Swing Line Loan, specifying the amount of such requested Swing Line Loan. Each such notice shall be accompanied by a Secured Borrowing Base Certificate dated as of the date of such notice (and by the notice provided for in Section 2.21(d)). All notices given by the Borrower under this Section 2.21(c) shall be irrevocable. Upon fulfillment of the applicable conditions set forth in Article III, the Swing Line Lender will make the Swing Line Loan available to the Borrower in immediately available funds by crediting the amount thereof to the Borrower's account with the Swing Line Lender.

(d) On the fifth Business Day following the making of a Swing Line Loan, such Swing Line Loan shall be paid in full from the proceeds of a Loan made pursuant to Section 2.01.1. Each notice given by the Borrower under Section 2.21(c) shall include, or, if it does not include, shall be deemed to include, an irrevocable notice under Section 2.03 requesting the Lenders to make an ABR Loan on the fifth succeeding Business Day in the full amount of such Swing Line Loan.

Section 2.22 Facility Letters of Credit.

Section 2.22.1 Issuance of Facility Letters of Credit. (a) Each Issuer agrees, on the terms and conditions set forth in this Agreement, to issue from time to time for the account of the Borrower, through such offices or branches as it and the Borrower may jointly agree, one or more Facility Letters of Credit in accordance with this Section 2.22, during the period commencing on the date hereof and ending on the thirtieth (30th) day prior to the Termination Date.

(b) The Borrower shall not request, and no Issuer shall issue, a Facility Letter of Credit for any purpose other than for purposes for which Loan proceeds may by used, provided that, the Borrower shall not request Facility Letters of Credit for any purposes other than for such purposes which are permitted to be secured by a "Permitted Lien" under, and as defined in, the Base Indenture 2002 as modified by the Ninth Supplemental Indenture dated October 26, 2007 (without regard to the provisions of clause (xi) thereunder), or any comparable provision of any other Senior Indenture.

Section 2.22.2 Limitations. An Issuer shall not issue, amend or extend, at any time, any Facility Letter of Credit:

(i) if the aggregate maximum amount then available for drawing under Letters of Credit issued by such Issuer, after giving effect to the Facility Letter of Credit or amendment or extension thereof requested hereunder, shall exceed any limit imposed by law or regulation upon such Issuer;

(ii) if, after giving effect to the issuance, amendment or extension of the Facility Letter of Credit requested hereunder, the aggregate principal amount of the Facility Letter of Credit Obligations would exceed the Facility Letter of Credit Sublimit;

(iii) if, after giving effect to the issuance, amendment or extension of the Facility Letter of Credit requested hereunder, (A) during any time the Cash Secured Option applies to the Facility, the amount of Unrestricted Cash held in the Cash Collateral Account under the Cash Collateral Agreement would be less than 105% of the then Aggregate Outstanding Extensions of Credit, and (B) during any time the Secured Borrowing Base Option applies to the Facility, the then Aggregate Outstanding Extensions of Credit would exceed the Secured Borrowing Base as of the most recent Inventory Valuation Date;

(iv) if, after giving effect to the issuance, amendment or extension of the Facility Letter of Credit requested hereunder, the Aggregate Outstanding Extensions of Credit would exceed the Aggregate Commitment;

(v) unless such Issuer receives written notice from the Agent on or before the proposed Issuance Date of such Facility Letter of Credit that the issuance, amendment or extension of such Facility Letter of Credit is within the limitations specified in clauses (ii), (iii) and (iv) of this Section 2.22.2;

(vi) that has an expiration date (taking into account any automatic renewal provisions thereof) later than one year after the date that is thirty (30) days prior to the scheduled Termination Date; or

(vii) that is in a currency other than U.S. Dollars or that provides for drawings other than by sight draft.

Section 2.22.3 Conditions. The issuance, amendment or extension of any Facility Letter of Credit is subject to the satisfaction in full of the following conditions on the Issuance Date:

(i) the Borrower shall have delivered to the Issuer at such times and in such manner as the Issuer may reasonably prescribe a Reimbursement Agreement and such other documents and materials as may be reasonably required pursuant to the terms thereof, and the proposed Facility Letter of Credit shall be reasonably satisfactory to such Issuer in form and content, provided, however, in the event of any conflict between the terms of this Agreement and the terms of the Reimbursement Agreement, the terms of this Agreement shall control;

(ii) as of the Issuance Date no order, judgment or decree of any court, arbitrator or governmental authority shall enjoin or restrain such Issuer from issuing the Facility Letter of Credit and no law, rule or regulation applicable to the Issuer and no directive from any governmental authority with jurisdiction over the Issuer shall prohibit such Issuer from issuing Letters of Credit generally or from issuing that Facility Letter of Credit;

(iii) the following statements shall be true, and the Agent and such Issuer shall have received a certificate, substantially in the form of the certificate attached hereto as Exhibit D, signed by a duly authorized officer of the Borrower dated the Issuance Date stating that:

(a) the representations and warranties contained in Article IV of this Agreement are correct in all material respects on and as of such Issuance Date as though made on and as of such Issuance Date except to the extent that any such representation or warranty is stated to relate solely to an earlier date, in which case such representation or warranty is correct in all material respects as of such earlier date; and

(b) No Default or Event of Default has occurred and is continuing or would result from the issuance, amendment or extension of such Facility Letter of Credit;

(iv) the Issuer and the Agent shall have received such other approvals, opinions, or documents as either may reasonably request.

Section 2.22.4 Procedure for Issuance of Facility Letters of Credit. (a) The Borrower shall give the applicable Issuer and the Agent not less than two (2) Business Days'

prior written notice of any requested issuance of a Facility Letter of Credit under this Agreement (except that, in lieu of such written notice, the Borrower may give the Issuer and the Agent telephonic notice of such request if confirmed in writing by delivery to such Issuer and the Agent (i) immediately (A) of a telecopy of the written notice required hereunder which has been signed by an authorized officer of the Borrower or (B) of an e-mail containing all information required to be contained in such written notice and (ii) promptly (but in no event later than the requested Issuance Date) of the written notice required hereunder containing the original signature of an authorized officer of the Borrower). Such notice shall specify (i) the stated amount of the Facility Letter of Credit requested, which amount shall be in compliance with the requirements of Section 2.22.2, (ii) the requested Issuance Date, which shall be a Business Day, (iii) the date on which such requested Facility Letter of Credit is to expire, which date shall be in compliance with the requirements of Section 2.22.2(vi), (iv) the purpose for which such Facility Letter of Credit is to be issued, which purpose shall be in compliance with the requirements of Section 2.22.1(b), and (v) the Person for whose benefit the requested Facility Letter of Credit is to be issued. At the time such request is made, the Borrower shall also provide the Agent with a copy of the form of the Facility Letter of Credit it is requesting be issued. Such notice, to be effective, must be received by the Issuer and the Agent not later than 3:00 p.m. New York City time on the last Business Day on which notice can be given under this Section 2.22.4. Promptly after receipt of such notice, the Issuer shall confirm with the Agent (by telephone or in writing) that the Agent has received a copy of such notice from the Borrower and, if not, the Issuer shall promptly provide the Agent with a copy thereof

(b) Promptly following receipt of a request for issuance of a Facility Letter of Credit in accordance with Section 2.22.4(a), such Issuer shall approve or disapprove, in its reasonable discretion, the issuance of such requested Facility Letter of Credit, but the issuance of such approved Facility Letter of Credit shall continue to be subject to the provisions of this Section 2.22.

(c) Subject to the terms and conditions of this Section 2.22 (including, without limitation, Sections 2.22.2 and 2.22.3), the applicable Issuer shall, on the Issuance Date, issue the requested Facility Letter of Credit in accordance with such Issuer’s usual and customary business practices unless such Issuer has actually received written or telephonic notice from the Borrower specifically revoking the request to issue such Facility Letter of Credit. The Issuer shall promptly give the Agent written notice, or telephonic notice confirmed promptly thereafter in writing, of the issuance, amendment, extension or cancellation of a Facility Letter of Credit, and the Agent shall promptly thereafter so notify all Lenders.

(d) No Issuer shall extend or amend any Facility Letter of Credit unless the requirements of this Section 2.22.4 are met as though a new Facility Letter of Credit were being requested and issued.

(e) Any Lender may, but shall not be obligated to, issue to the Borrower or any of its Subsidiaries Letters of Credit (that are not Facility Letters of Credit) for its own account, and at its own risk. None of the provisions of this Section 2.22 shall apply to any Letter of Credit that is not a Facility Letter of Credit.

Section 2.22.5 Duties of Issuer. Any action taken or omitted to be taken by an Issuer under or in connection with any Facility Letter of Credit, if taken or omitted in the absence of willful misconduct or gross negligence, shall not put such Issuer under any resulting liability to any Lender or, assuming that such Issuer has complied in all material respects with the procedures specified in Section 2.22.4, relieve any Lender of its obligations hereunder to such Issuer. In determining whether to pay under any Facility Letter of Credit, such Issuer shall have no obligation to the Lenders other than to confirm that any documents required to be delivered under such Facility Letter of Credit appear to have been delivered in compliance and that they appear to comply on their face with the requirements of such Facility Letter of Credit.

Section 2.22.6 Participation. (a) Immediately upon the issuance by an Issuer of any Facility Letter of Credit in accordance with Section 2.22.4, each Lender shall be deemed to have irrevocably and unconditionally purchased and received from such Issuer, without recourse or warranty, an undivided interest and participation ratably (in the proportion of such Lender's Pro Rata Share) in such Facility Letter of Credit (including, without limitation, all obligations of the Borrower with respect thereto other than amounts owing to such Issuer under Section 2.15).

(b) In the event that an Issuer makes any payment under any Facility Letter of Credit and the Borrower shall not have repaid such amount to such Issuer on or before the date of such payment by such Issuer, such Issuer shall promptly so notify the Agent, which shall promptly so notify each Lender. Upon receipt of such notice, each Lender shall promptly and unconditionally pay to the Agent for the account of such Issuer the amount of such Lender's Pro Rata Share of such payment in same day funds, and the Agent shall promptly pay such amount, and any other amounts received by the Agent for such Issuer's account pursuant to this Section 2.22.6, to such Issuer. If the Agent so notifies such Lender prior to noon New York City time on any Business Day, such Lender shall make available to the Agent for the account of such Issuer such Lender's ratable share of the amount of such payment on such Business Day in same day funds. If and to the extent such Lender shall not have so made its ratable share of the amount of such payment available to the Agent for the account of the Issuer, such Lender agrees to pay to the Agent for the account of the Issuer forthwith on demand such amount, together with interest thereon, for each day from the date such payment was first due until the date such amount is paid to the Agent for the account of the Issuer, at the Federal Funds Effective Rate. The failure of any Lender to make available to the Agent for the account of an Issuer such Lender's ratable share of any such payment shall not relieve any other Lender of its obligation hereunder to make available to the Agent for the account of such Issuer its ratable share of any payment on the date such payment is to be made.

(c) If any draft is paid under any Facility Letter of Credit, the Borrower shall reimburse the Issuing Lender for the amount of (a) the draft so paid and (b) any taxes, fees, charges or other costs or expenses incurred by the Issuing Lender in connection with such payment, not later than 12:00 Noon, Charlotte, North Carolina time, on (i) the Business Day immediately following the day that the Borrower receives notice of such draft, if such notice is received on such day prior to 10:00 A.M. New York City time, or (ii) if clause (i) above does not apply, the second Business Day following the day that the Borrower receives such notice. Each such payment shall be made to the Issuing Lender at its address for notices referred to herein in Dollars and in immediately available funds. Interest shall be payable on any such amounts from the date on which the relevant draft is paid until payment in full at the rate set forth in (x) until the Business Day next succeeding the date when such payment is required as set forth above, Section 2.07(a) and (y) thereafter, Section 2.07(d).

(d) Upon the request of the Agent or any Lender, each Issuer shall furnish to the requesting Agent or Lender copies of any Facility Letter of Credit or Reimbursement Agreement to which such Issuer is party.

(e) The obligations of the Lenders to make payments to the Agent for the account of an Issuer with respect to a Facility Letter of Credit shall be irrevocable, not subject to any qualification or exception whatsoever and shall be made in accordance with the terms and conditions of this Agreement under all circumstances, including, without limitation, the following:

(i) any lack of validity or enforceability of this Agreement or any of the other Loan Documents;

(ii) the existence of any claim, setoff, defense or other right which the Borrower may have at any time against a beneficiary named in a Facility Letter of Credit or any transferee of any Facility Letter of Credit (or any Person for whom any such transferee may be acting), the Issuer, the Agent, any Lender, or any other Person, whether in connection with this Agreement, any Facility Letter of Credit, the transactions contemplated herein or any unrelated transactions (including any underlying transactions between the Borrower or any Subsidiary and the beneficiary named in any Facility Letter of Credit);

(iii) any draft, certificate or any other document presented under the Facility Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect;

(iv) the surrender or impairment of any security for the performance or observance of any of the terms of any of the Loan Documents;

(v) any failure by the Agent or an Issuer to make any reports required pursuant to Section 2.22.8; or

(vi) the occurrence of any Default or Event of Default.

(f) For purposes of determining the unused portion of the Aggregate Commitment and the unused portion of a Lender's Commitment under Sections 2.02.1 and 2.09(b), the Aggregate Commitment shall be deemed used to the extent of the aggregate undrawn face amount of the outstanding Facility Letters of Credit and the Lender's Commitment shall be deemed used to the extent of such Lender's Pro Rata Share of the aggregate undrawn face amount of the outstanding Facility Letters of Credit.

Section 2.22.7 Compensation for Facility Letters of Credit. (a) The Borrower agrees to pay to the Agent, in the case of each Facility Letter of Credit, the Facility Letter of Credit Fee therefor, payable quarterly in arrears not later than five (5) Business Days following Agent's delivery to Borrower of the quarterly statement specifying the amount of the Facility Letter of Credit Fees properly due and payable hereunder with respect to the preceding calendar quarter (which payment shall be a pro rata portion of the annual Facility Letter of Credit Fee for such preceding calendar quarter) and on the Termination Date (which payment shall be in the amount of all accrued and unpaid Facility Letter of Credit Fees). Facility Letter of Credit Fees shall be calculated, on a pro rata basis for the period to which such payment applies, for actual days on which such Facility Letter of Credit was outstanding during such period, on the basis of a 360-day year. The Agent shall, with reasonable promptness following receipt from all Issuers of the reports provided for in Section 2.22.8 for the months of March, June, September and December, respectively, deliver to the Borrower a quarterly statement of the Facility Letter of Credit Fees then due and payable. The Agent shall promptly remit such Facility Letter of Credit Fees, when received by the Agent, ratably to all Lenders.

(b) The Borrower agrees to pay the applicable Issuer of each Facility Letter of Credit an issuance fee of 0.125% of the stated amount of such Facility Letter of Credit, payable prior to the issuance of such Letter of Credit.

(c) An Issuer shall also have the right to receive, solely for its own account, its out-of-pocket costs of issuing and servicing Facility Letters of Credit, as the Borrower may agree in writing.

Section 2.22.8 Issuer Reporting Requirements. Each Issuer shall, no later than the third (3rd) Business Day following the last day of each month, provide to the Agent a schedule of the Facility Letters of Credit issued by it showing the Issuance Date, account party, original face amount, amount (if any) paid thereunder, expiration date and the reference number of each Facility Letter of Credit outstanding at any time during such month (and indicating, with respect to each Facility Letter of Credit, whether it is a Financial Letter of Credit or Performance

Letter of Credit) and the aggregate amount (if any) payable by the Borrower to such Issuer during the month pursuant to Section 2.15. Copies of such reports shall be provided promptly to each Lender by the Agent. The reporting requirements hereunder are in addition to those set forth in Section 2.22.4.

Section 2.22.9 Indemnification; Nature of Issuer's Duties. (a) In addition to amounts payable as elsewhere provided in this Section 2.22, the Borrower hereby agrees to protect, indemnify, pay and save the Agent, each Issuer and each Lender harmless from and against any and all claims, demands, liabilities, damages, losses, costs, charges and expenses (including reasonable attorneys' fees) arising from the claims of third parties against the Agent, any Issuer or any Lender as a consequence, direct or indirect, of (i) the issuance of any Facility Letter of Credit other than, in the case of an Issuer, as a result of its willful misconduct or gross negligence, or (ii) the failure of an Issuer to honor a drawing under a Facility Letter of Credit as a result of any act or omission, whether rightful or wrongful, of any government, court or other governmental agency or authority.

(b) As among the Borrower, the Lenders, the Agent and each Issuer, the Borrower assumes all risks of the acts and omissions of or misuse of Facility Letters of Credit by, the respective beneficiaries of such Facility Letters of Credit. In furtherance and not in limitation of the foregoing, neither an Issuer nor the Agent nor any Lender shall be responsible: (i) for the form, validity, sufficiency, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for and issuance of the Facility Letters of Credit, even if it should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged; (ii) for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Facility Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason; (iii) for failure of the beneficiary of a Facility Letter of Credit to comply fully with conditions required in order to draw upon such Facility Letter of Credit; (iv) for errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex, facsimile transmission or otherwise; (v) for errors in interpretation of technical terms; (vi) for any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any Facility Letter of Credit or of the proceeds thereof; (vii) for the misapplication by the beneficiary of a Facility Letter of Credit of the proceeds of any drawing under such Facility Letter of Credit; or (viii) for any consequences arising from causes beyond the control of the Agent, such Issuer and the Lenders including, without limitation, any act or omission, whether rightful or wrongful, of any government, court or other governmental agency or authority. None of the above shall affect, impair, or prevent the vesting of any of such Issuer's rights or powers under this Section 2.22.9.

(c) In furtherance and extension and not in limitation of the specific provisions hereinabove set forth, any action taken or omitted by an Issuer under or in connection with the Facility Letters of Credit or any related certificates, if taken or omitted in good faith, shall not

put such Issuer, the Agent or any Lender under any resulting liability to the Borrower or relieve the Borrower of any of its obligations hereunder to any such Person, but the foregoing shall not relieve such Issuer of its obligation to confirm that any documents required to be delivered under a Facility Letter of Credit appear to have been delivered in compliance and that they appear to comply on their face with the requirements of such Facility Letter of Credit.

(d) Notwithstanding anything to the contrary contained in this Section 2.22.9, the Borrower shall have no obligation to indemnify an Issuer under this Section 2.22.9 in respect of any liability incurred by an Issuer arising primarily out of the willful misconduct or gross negligence of such Issuer, as determined by a court of competent jurisdiction, or out of the wrongful dishonor by such Issuer of a proper demand for payment made under the Facility Letters of Credit issued by such Issuer, unless such dishonor was made at the request of the Borrower.

Section 2.22.10 Designation or Resignation of Issuer. (a) Upon request by the Borrower and approval by the Agent, a Lender may at any time agree to be designated as an Issuer hereunder, which designation shall be set forth in a written instrument or instruments delivered by the Borrower, the Agent and such Lender. The Agent shall promptly deliver to the other Lenders a copy of such instrument or instruments. From and after such designation and unless and until such Lender resigns as an Issuer in accordance with Section 2.22.10(b), such Lender shall have all of the rights and obligations of an Issuer hereunder,

(b) An Issuer shall continue to be the Issuer unless and until (i) it shall have given the Borrower and the Agent notice that it has elected to resign as Issuer and (ii) unless there is, at the time of such notice, at least one other Issuer, another Lender shall have agreed to be the replacement Issuer and shall have been approved in writing by the Agent and the Borrower. A resigning Issuer shall continue to have the rights and obligations of the Issuer hereunder solely with respect to Facility Letters of Credit theretofore issued by it notwithstanding the designation of a replacement Issuer hereunder, but upon its notice of resignation (or, if at the time of such notice, there is not at least one other Issuer, then upon such designation of a replacement Issuer), the resigning Issuer shall not thereafter issue any Facility Letters of Credit (unless it shall again thereafter be designated as an Issuer in accordance with the provisions of this Section 2.22.10). The assignment of, or grant of a participation interest in, or termination pursuant to Section 2.19 of, all or any part of its Commitment or Loans by a Lender that is also the Issuer shall not constitute an assignment or transfer of any of its rights or obligations as an Issuer.

Section 2.22.11 Termination of Issuer's Obligation. In the event that the Lenders' obligations to make Loans terminate or are terminated as provided in Section 8.01, each Issuer's obligation to issue Facility Letters of Credit shall also terminate.

Section 2.22.12 Obligations of Issuer and Other Lenders. Except to the extent that a Lender shall have agreed to be designated as an Issuer, no Lender shall have any obligation

to accept or approve any request for, or to issue, amend or extend, any Letter of Credit, and the obligations of an Issuer to issue, amend or extend any Facility Letter of Credit are expressly limited by and subject to the provisions of this Section 2.22.

Section 2.22.13 Facility Letter of Credit Collateral Account. The Borrower agrees that it will, during any time the Secured Borrowing Base Option applies to the Facility, upon the request of the Agent or the Required Lenders and until the final expiration date of any Facility Letter of Credit and thereafter as long as any amount is payable to the Issuer or the Lenders in respect of any Facility Letter of Credit, maintain a special collateral account pursuant to arrangements satisfactory to the Agent (the "Facility Letter of Credit Collateral Account") at the Agent's office at the address specified pursuant to Section 10.02, in the name of the Borrower but under the sole dominion and control of the Agent, for the benefit of the Lenders and in which such Borrower shall have no interest other than as set forth in Section 8.01. The Borrower hereby pledges, assigns and grants to the Agent, on behalf of and for the ratable benefit of the Lenders and the Issuer, a security interest in all of the Borrower's right, title and interest in and to all funds which may from time to time be on deposit in the Facility Letter of Credit Collateral Account to secure the prompt and complete payment and performance of (a) the obligations of the Borrower to reimburse the Issuer and (if applicable) the Lenders for amounts (if any) from time to time drawn on Facility Letters of Credit and interest thereon and other sums from time to time payable under Reimbursement Agreements, and (b) if and when all such obligations of the Borrower have been paid in full and no Facility Letters of Credit remain outstanding, all other Obligations. The Agent will invest any funds on deposit from time to time in the Facility Letter of Credit Collateral Account in Cash Equivalents reasonably acceptable the agent having a maturity not exceeding 30 days. Nothing in this Section 2.22.13 shall either obligate the Agent to require the Borrower to deposit any funds in the Facility Letter of Credit Collateral Account or limit the right of the Agent to release any funds held in the Facility Letter of Credit Collateral Account in each case other than as required by Section 22.15.

Section 2.22.14 Issuer's Rights. All of the representations, warranties, covenants and agreements of the Borrower to the Lenders under this Agreement and of the Borrower under any other Loan Document shall inure to the benefit of each Issuer (unless the context otherwise indicates).

Section 2.22.15 Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if during the any time the Secured Borrowing Base Option applies to the Facility 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.

Section 2.22.16 End of Term Cash Collateralization. On the date that is 30 days prior to the scheduled Termination Date, if the Secured Borrowing Base Option is then in effect, the Borrower shall deposit in the Cash Collateral Account an amount not less than 105% of the Facility Letter of Credit Obligations as of such date. Not more than once during each calendar month following the Termination Date, provided that no Event of Default has occurred and is then continuing, the Borrower may request that the Agent release any amount of Unrestricted Cash held in the Cash Collateral Account under the Cash Collateral Agreement in excess of an amount equal to 105% of the then Facility Letter of Credit Obligations to the Borrower, and the Agent shall promptly release such excess amount, subject to the terms of the Cash Collateral Agreement.

ARTICLE III
CONDITIONS PRECEDENT

Section 3.01 Conditions Precedent to Closing Date. This Agreement and the Commitments of each Lender shall be effective on the date (the "Closing Date") on which each of the following conditions precedent shall have been satisfied or waived by the Agent and each Lender:

(1) **Fourth Amendment and Successor Agency and Amendment Agreement**. The "Fourth Amendment Effective Date" shall have occurred under the Fourth Amendment and

the “Effective Date” shall have occurred under the Successor Agency and Amendment Agreement in accordance with their respective terms.

(2) **Credit Agreement**. The Agent shall have received this Agreement duly executed by each of the parties hereto;

(3) **Replacement Note**. A Note payable to each Lender duly executed by the Borrower, and the original promissory note issued to such Lender under the Existing Credit Agreement to be delivered to the Borrower for cancellation upon the Closing Date;

(4) **Amended and Restated Guaranty**. The Agent shall have received the Amended and Restated Guaranty, duly executed by each Guarantor listed in Schedule III.

(5) **Amended and Restated Collateral Agreement**. The Agent shall have received the Amended and Restated Collateral Agreement, duly executed by each party thereto (provided that the Borrower may designate one or more schedules as to be updated as required pursuant to Section 3.02);

(6) **No Default or Event of Default**. After giving effect to this Agreement, no Default or Event of Default shall have occurred and be continuing;

(7) **Closing Fee**. The Borrower shall have paid a cash fee to the Agent in accordance with the terms of the Agent’s Fee Letter; and

(8) **Other Documents**. The Agent shall have received such other documents as the Agent, its counsel or any Lender may reasonably request.

Section 3.02 Conditions Precedent to Cash Secured Option. The Lenders shall not be required to make Loans or participate in any Facility Letters of Credit under the Cash Secured Option, and the Issuers shall not be required to issue any Facility Letters of Credit under the Cash Secured Option, unless and until the Closing Date has occurred and the Agent shall have received each of the following, in form and substance satisfactory to the Agent:

(1) **Secretary’s Certificate of the Borrower**. A certificate of the Secretary or an Assistant Secretary of the Borrower certifying (A) the names and true signatures of each officer of the Borrower who has been authorized to execute and deliver this Agreement and any other Loan Document or other document required to be executed and delivered by or on behalf of the Borrower under this Agreement, (B) that the attached copies of the certificate of incorporation and by-laws of the Borrower have not been amended except as set forth therein and remain in full force and effect and (C) the attached copy of resolutions of the Board of Directors of the Borrower approving and authorizing the execution, delivery and performance of this Agreement and the other Loan Documents to which it is a party;

(2) **Good Standing Certificate of the Borrower**. A currently dated certificate of good standing for the Borrower issued by the Secretary of State of the State of Delaware;

(3) **Secretary's Certificates of the Guarantors**. A certificate of the Secretary or an Assistant Secretary of each corporate Guarantor or the general partner of each limited partnership Guarantor or managing member of each limited liability company Guarantor certifying (A) the names and true signatures of each officer, partner, member or other representative of such Guarantor who has been authorized to execute and deliver the Amended and Restated Guaranty and any other Loan Document or other document required to be executed and delivered by or on behalf of such Guarantor under this Agreement, (B) that the attached copies of the certificate of incorporation and by-laws of such corporate Guarantor, or certificate of limited partnership and limited partnership agreement of such limited partnership Guarantor, or certificate of formation and limited liability company or operating agreement of each limited liability company guarantor, or equivalent applicable constituent documents of such Guarantor, have not been amended except as set forth therein and remain in full force and effect and (C) the attached copy of resolutions of the Board of Directors of such corporate Guarantor, or the consents of such limited partnership or limited liability company Guarantor, approving and authorizing the execution, delivery and performance of the Amended and Restated Guaranty and the other Loan Documents to which it is a party;

(4) **Good Standing Certificate of the Borrower**. A currently dated certificate of good standing for each Guarantor issued by the secretary of state or other appropriate governmental officer in its jurisdiction of incorporation or formation;

(5) **Updated Schedules to Amended and Restated Collateral Agreement**. The Borrower shall have delivered updated schedules to the Amended and Restated Collateral Agreement if so noted as referred to in clause (6) of Section 3.01;

(6) **Cash Collateral Agreement**. The Agent shall have received the Cash Collateral Agreement duly executed by each of the Borrower and the Agent;

(7) **Opinions of Counsel**. A favorable opinion of (A) Troutman Sanders LLP, counsel for the Borrower and for certain of the Guarantors, in substantially the form of Exhibit E and (B) counsel to each other Guarantor that is formed or organized to do business in the State of Indiana or in the State of Tennessee (as approved by the Agent), in form similar to that furnished pursuant to clause (A) and reasonably satisfactory to the Agent;

(8) **Costs and Expenses**. The Borrower shall have paid all costs and invoiced out-of-pocket expenses of the Agent in connection with the execution and delivery of the documents and instruments described in Section 3.01 and clauses (1) through (6) of this Section 3.02, including, without limitation, the reasonable fees and out-of-pocket expenses of counsel for the Agent; and

(9) **Other Documents**. Such other and further documents as any Lender or the Agent or its counsel may have reasonably requested.

Section 3.03 Conditions Precedent to Secured Borrowing Base Option. The Lenders shall not be required to make Loans or participate in any Facility Letters of Credit under the Secured Borrowing Base Option, and the Issuers shall not be required to issue any Facility Letters of Credit under the Secured Borrowing Base Option, unless and until the Closing Date has occurred, the condition precedent set forth in Section 3.02 have been satisfied or waived by the Agent and the Lenders, and the Agent shall have received each of the following, in form and substance satisfactory to the Agent:

(1) **Assignments of Financing Statements**. Recorded or file-stamped copies of assignments from Wachovia Bank, National Association, as original secured party, to the Agent of each financing statement filed or recorded with respect to any Security Document;

(2) **Assignments of Mortgages**. Recorded copies of assignments by Wachovia Bank, National Association, to the Agent of all Mortgages delivered under the Existing Credit Agreement;

(3) **Endorsements to Title Insurance Policies**. Endorsements to all title insurance policies referred to in subclause (c) of item (4) of the Secured Borrowing Base Conditions previously issued by the Title Insurance Company, reflecting Agent as the holder of the Mortgage insured under such title insurance policy;

(4) **Other Secured Borrowing Base Conditions**. With respect to all Mortgaged Property covered by the Mortgages referred to in clause (2) above, evidence satisfactory to the Agent that all other Secured Borrowing Base Conditions have been satisfied with respect to such Mortgaged Property; and

(5) **Costs and Expenses**. The Borrower shall have paid all costs and invoiced out-of-pocket expenses of the Agent in connection with the execution and delivery of the documents and instruments described in clauses (1) through (4) of this Section 3.03, including, without limitation, the reasonable fees and out-of-pocket expenses of counsel for the Agent; and

(6) **Other Documents**. Such other and further documents as any Lender or the Agent or its counsel may have reasonably requested.

Section 3.04 Conditions Precedent to All Loans. The obligation of each Lender to make each Loan (including, in the case of the Swing Line Lender, any Swing Line Loan) shall be subject to the further conditions precedent that (except as hereinafter provided) on the date of such Loan:

(1) The following statements shall be true and the Agent shall have received a certificate, substantially in the form of the certificate attached hereto as Exhibit D, signed by a duly authorized officer of the Borrower dated the date of such Loan, stating that:

(a) The representations and warranties contained in Article IV of this Agreement are correct in all material respects on and as of the date of such Loan as though made on and as of such date except to the extent that any such representation or warranty is stated to relate solely to an earlier date, in which case such representation or warranty is correct in all material respects as of such earlier date; and

(b) No Default or Event of Default has occurred and is continuing, or would result from such Loan.

(2) The Agent shall have received such other approvals, opinions, or documents as any Lender through the Agent may reasonably request.

Notwithstanding the foregoing, in the case of a Loan (provided for in Section 2.21(d)) made to repay a Swing Line Loan, the satisfaction of the foregoing conditions with respect to such Swing Line Loan shall constitute satisfaction of such conditions with respect to the Loan made pursuant to Section 2.21(d) to repay such Swing Line Loan.

Section 3.05 Conditions Precedent to Facility Letters of Credit. The obligations of each Issuer to issue, amend or extend any Facility Letter of Credit shall be subject to the conditions precedent set forth in Section 2.22.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants that:

Section 4.01 Incorporation, Formation, Good Standing, and Due Qualification. The Borrower, each Subsidiary, and each of the Guarantors is (in the case of a corporation) a corporation duly incorporated or (in the case of a limited partnership) a limited partnership duly formed or (in the case of a limited liability company) a limited liability company duly formed, validly existing, and in good standing under the laws of the jurisdiction of its incorporation or formation; has the power and authority to own its assets and to transact the business in which it is now engaged or proposed to be engaged; and is duly qualified and in good standing under the laws of each other jurisdiction in which such qualification is required, except where the failure to be so qualified could not reasonably be expected to result in a Material Adverse Effect.

Section 4.02 Power and Authority. The execution, delivery and performance by the Borrower and the Guarantors of the Loan Documents to which each is a party have been duly authorized by all necessary corporate, partnership or limited liability company action, as the case may be, and do not and will not (1) require any consent or approval of the stockholders of such corporation, partners of such partnership or members of such limited liability company (except such consents as have been obtained as of the date hereof); (2) contravene such corporation's charter or bylaws, such partnership's partnership agreement or such limited liability company's articles or certificate of formation or operating agreement; (3) violate, in any material respect, any provision of any law, rule, regulation (including, without limitation, Regulations U and X of the Board of Governors of the Federal Reserve System), order, writ, judgment, injunction, decree, determination, or award presently in effect having applicability to such corporation, partnership or limited liability company; (4) result in a breach of or constitute a default under any indenture or loan or credit agreement or any other material agreement, lease, or instrument to which such corporation, partnership or limited liability company is a party or by which it or its properties may be bound or affected; (5) result in, or require, the creation or imposition of any Lien, upon or with respect to any of the properties now owned or hereafter acquired by such corporation, partnership or limited liability company, other than Liens securing the Obligations; and (6) cause such corporation, partnership or limited liability company to be in default, in any material respect, under any such law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award or any such indenture, agreement, lease or instrument.

Section 4.03 Legally Enforceable Agreement. This Agreement is, and each of the other Loan Documents when delivered under this Agreement will be legal, valid, and binding obligations of the Borrower or each Guarantor, as the case may be, enforceable against the Borrower or each Guarantor, as the case may be, in accordance with their respective terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency, and other similar laws affecting creditors' rights generally.

Section 4.04 Financial Statements. The consolidated balance sheet of the Borrower and its Subsidiaries as at March 31, 2009, and the consolidated statements of operations, cash flow and changes to stockholders' equity of the Borrower and its Subsidiaries for the period of two fiscal quarters ended March 31, 2009, are complete and correct and fairly present as at such date the financial condition of the Borrower and its Subsidiaries and the results of their operations for the periods covered by such statements, all in accordance with GAAP consistently applied (subject to the absence of footnotes and year-end adjustments), and since March 31, 2009, there has been no material adverse change in the condition (financial or otherwise), business, or operations of the Borrower and its Subsidiaries. There are no liabilities of the Borrower or any Subsidiary, fixed or contingent, which are material but are not reflected in the financial statements or in the notes thereto, other than liabilities arising in the ordinary course of business since March 31, 2009. No information, exhibit, or report furnished by the Borrower to any Lender in connection with the negotiation of this Agreement, taken together, contained any

material misstatement of fact or omitted to state a material fact or any fact necessary to make the statements contained therein not materially misleading.

Section 4.05 Labor Disputes and Acts of God. Neither the business nor the properties of the Borrower or any Subsidiary or any Guarantor are affected by any fire, explosion, accident, strike, lockout, or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy, or other casualty (whether or not covered by insurance), materially and adversely affecting such business or properties or the operation of the Borrower or such Subsidiary or such Guarantor.

Section 4.06 Other Agreements. Neither the Borrower nor any Significant Subsidiary nor any Significant Guarantor is a party to any indenture, loan, or credit agreement, or to any lease or other agreement or instrument or subject to any charter, corporate or other restriction which could reasonably be expected to have a material adverse effect on the business, properties, assets, operations, or conditions, financial or otherwise, of the Borrower or any Significant Subsidiary or any Significant Guarantor, or the ability of the Borrower or any Significant Guarantor to carry out its obligations under the Loan Documents to which it is a party. Neither the Borrower nor any Significant Subsidiary nor any Significant Guarantor is in default in any material respect in the performance, observance, or fulfillment of any of the obligations, covenants, or conditions contained in any agreement or instrument material to its business to which it is a party.

Section 4.07 Litigation. Except as disclosed in Schedule 4.07 or Schedule 4.14, or reflected in or reserved for in the financial statements referred to in Section 4.04, there is no pending or, to the knowledge of the Borrower or any Guarantor, threatened action or proceeding against or affecting the Borrower or any Significant Subsidiary or any Significant Guarantor before any court, governmental agency, or arbitrator, which could reasonable be expected, in any one case or in the aggregate, to materially adversely affect the financial condition, operations, properties, or business of the Borrower or any Significant Subsidiary or any Significant Guarantor or the ability of the Borrower or any Significant Guarantor to perform its obligations under the Loan Documents to which it is a party.

Section 4.08 No Defaults on Outstanding Judgments or Orders. Except for judgments with respect to which the uninsured liability of the Borrower, each Significant Subsidiary and each Significant Guarantor does not exceed $10,000,000 in the aggregate for all such judgments, (a) the Borrower, each Significant Subsidiary and each Significant Guarantor have satisfied all judgments, and (b) neither the Borrower nor any Significant Subsidiary nor any Significant Guarantor is in default with respect to any judgment, writ, injunction, decree, ruling or order of any court, arbitrator, or federal, state, municipal, or other governmental authority, commission, board, bureau, agency, or instrumentality, domestic or foreign.

Section 4.09 Ownership and Liens. The Borrower and each Subsidiary and each Guarantor have title to, or valid leasehold interests in, all of their respective properties and assets, real and personal, including the properties and assets and leasehold interests reflected in the financial statements referred to in Section 4.04 (other than any properties or assets disposed of in the ordinary course of business), and none of the properties and assets owned by the Borrower or any Subsidiary or any Guarantor and none of their leasehold interests is subject to any Lien, except such as may be permitted pursuant to Section 6.01.

Section 4.10 Subsidiaries and Ownership of Stock. Set forth in Schedule 4.10 hereto is a complete and accurate list, as of the date hereof, of the Subsidiaries of the Borrower, showing the jurisdiction of incorporation or formation of each and showing the percentage of the Borrower's ownership of the outstanding stock or partnership interest or membership interest of each Subsidiary. All of the outstanding capital stock of each such corporate Subsidiary has been validly issued, is fully paid and nonassessable, and is owned by the Borrower free and clear of all Liens. The limited partnership agreement of each such limited partnership Subsidiary is in full force and effect and has not been amended or modified, except for such amendments or modifications as are delivered to the Agent under Section 3.02. Each of the Guarantors is a Wholly-Owned Subsidiary of the Borrower.

Section 4.11 ERISA. The Borrower and each Subsidiary and each Guarantor are in compliance in all material respects with all applicable provisions of ERISA. Neither a Reportable Event nor a Prohibited Transaction has occurred and is continuing with respect to any Plan; no notice of intent to terminate a Plan has been filed, nor has any Plan been terminated; no circumstances exist which constitute grounds entitling the PBGC to institute proceedings to terminate, or appoint a trustee to administer, a Plan, nor has the PBGC instituted any such proceedings; neither the Borrower nor any Commonly Controlled Entity has completely or partially withdrawn from a Multiemployer Plan under circumstances that could subject the Borrower or any Subsidiary to material withdrawal liability; the Borrower and each Commonly Controlled Entity have met their minimum funding requirements under ERISA with respect to all of their Plans and the present value of all vested benefits under each Plan does not materially exceed the fair market value of all Plan assets allocable to such benefits, as determined on the most recent valuation date of the Plan and in accordance with the provisions of ERISA; and neither the Borrower nor any Commonly Controlled Entity has incurred any material liability to the PBGC under ERISA.

Section 4.12 Operation of Business. The Borrower, each Subsidiary and each Guarantor possess all material licenses, permits, franchises, patents, copyrights, trademarks, and trade names, or rights thereto, to conduct their respective businesses substantially as now conducted and as presently proposed to be conducted and the Borrower and each of its Subsidiaries and each Guarantor are not in violation of any valid rights of others with respect to any of the foregoing where the failure to possess such licenses, permits, franchises, patents, copyrights, trademarks, trade names or rights thereto or the violation of the valid rights of others

with respect thereto could reasonably be expected to, in any one case or in the aggregate, adversely affect in any material respect the financial condition, operations, properties, or business of the Borrower or any Significant Subsidiary or any Significant Guarantor or the ability of the Borrower or any Significant Guarantor to perform its obligation under the Loan Documents to which it is a party.

Section 4.13 Taxes. All federal and state income tax liabilities or income tax obligations, and all other material income tax liabilities or material income tax obligations, of the Borrower, each Subsidiary and each Guarantor have been paid or have been accrued by or reserved for by the Borrower. The Borrower constitutes the parent of an affiliated group of corporations for purposes of filing a consolidated United States federal income tax return.

Section 4.14 Laws; Environment. Except as disclosed in Schedule 4.14 hereto, (a) the Borrower, each Subsidiary and each Guarantor have duly complied, and their businesses, operations, assets, equipment, property, leaseholds, or other facilities are in compliance, in all material respects, with the provisions of all federal, state, and local statutes, laws, codes, and ordinances and all rules and regulations promulgated thereunder (including without limitation those relating to the environment, health and safety), except where the failure to so comply could not reasonably be expected to, in any one case or in the aggregate, adversely affect in any material respect the financial condition, operations, properties or business of the Borrower or any Subsidiary or the ability of the Borrower or any Guarantor to perform its obligations under the Loan Documents to which it is a party; (b) the Borrower, each Subsidiary and each Guarantor have been issued and will maintain all required federal, state, and local permits, licenses, certificates, and approvals relating to (1) air emissions; (2) discharges to surface water or groundwater; (3) noise emissions; (4) solid or liquid waste disposal; (5) the use, generation, storage, transportation, or disposal of toxic or hazardous substances or hazardous wastes (intended hereby and hereafter to include any and all such materials listed in any federal, state, or local law, code, or ordinance and all rules and regulations promulgated thereunder as hazardous); or (6) other environmental, health or safety matters, to the extent for any of the foregoing that failure to maintain the same could reasonably be expected to, in any one case or in the aggregate, adversely affect in any material respect the financial condition, operations, properties, or business of the Borrower or any Significant Subsidiary or any Significant Guarantor or the ability of the Borrower or any Significant Guarantor to perform its obligations under the Loan Documents to which it is a party; (c) neither the Borrower nor any Subsidiary nor any Guarantor has received notice of, or has actual knowledge of any violations of any federal, state, or local environmental, health, or safety laws, codes or ordinances or any rules or regulations promulgated thereunder with respect to its businesses, operations, assets, equipment, property, leaseholds, or other facilities, which violation could reasonably be expected to, in any one case or in the aggregate, adversely affect in any material respect the financial condition, operations, properties, or business of the Borrower or any Significant Subsidiary or any Significant Guarantor or the ability of the Borrower or any Significant Guarantor to perform its obligations under the Loan Documents to which it is a party; (d) except in accordance with a valid

governmental permit, license, certificate or approval, there has been no material emission, spill, release, or discharge into or upon (1) the air; (2) soils, or any improvements located thereon; (3) surface water or groundwater; or (4) the sewer, septic system or waste treatment, storage or disposal system servicing the premises, of any toxic or hazardous substances or hazardous wastes at or from the premises, in each case related to the premises of the Borrower, each Subsidiary and each Guarantor; and accordingly the premises of the Borrower, each Subsidiary and each Guarantor have not been adversely affected, in any material respect, by any toxic or hazardous substances or wastes; (e) there has been no complaint, order, directive, claim, citation, or notice by any governmental authority or any person or entity with respect to material violations of law or material damages by reason of Borrower's or any Subsidiary's (1) air emissions; (2) spills, releases, or discharges to soils or improvements located thereon, surface water, groundwater or the sewer, septic system or waste treatment, storage or disposal systems servicing the premises; (3) noise emissions; (4) solid or liquid waste disposal; (5) use, generation, storage, transportation, or disposal of toxic or hazardous substances or hazardous waste; or (6) other environmental, health or safety matters affecting the Borrower, any Subsidiary or any Guarantor or its business, operations, assets, equipment, property, leaseholds, or other facilities; and (f) neither the Borrower nor any Subsidiary nor any Guarantor has any material indebtedness, obligation, or liability, absolute or contingent, matured or not matured, with respect to the storage, treatment, cleanup, or disposal of any solid wastes, hazardous wastes, or other toxic or hazardous substances (including without limitation any such indebtedness, obligation, or liability with respect to any current regulation, law, or statute regarding such storage, treatment, cleanup, or disposal).

Section 4.15 Investment Company Act. Neither the Borrower nor any Subsidiary thereof is an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended.

Section 4.16 OFAC. Neither Borrower nor any Guarantor is (or will be) a person with whom any Lender is restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury of the United States of America (including, those Persons named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order (including, the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and shall not engage in any dealings or transactions or otherwise be associated with such persons. In addition, Borrower hereby agrees to provide to any Lender with any additional information that such Lender deems necessary from time to time in order to ensure compliance with all applicable Laws concerning money laundering and similar activities.

Section 4.17 Accuracy of Information. The representations and warranties by the Borrower or any Guarantor contained herein or in any other Loan Document or made hereunder or in any other Loan Document and the certificates, schedules, exhibits, reports or other

documents provided or to be provided by the Borrower or any Guarantor in connection with the transactions contemplated hereby or thereby (including, without limitation, the negotiation of and compliance with the Loan Documents), when taken together as a whole, do not contain and will not contain a misstatement of a material fact or omit to state a material fact required to be stated therein in order to make the statements contained therein, in the light of the circumstances under which made, not materially misleading at the time such statements were made or are deemed made.

Section 4.18 Security Documents.

(a) Each of the Cash Collateral Agreement and the Collateral Agreement is effective until release thereof permitted under this Agreement to create in favor of the Agent, for the benefit of the Lenders, a legal, valid and enforceable security interest in the Collateral described therein and proceeds thereof. In the case of the Collateral described in the Collateral Agreement, the Collateral Agreement constitutes a fully perfected Lien on all right, title and interest of the Borrower and the Guarantors in such Collateral (other than such Collateral in which a security interest cannot be perfected by filing of a financing statement under the UCC as in effect at the relevant time in the relevant jurisdiction) and the proceeds thereof, as security for the Obligations (as defined in the Collateral Agreement), in each case prior and superior in right to any other Person except Liens permitted under Section 6.01(1) through (7). In the case of the Collateral described in the Cash Collateral Agreement, the Cash Collateral Agreement constitutes a fully perfected Lien on all right, title and interest of the Borrower and the Guarantors in such Collateral and the proceeds thereof, as security for the Obligations (as defined in the Cash Collateral Agreement), in each case prior and superior in right to any other Person.

(b) Upon execution and delivery thereof until release thereof permitted under this Agreement, each of the Mortgages is effective to create in favor of the Agent, for the benefit of the Lenders, a legal, valid and enforceable Lien on the Mortgaged Properties described therein and proceeds thereof, and when the Mortgages are filed in the appropriate recording offices, each such Mortgage shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of Borrower and the Guarantors in the Mortgaged Properties and the proceeds thereof, as security for the Obligations (as defined in the relevant Mortgage), in each case prior and superior in right to any other Person (other than those exceptions to title set forth in the applicable title insurance policy described in subclause (c) of item (4) of the Secured Borrowing Base Conditions and other than Liens permitted pursuant to clause (g) of the definition of Mortgage Conditions or Section 6.01(7)).

ARTICLE V
AFFIRMATIVE COVENANTS

So long as any Note shall remain unpaid or any Facility Letter of Credit Obligations shall remain outstanding or any Lender shall have any Commitment under this Agreement, the Borrower will (unless otherwise agreed to by the Required Lenders in writing):

Section 5.01 Maintenance of Existence. Preserve and maintain, and cause each Subsidiary to preserve and maintain (except for a Subsidiary that ceases to maintain its existence solely as a result of an Internal Reorganization), its corporate, limited partnership or limited liability company existence and good standing in the jurisdiction of its incorporation or formation and qualify and remain qualified to transact business in each jurisdiction in which such qualification is required except where the failure to so qualify to transact business could not reasonably be expected to affect in any material respect the financial condition, operations, properties or business of the Borrower or any Subsidiary.

Section 5.02 Maintenance of Records. Keep and cause each Subsidiary to keep, adequate records and books of account, in which complete entries will be made in accordance with GAAP consistently applied, reflecting all financial transactions of the Borrower and its Subsidiaries.

Section 5.03 Maintenance of Properties. Maintain, keep, and preserve, and cause each Subsidiary to maintain, keep, and preserve, all of its properties (tangible and intangible) necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear and tear excepted.

Section 5.04 Conduct of Business. Continue, and cause each Subsidiary to continue (except in the case of a Subsidiary that ceases to engage in business solely as a result of an Internal Reorganization), to engage in a business of the same general type and in the same manner as conducted by it on the date of this Agreement.

Section 5.05 Maintenance of Insurance. Maintain, and cause each Subsidiary to maintain, insurance with financially sound reputable insurance companies or associations (or, in the case of insurance for construction warranties and builder default protection for buyers of Housing Units from the Borrower or any of its Subsidiaries or UHIC) in such amounts and covering such risks as are usually carried by companies engaged in the same or a similar business and similarly situated, which insurance may provide for reasonable deductibility from coverage thereof. In addition, if any structure on any Mortgaged Property is located in an area identified by the Federal Emergency Management Agency as a special flood hazard area and in which flood insurance has been made available under the National Flood Insurance Act of 1968, then the Borrower shall maintain or cause its applicable Subsidiary to maintain, a policy of flood insurance as described in subclause (c) of item (4) of the Secured Borrowing Base Conditions.

Section 5.06 Compliance with Laws. Comply, and cause each Subsidiary to comply, in all material respects with all applicable laws, rules, regulations, and orders, the noncompliance with which could not reasonably be expected to, in any one case or in the aggregate, adversely affect in any material respect the financial condition, operations, properties or business of the Borrower or any Subsidiary or the ability of the Borrower or any Guarantor to perform its obligations under the Loan Documents to which it is a party, and such compliance to include, without limitation, paying before the same become delinquent all taxes, assessments and governmental charges imposed upon it or upon its property, other than any such taxes, assessments and charges being contested by the Borrower in good faith which will not have a material adverse effect on the financial condition of the Borrower; and with respect to the matters disclosed in Schedule 4.14, implement prudent measures to achieve compliance with all relevant laws and regulations within a reasonable time and in accordance with requirements negotiated with applicable regulatory agencies.

Section 5.07 Right of Inspection. At any reasonable time and from time to time, permit any Lender or any agent or representative thereof to examine and make copies of and abstracts from the records and books of account of, and visit the properties of, the Borrower and any Subsidiary, and to discuss the affairs, finances, and accounts of the Borrower and any Subsidiary with any of their respective officers and directors and the Borrower's independent accountants.

Section 5.08 Reporting Requirements. Furnish to the Agent for delivery to each of the Lenders:

(1) **Quarterly financial statements**. As soon as available and in any event within fifty (50) days after the end of each of the first three quarters of each fiscal year of the Borrower, an unaudited condensed consolidated balance sheet of the Borrower and its Subsidiaries as of the end of such quarter, unaudited condensed consolidated statements of operations and cash flow of the Borrower and its Subsidiaries for the period commencing at the end of the previous fiscal year and ending with the end of such quarter, and unaudited condensed consolidated statements of changes in stockholders' equity of the Borrower and its Subsidiaries for the portion of the fiscal year ended with the last day of such quarter, all in reasonable detail and stating in comparative form the respective figures for the corresponding date and period in the previous fiscal year and all prepared in accordance with GAAP consistently applied and certified by the chief financial officer of the Borrower (subject to year-end adjustments); the timely filing by the Borrower of the Borrower's quarterly 10-Q report with the Securities and Exchange Commission shall satisfy the foregoing requirements.

(2) **Annual financial statements**. As soon as available and in any event within ninety-five (95) days after the end of each fiscal year of the Borrower, a consolidated balance sheet of the Borrower and its Subsidiaries as of the end of such fiscal year, consolidated statements of operations and cash flow of the Borrower and its Subsidiaries for such fiscal year,

and consolidated statements of changes in stockholders' equity of the Borrower and its Subsidiaries for such fiscal year, all in reasonable detail and stating in comparative form the respective figures for the corresponding date and period in the prior fiscal year and all prepared in accordance with GAAP consistently applied and accompanied by an opinion thereon acceptable to the Agent by Deloitte & Touche or other independent accountants selected by the Borrower and acceptable to the Agent; the timely filing by the Borrower of the Borrower's annual 10-K report with the Securities and Exchange Commission shall satisfy the foregoing requirements.

(3) [Intentionally deleted.]

(4) [Intentionally deleted.]

(5) **Management letters**. Promptly upon receipt thereof, copies of any reports submitted to the Borrower or any Subsidiary by independent certified public accountants in connection with examination of the financial statements of the Borrower or any Subsidiary made by such accountants.

(6) [Intentionally deleted.]

(7) **Compliance certificate**. Within fifty (50) days after the end of each of the first three quarters, and within ninety-five (95) days after the end of each fourth quarter, of each fiscal year of the Borrower, a certificate of the President or chief financial officer of the Borrower certifying (a) the Borrower's compliance with all financial covenants including, without limitation, those set forth in Section 6.10 and Article VII hereof, which certificate shall set forth in reasonable detail the computation thereof and (b) certifying that to the best of his knowledge no Default or Event of Default has occurred and is continuing, or if a Default or Event of Default has occurred and is continuing, a statement as to the nature thereof and the action which is proposed to be taken with respect thereto.

(8) [Intentionally deleted.]

(9) [Intentionally deleted.]

(10) **Notice of litigation**. Promptly after the commencement thereof, notice of all actions, suits, and proceedings before any court or governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign, affecting the Borrower or any Subsidiary which, if determined adversely to the Borrower or such Subsidiary, would reasonably be expected to result in a judgment against the Borrower or such Subsidiary in excess of $10,000,000 (to the extent not covered by insurance) or would reasonably be expected to have a material adverse effect on the financial condition, properties, or operations of the Borrower or such Subsidiary.

(11) **Notice of Defaults and Events of Default**. As soon as possible and in any event within ten (10) days after the occurrence of each Default or Event of Default, a written notice setting forth the details of such Default or Event of Default and the action which is proposed to be taken by the Borrower with respect thereto.

(12) **ERISA reports**. As soon as possible, and in any event within thirty (30) days after the Borrower knows or has reason to know that any circumstances exist that constitute grounds entitling the PBGC to institute proceedings to terminate a Plan subject to ERISA with respect to the Borrower or any Commonly Controlled Entity, and promptly but in any event within two (2) Business Days of receipt by the Borrower or any Commonly Controlled Entity of notice that the PBGC intends to terminate a Plan or appoint a trustee to administer the same, and promptly but in any event within five (5) Business Days of the receipt of notice concerning the imposition of withdrawal liability in excess of $50,000 with respect to the Borrower or any Commonly Controlled Entity, the Borrower will deliver to each Lender a certificate of the chief financial officer of the Borrower setting forth all relevant details and the action which the Borrower proposes to take with respect thereto.

(13) [Intentionally deleted.]

(14) **Proxy statements, etc**. Promptly after the sending or filing thereof, copies of all proxy statements, financial statements, and reports which the Borrower or any Subsidiary sends to its stockholders, and copies of all regular, periodic, and special reports, and all registration statements which the Borrower or any Subsidiary files with the Securities and Exchange Commission or any governmental authority which may be substituted therefor, or with any national securities exchange.

(15) [Intentionally deleted].

(16) **General information**. Such other information respecting the condition or operations, financial or otherwise, of the Borrower or any Subsidiary as any Lender may from time to time reasonably request.

Section 5.09 [Intentionally Deleted].

Section 5.10 Environment. Be and remain, and cause each Subsidiary to be and remain, in compliance with the provisions of all federal, state, and local environmental, health, and safety laws, codes and ordinances, and all rules and regulations issued thereunder, except where the failure to so comply could not reasonably be expected to, in any one case or in the aggregate, adversely affect in any material respect the financial condition, operations, properties or business of the Borrower or any Subsidiary or the ability of the Borrower or any Guarantor to perform its obligations under the Loan Documents to which it is a party; with respect to matters disclosed in Schedule 4.14, implement prudent measures to achieve compliance with all relevant

laws and regulations within a reasonable time and in accordance with requirements negotiated with applicable regulatory agencies; notify the Agent promptly of any notice of a hazardous discharge or environmental complaint received from any governmental agency or any other party (and the Agent shall notify the Lenders promptly following its receipt of any such notice from the Borrower); notify the Agent promptly of any hazardous discharge from or affecting its premises if (i) the storage, treatment or cleanup of such hazardous discharge (all in accordance with applicable laws and regulations) or (ii) the diminution in the value of the assets affected by such hazardous discharge, is reasonably expected to exceed $10,000 (and the Agent shall notify the Lenders promptly following its receipt of any such notice from the Borrower); promptly contain and remove the same, in compliance with all applicable laws; promptly pay any fine or penalty assessed in connection therewith; permit any Lender to inspect the premises, to conduct tests thereon, and to inspect all books, correspondence, and records pertaining thereto; and at such Lender's request, and at the Borrower's expense, provide a report of a qualified environmental engineer, satisfactory in scope, form, and content to the Required Lenders, and such other and further assurances reasonably satisfactory to the Required Lenders that the condition has been corrected.

Section 5.11 Use of Proceeds. Use the proceeds of the Loans solely as provided in Section 2.13.

Section 5.12 Ranking of Obligations. Ensure that at all times its Obligations under the Loan Documents shall be and constitute unconditional general obligations of the Borrower ranking at least pari passu with all its other unsecured Debt.

Section 5.13 Taxes. Pay and cause each Subsidiary to pay when due all taxes, assessments and governmental charges and levies upon it or its income, profits or property, except those which are being contested in good faith by appropriate proceedings and with respect to which adequate reserves have been set aside.

Section 5.14 [Intentionally Deleted].

Section 5.15 New Subsidiaries. Within fifty (50) days after the end of any fiscal quarter of the Borrower during which any Person shall have become a Subsidiary, cause such Subsidiary to (i) execute and deliver to the Agent, for the benefit of the Lenders, a Supplemental Guaranty, (ii) become a Grantor under the Collateral Agreement by executing and delivering an assumption agreement to the Collateral Agreement substantially in the form of Annex I thereto, and (iii) deliver or cause to be delivered an opinion of counsel, certified copies of resolutions, articles of incorporation or other formation documents, incumbency certificates and other documents with respect to such Subsidiary and its Guaranty substantially similar to the documents delivered pursuant to Section 3.02 with respect to the Guarantors, all of which shall be reasonably satisfactory to the Agent in form and substance; provided that if and so long as any such Subsidiary has total assets the book value of which is not more than $5,000,000, the

Borrower shall not be required to comply with this Section. None of the Title Companies nor UHIC nor BMC shall be required to deliver a Guaranty.

ARTICLE VI
NEGATIVE COVENANTS

Except during any period when the Cash Secured Option shall apply to the Facility, so long as any Note shall remain unpaid or any Facility Letter of Credit Obligations shall remain outstanding or any Lender shall have any Commitment under this Agreement, the Borrower and each Guarantor will not (unless otherwise agreed to by the Required Lenders in writing):

Section 6.01 Liens. Create, incur, assume, or suffer to exist, or permit any Subsidiary to create, incur, assume, or suffer to exist, any Lien, upon or with respect to any of its properties, now owned or hereafter acquired, except the following:

(1) Liens for taxes or assessments or other government charges or levies if not yet due and payable or, if due and payable, if they are being contested in good faith by appropriate proceedings and for which appropriate reserves are maintained;

(2) Liens imposed by law, such as mechanics', materialmen's, landlords', warehousemen's, and carriers' Liens, and other similar Liens, securing obligations incurred in the ordinary course of business which are not past due for more than ninety (90) days or which are being contested in good faith by appropriate proceedings and for which appropriate reserves have been established;

(3) Liens under workers' compensation, unemployment insurance, Social Security, or similar legislation (other than Liens imposed by ERISA);

(4) Liens, deposits, or pledges to secure the performance of bids, tenders, contracts (other than contracts for the payment of money), Capital Leases (permitted under the terms of this Agreement), public or statutory obligations, surety, stay, appeal, indemnity, performance, or other similar bonds, or other similar obligations arising in the ordinary course of business;

(5) Judgment and other similar Liens arising in connection with any court proceeding, provided the execution or other enforcement of such Liens is effectively stayed and the claims secured thereby are being actively contested in good faith and by appropriate proceedings;

(6) Easements, rights-of-way, restrictions (including zoning, building and land use restrictions), restrictive covenants (including, without limitation, any Lien rights granted pursuant to any recorded declaration of covenants, conditions and restrictions to any property owners' association or similar Person that has authority to impose and collect dues or

assessments), and other similar encumbrances which, in the aggregate, do not materially interfere with the occupation, use, and enjoyment by the Borrower or any Subsidiary of the property or assets encumbered thereby in the normal course of its business or materially impair the value of the property subject thereto;

(7) Liens in favor of a seller of Entitled Land, Lots Under Development or Finished Lots requiring the Borrower or any Subsidiary to make a payment upon the future sale of such Entitled Land, Lots Under Development or Finished Lots;

(8) Rights of repurchase and/or rights of first refusal in favor of sellers of property or assets;

(9) Liens securing Secured Debt (A) permitted under clause (1) of Section 6.02, but only to the extent such Liens are limited to (i) Real Property that is not a Secured Borrowing Base Asset, (ii) personal property rights arising solely from Real Property described in clause (A), and (iii) Cash Equivalents not constituting Collateral, and (B) permitted under clause (2) of Section 6.02, but only to the extent such Liens are subordinated in the manner required under clause (2) of Section 6.02; and

(10) Liens pursuant to the Security Documents.

Section 6.02 Secured Debt. Create, incur, assume or suffer to exist, or permit any Subsidiary to create, incur, assume or suffer to exist, any Secured Debt, except for:

(1) Secured Debt in an aggregate principal amount outstanding at any one time not exceeding (A) if no Secured Debt referred to in clause (2) of this Section 6.02 is then outstanding, a principal amount equal to $200,000,000 minus the Aggregate Commitments or (B) if Secured Debt referred to in clause (2) of this Section 6.02 is then outstanding, a principal amount equal to $700,000,000 minus the then outstanding principal amount of such Secured Debt referred to in clause (2) of this Section 6.02 minus the Aggregate Commitments, and such Secured Debt either:

(A) is (i) Secured Debt the proceeds of which are used by the Borrower and its Subsidiaries solely for working capital purposes and general corporate purposes and (ii) secured only by Liens permitted under clause (9)(A) of Section 6.; or

(B) is Secured Debt of an entity acquired by Borrower or any of its Subsidiaries after the Closing Date; provided that, (i) such Secured Debt was in existence prior to the date of such Acquisition and was not incurred in anticipation thereof and (ii) the Liens securing such Secured Debt do not

extend to any other assets other than those theretofore encumbered by such Liens; and

(2) Junior lien Secured Debt in an aggregate principal amount outstanding at any one time not exceeding $700,000,000 minus the aggregate then outstanding principal amount of Secured Debt described in clause (1) above; provided that (A) the Agent is granted first priority Liens on all assets of the Borrower and its Subsidiaries granted to the holders of such junior Lien Debt, other than assets encumbered by Liens described in clause (1) and clause (2) above, and (B) Liens securing such Secured Debt shall be fully subordinated silent junior Liens subordinated to all Liens securing the Obligations pursuant to an intercreditor agreement to be entered into between the Agent and the agent or indenture trustee for such junior lien Secured Debt, which shall be in form and substance satisfactory to the Agent and the Lenders in their respective sole and absolute discretion.

Section 6.03 Mergers, Etc. Wind up, liquidate or dissolve itself, reorganize, merge or consolidate with or into, or convey, sell, assign, transfer, lease, or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to any Person, or acquire all or substantially all the assets or the business of any Person, or permit any Subsidiary to do so, except (1) for any Permitted Acquisition, (2) that any Guarantor may merge into or transfer assets to the Borrower as a result of an Internal Reorganization or otherwise and (3) that any Guarantor may merge into or consolidate with or transfer assets to any other Guarantor as a result of an Internal Reorganization or otherwise.

Section 6.04 Leases. Create, incur, assume, or suffer to exist, or permit any Subsidiary to create, incur, assume, or suffer to exist, any obligation as lessee for the rental or hire of any real or personal property, except (1) Capital Leases not otherwise prohibited by the terms of this Agreement; (2) leases existing on the date of this Agreement and any extension or renewals thereof; (3) leases between the Borrower and any Subsidiary or between any Subsidiaries; (4) operating leases entered into in the ordinary course of business; and (5) any lease of property having a value of $500,000 or less.

Section 6.05 Sale and Leaseback. Sell, transfer or otherwise dispose of, or permit any Subsidiary to sell, transfer, or otherwise dispose of, any real or personal property to any Person and thereafter directly or indirectly lease back the same or similar property, except for the sale and leaseback of model homes.

Section 6.06 Sale of Assets. Sell, lease, assign, transfer, or otherwise dispose of, or permit any Subsidiary to sell, lease, assign, transfer, or otherwise dispose of, any of its now owned or hereafter acquired assets (including, without limitation, shares of stock and indebtedness of subsidiaries, receivables, and leasehold interests), except (a) for (1) Inventory disposed of in the ordinary course of business; (2) the sale or other disposition of assets no

longer used or useful in the conduct of its business, provided that the Borrower is in compliance with Section 2.01.2(b)(i) hereof and no Event of Default has occurred and is continuing; or (3) the sale and leaseback of model homes; (b) that any Guarantor may sell, lease, assign, or otherwise transfer its assets to the Borrower or any other Guarantor in connection with an Internal Reorganization or otherwise; and (c) that the provisions of this Section 6.06 shall not affect or limit the Borrower's obligations under Section 6.03.

Section 6.07 Investments. Make, or permit any Subsidiary to make, any loan or advance to any Person, or purchase or otherwise acquire, or permit any Subsidiary to purchase or otherwise acquire, any capital stock, assets (other than assets acquired in the ordinary course of business), obligation, or other securities of, make any capital contribution to, or otherwise invest in or acquire any interest in any Person including, without limitation, any hostile takeover, hostile tender offer or similar hostile transaction (collectively, "Investments"), except:

(1) Cash Equivalents;

(2) securities permitted as investments under the Borrower's investment policy in effect from time to time and consented to by Required Lenders;

(3) stock, obligation, or securities received in settlement of debts (created in the ordinary course of business) owing to the Borrower or any Subsidiary provided such issuance is approved by the board of directors of the issuer thereof;

(4) a loan or advance from the Borrower to a Subsidiary, or from a Subsidiary to a Subsidiary, or from a Subsidiary to the Borrower (subject, however, to the limitations set forth below in the case of Investments in Subsidiaries that are not Guarantors);

(5) any Permitted Acquisition;

(6) an Investment in a Wholly-Owned Subsidiary, which Investment is, or constitutes a part of, an Internal Reorganization (subject, however, to the limitations set forth below in the case of Investments in Subsidiaries that are not Guarantors);

(7) redemptions and repurchases of senior Debt; provided that in each instance the Borrower shall continue to be in compliance with the minimum liquidity covenant in Section 7.04 immediately after giving effect to such redemption or repurchase;

(8) redemption and repurchases in respect of any subordinated Debt of Borrower or any of its Wholly-Owned Subsidiaries; provided that in each instance the Borrower shall continue to be in compliance with the minimum liquidity covenant in Section 7.04 immediately after giving effect to such redemption or repurchase;

(9) any redemption, repurchase, exchange or refinancing of Debt (A) in exchange for, or out of the proceeds of the substantially concurrent issuance and sale of, equity interests (other than Disqualified Stock), or (B) in exchange for, or out of the proceeds of the substantially concurrent incurrence of, Refinancing Debt;

(10) Investments in Subsidiaries that are not Guarantors and Investments in Joint Ventures (including Guarantees of Debt and other obligations of Joint Ventures);

(11) any other Investment not identified in clauses (1) though (9) above (subject; however, to the limitations set forth below);

provided, that the aggregate amount of all Investments by the Borrower and its Subsidiaries permitted under clauses (10) and (11) above and the contingent obligations under guaranties permitted under clause (3) of Section 6.08 below does not at any time exceed $100,000,000.

Section 6.08 Guaranties, Etc. Assume, guarantee, endorse, or otherwise be or become directly or contingently responsible or liable, or permit any Subsidiary to assume, guarantee, endorse, or otherwise be or become directly or contingently responsible or liable (including, but not limited to, an agreement to purchase any obligation, stock, assets, goods, or services, or to supply or advance any funds, assets, goods, or services, or an agreement to maintain or cause such Person to maintain a minimum working capital or net worth or otherwise to assure the creditors of any Person against loss), for obligations of any Person, except: (1) guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business; (2) guaranties of performance obligations in the ordinary course of business; (3) guaranties of the Debt or other obligations of any Joint Venture or any Subsidiary that is not a Guarantor, and (4) that the Borrower or any Subsidiary or any Guarantor may, whether as a result of an Internal Reorganization or otherwise, guarantee the Debt of any other Subsidiary (other than any Subsidiary that is not a Guarantor) or Guarantor or the Borrower permitted under this Agreement.

Section 6.09 Transactions with Affiliates. Enter into any transaction, including, without limitation, the purchase, sale, or exchange of property or the rendering of any service, with any Affiliate, or permit any Subsidiary to enter into any transaction, including, without limitation, the purchase, sale, or exchange of property or the rendering of any service, with any Affiliate, except in the ordinary course of and pursuant to the reasonable requirements of the Borrower's or such Guarantor's or any Subsidiary's business and upon fair and reasonable terms no less favorable to the Borrower or such Guarantor or any Subsidiary than would obtain in a comparable arm's-length transaction with a Person not an Affiliate (which exception shall include the payment of insurance premiums to UHIC for the purchase of construction warranties and builder default protection for buyers of Housing Units from the Borrower or any of its Subsidiaries and to the Title Companies for title insurance); provided, however, that, the following transactions shall not be prohibited by this Section 6.09: (i) transactions involving the

purchase, sale or exchange of property having a value of $500,000 or less; (ii) transactions otherwise permitted by this Agreement; (iii) the issuance of any equity interests (whether common or preferred), other than Disqualified Stock, to Affiliates that are not officers or directors of Borrower or any Guarantor; and (iv) the execution of customary agreements entered into with shareholders relating to (x) registration rights and, related to such registration rights, reasonable indemnification rights and reasonable cost reimbursements, (y) board observation rights and (z) other provisions reasonably acceptable to the Agent.

Section 6.10 [Intentionally Deleted].

Section 6.11 [Intentionally Deleted].

Section 6.12 Non-Guarantors. Permit UHIC to engage in any business other than the issuance of construction warranties and builder default protection for buyers of Housing Units from the Borrower or any of its Subsidiaries or permit any of the Title Companies to engage in any business other than title insurance.

Section 6.13 Negative Pledge. Directly or indirectly enter into any agreement with any Person that prohibits or restricts or limits the ability of the Borrower or any Guarantor to create, incur, pledge or suffer to exist any Lien upon any assets of the Borrower or any Guarantor in favor of or for the benefit of the Agent for the benefit of the Lenders and the Issuers, as contemplated by clause (2) of Section 6.02 or as required to satisfy any condition of the Cash Secured Option or with respect to any Facility Letter of Credit.

ARTICLE VII
FINANCIAL COVENANTS

So long as any Note shall remain unpaid or any Facility Letter of Credit shall remain outstanding or any Lender shall have any Commitment under this Agreement (unless otherwise agreed to by the Required Lenders in writing):

Section 7.01 Minimum Consolidated Tangible Net Worth. The Borrower will, as of the last day of each fiscal quarter, maintain a Consolidated Tangible Net Worth of not less than: (a) during any time that the Cash Secured Option applies to the Facility, $1, and (b) during any time that the Secured Borrowing Base Option applies to the Facility, $85,000,000.

Section 7.02 Leverage Ratio. The Borrower will not permit the Leverage Ratio to exceed at any time (a) during any time that the Cash Secured Option applies to the Facility, 100.0 to 1.0, and (b) during any time that the Secured Borrowing Base Option applies to the Facility, 8.0 to 1.0.

Section 7.03 Interest Coverage Ratio. The Borrower shall maintain an Interest Coverage Ratio of not less than (a) during any time that the Cash Secured Option applies to the Facility, -10.0 to 1.0, and (b) during any time that the Secured Borrowing Base Option applies to the Facility, -10.0 to 1.0.

Section 7.04 Minimum Liquidity. If, as of the last day of the fiscal quarter most recently ended, the Interest Coverage Ratio is less than 2.0 to 1.0, the Borrower shall maintain Unrestricted Cash not included in the Secured Borrowing Base in an amount of not less than $120,000,000.

ARTICLE VIII
EVENTS OF DEFAULT

Section 8.01 Events of Default. If any of the following events shall occur:

(1) The Borrower shall fail to pay (a) the principal of any Note, or any amount of a commitment or other fee, as and when due and payable or (b) interest on any Note within five (5) Business Days after the same is due and payable;

(2) Any representation or warranty made or deemed made by the Borrower or by any Guarantor in any Loan Document or which is contained in any certificate, document, opinion, or financial or other statement furnished at any time under or in connection with this Agreement shall prove to have been incorrect, incomplete, or misleading in any material respect on or as of the date made or deemed made;

(3) The Borrower or any Guarantor shall fail to perform or observe any term, covenant, or agreement contained in Articles V, VI or VII hereof, and such failure shall continue for a period of thirty (30) consecutive days after delivery of written notice thereof from the Agent to the Borrower or such Guarantor;

(4) The Borrower or any Significant Subsidiary or any Significant Guarantor shall (a) fail to pay (within the applicable cure period, if any) any amount in respect of indebtedness for borrowed money equal to or in excess of $25,000,000 in the aggregate (other than the Notes) of the Borrower or such Significant Subsidiary or such Significant Guarantor, as the case may be, or any interest or premium thereon, when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise); or (b) fail to perform or observe any term, covenant, or condition on its part to be performed or observed (within the applicable cure period, if any) under any agreement or instrument relating to any such indebtedness, when required to be performed or observed, if the effect of such failure to perform or observe is to accelerate the maturity of such indebtedness, or to permit the acceleration of the maturity of such indebtedness after the giving of notice or passage of time, or both, and after giving effect to any amendment or waiver; or (c) any such indebtedness shall be declared to be due and payable, or required to be

prepaid (other than by a regularly scheduled required prepayment), repurchased (or an offer to repurchase to be made) or redeemed prior to the stated maturity thereof (other than as otherwise permitted under the terms of this Agreement);

(5) The Borrower or any Significant Subsidiary or any Significant Guarantor (a) shall generally not pay, or shall be unable to pay, or shall admit in writing its inability to pay its debts as such debts become due; or (b) shall make an assignment for the benefit of creditors, or petition or apply to any tribunal for the appointment of a custodian, receiver, or trustee for it or a substantial part of its assets; or (c) shall commence any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; or (d) shall have had any such petition or application filed or any such proceeding commenced against it in which an order for relief is entered or an adjudication or appointment is made and which remains undismissed for a period of sixty (60) days or more; or (e) shall take any corporate partnership, limited liability company or similar organizational action indicating its consent to, approval of, or acquiescence in any such petition, application, proceeding, or order for relief or the appointment of a custodian, receiver, or trustee for all or any substantial part of its properties; or (f) shall suffer any such custodianship, receivership, or trusteeship to continue undischarged for a period of sixty (60) days or more. 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;

(6) One or more judgments, decrees, or orders for the payment of money in excess of $25,000,000 in the aggregate shall be rendered against the Borrower and/or any Subsidiary and/or any Guarantor, and such judgments, decrees, or orders shall continue unsatisfied and in effect for a period of twenty (20) consecutive days without being vacated, discharged, satisfied, or stayed or bonded pending appeal;

(7) Any Guaranty hereunder shall at any time after its execution and delivery and for any reason cease to be in full force and effect or shall be declared null and void, or the validity or enforceability thereof shall be contested by the Guarantor or the Guarantor shall deny it has any further liability or obligation under, or shall fail to perform its obligations under, the Guaranty (except to the extent that the foregoing occurs solely by reason of the liquidation or dissolution of a Guarantor as a result of an Internal Reorganization);

(8) Any Change of Control of the Borrower or any Subsidiary or any Guarantor shall occur;

(9) Any of the following events shall occur or exist with respect to the Borrower, any Subsidiary or any Commonly Controlled Entity under ERISA: any Reportable Event shall

occur; complete or partial withdrawal from any Multiemployer Plan shall take place; any Prohibited Transaction shall occur; a notice of intent to terminate a Plan shall be filed, or a Plan shall be terminated; or circumstances shall exist which constitute grounds entitling the PBGC to institute proceedings to terminate a Plan, or the PBGC shall institute such proceedings; and in each case above, such event or condition, together with all other events or conditions described in this Section 8.01(9), if any, could subject the Borrower or any Significant Guarantor or Significant Subsidiary to any tax, penalty, or other liability which in the aggregate may exceed $1,000,000;

(10) If any federal, state, or local agency asserts a material claim against the Borrower or any Significant Guarantor or Significant Subsidiary and/or its assets, equipment, property, leaseholds, or other facilities for damages or cleanup costs relating to a hazardous discharge or an environmental complaint; provided, however, that such claim shall not constitute a Default if, within fifteen (15) days of the occurrence giving rise to the claim, (a) the Borrower can prove to the reasonable satisfaction of the Required Lenders that the Borrower has commenced and is diligently pursuing either: (i) a cure or correction of the event which constitutes the basis for the claim, and continues diligently to pursue such cure or correction, it being hereby acknowledged by the Lenders that (with respect to the matters disclosed in Schedule 4.14) the Borrower's compliance with the covenants contained in Sections 5.06 and 5.10 shall satisfy the requirements of this clause (i), or (ii) proceedings for an injunction, a restraining order or other appropriate emergent relief preventing such agency or agencies from asserting such claim, which relief is granted within thirty (30) days of the occurrence giving rise to the claim and the injunction, order, or emergent relief is not thereafter resolved or reversed on appeal or (iii) the defense against the claim through action in a court or agency exercising jurisdiction over the claim; and (b) in any of the foregoing events (except for the matters disclosed in Schedule 4.14, as to which no security is required), the Borrower has posted a bond, letter of credit, or other security satisfactory in form, substance, and amount to the Required Lenders and the agency or entity asserting the claim to secure the correction of the event which constitutes the basis for the claim in accordance with applicable laws;

(11) Except with respect to releases of Liens permitted under this Agreement, any of the Security Documents shall cease, for any reason, to be in full force and effect, or any Loan Party or any Affiliate of any Loan Party shall so assert, or any Lien created by any of the Security Documents shall cease to be enforceable and of the same effect and priority purported to be created thereby;

(12) Any Loan Party shall default in the observance or performance of any term, covenant or agreement contained in the Cash Collateral Agreement, the Collateral Agreement or any Mortgage, and such default shall continue unremedied for 30 consecutive days after the delivery of notice thereof from the Agent to such Loan Party.

then the following provisions shall apply:

(i) if any Event of Default described in Section 8.01(5) occurs with respect to the Borrower, the obligations of the Lenders to make Loans hereunder and the obligation and power of the Issuers to issue Facility Letters of Credit shall automatically terminate and the Obligations shall immediately become due and payable without any election or action on the part of the Agent, any Issuer or any Lender and, if at such time the Secured Borrowing Base Option is in effect, the Borrower will be and become thereby unconditionally obligated, without any further notice, act or demand, to pay to the Agent an amount in immediately available funds, which funds shall be held in the Cash Collateral Account, equal to the difference of (x) 105% of the amount of Facility Letter of Credit Obligations at such time, less (y) the amount on deposit in the Facility Letter of Credit Collateral Account at such time which is free and clear of all rights and claims of third parties and has not been applied against the Obligations (such difference, the "Collateral Shortfall Amount"). If any other Event of Default occurs, the Required Lenders (or the Agent with the consent of the Required Lenders) may (a) terminate or suspend the obligations of the Lenders to make Loans hereunder and the obligation and power of the Issuers to issue Facility Letters of Credit, or declare the Obligations to be due and payable, or both, whereupon the Obligations shall become immediately due and payable, without presentment, demand, protest or notice of any kind, all of which the Borrower hereby expressly waives, and (b) upon notice to the Borrower and in addition to the continuing right to demand payment of all amounts payable under this Agreement, make demand on the Borrower to pay, and the Borrower will, forthwith upon such demand and without any further notice or act, pay to the Agent the Collateral Shortfall Amount, which funds shall be deposited in the Cash Collateral Account.

(ii) If at any time while any Event of Default is continuing, the Agent determines that the Collateral Shortfall Amount at such time is greater than zero, the Agent may make demand on the Borrower to pay, and the Borrower will, forthwith upon such demand and without any further notice or act, pay to the Agent the Collateral Shortfall Amount, which funds shall be deposited in the Cash Collateral Account.

(iii) The Agent may, at any time or from time to time after funds are deposited in the Cash Collateral Account or the Facility Letter of Credit Collateral Account, apply such funds to the payment of the Obligations and any other amounts as shall from time to time have become due and payable by the Borrower to the Lenders or the Issuer under the Loan Documents.

(iv) At any time while any Event of Default is continuing, neither the Borrower nor any Person claiming on behalf of or through the Borrower shall have any right to withdraw any of the funds held in the Cash Collateral Account or the Facility Letter of Credit Collateral Account. After all of the Obligations have been indefeasibly paid in full and the Aggregate Commitment has been terminated, any funds remaining in the Cash Collateral Account or the Facility Letter of Credit Collateral Account shall be returned by the Agent to the Borrower or paid to whomever may be legally entitled thereto at such time.

(v) If within 30 days after acceleration of the maturity of the Obligations or termination of the obligations of the Lenders to make Loans and the obligation and power of the Issuer to issue Facility Letters of Credit hereunder as a result of any Event of Default (other than any Event of Default as described in Section 8.01(5) with respect to the Borrower) and before any judgment or decree for the payment of the Obligations due shall have been obtained or entered, the Required Lenders (in their sole discretion) shall so direct, the Agent shall, by notice to the Borrower, rescind and annul such acceleration and/or termination.

(vi) Upon the occurrence and during the continuance of any Event of Default, the Agent may exercise any and all remedies provided under any of the Security Documents or otherwise provided by law.

Section 8.02 Set Off. Upon the occurrence and during the continuance of any Event of Default, each Lender is hereby authorized at any time and from time to time, without notice to the Borrower (any such notice being expressly waived by the Borrower), to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by such Lender to or for the credit or the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement or any Note or Notes held by such Lender or any other Loan Document, irrespective of whether or not the Agent or such Lender shall have made any demand under this Agreement or any Note or Notes held by such Lender or such other Loan Document and although such obligations may be unmatured. Each Lender agrees promptly to notify the Borrower (with a copy to the Agent) after any such set-off and application, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of each Lender under this Section 8.02 are in addition to other rights and remedies (including, without limitation, other rights of set-off) which each Lender may have.

ARTICLE IX
AGENCY PROVISIONS

Section 9.01 Authorization and Action. Each Lender hereby irrevocably appoints and authorizes the Agent to take such action as agent on its behalf and to exercise such powers under this Agreement and the other Loan Documents as are delegated to the Agent by the terms hereof and thereof, together with such powers as are reasonably incidental thereto. The duties of the Agent shall be mechanical and administrative in nature and the Agent shall not by reason of this Agreement or any other Loan Document be a trustee or fiduciary for any Lender or Issuer. The Agent shall have no duties or responsibilities except those expressly set forth in this Agreement and the other Loan Documents. As to any matters not expressly provided for by this Agreement or any other Loan Document (including, without limitation, enforcement or collection of the Notes), the Agent shall not be required to act or to refrain from acting except upon the instructions of the Required Lenders or, to the extent required under Section 10.01, all Lenders (and shall be fully protected in so acting or so refraining from acting), and such instructions shall be binding upon all Lenders, all Issuers and all holders of Notes; provided, however, that the Agent shall not be required to take any action which exposes the Agent to personal liability or which is contrary to this Agreement or applicable law. The Agent shall administer the Loan in the same manner that it would administer a comparable loan held 100% for its own account. The Agent may perform any of its duties under this Agreement and any other Loan Document by and through its agents (which shall include any third party sub-agent or mortgage servicer).

Section 9.02 Liability of Agent. Neither the Agent nor any of its Affiliates or any of their respective directors, officers, agents, employees or advisors shall be liable for any action taken or omitted to be taken by it or them in good faith under or in connection with this Agreement or any other Loan Document in the absence of its or their own gross negligence or willful misconduct. Without limiting the generality of the foregoing, the Agent (1) may treat the payee of any Note as the holder thereof until the Agent receives written notice of the assignment or transfer thereof signed by such payee and in form satisfactory to the Agent; (2) may consult with legal counsel (including counsel for the Borrower), independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants, or experts; (3) makes no warranty or representation to any Lender and shall not be responsible to any Lender for any statements, warranties, or representations made in or in connection with this Agreement; (4) shall not have any duty to ascertain or to inquire as to the performance or observance of any terms, covenants, or conditions of this Agreement on the part of the Borrower (other than the payment of principal, interest and fees due hereunder), or to inspect the property (including the books and records) of the Borrower; (5) shall not be responsible to any Lender for the due execution, legality, validity, enforceability, genuineness, perfection, sufficiency or value of this Agreement or any other instrument or document furnished pursuant hereto or the value, sufficiency, creation, perfection or priority of any Lien in any collateral security; and (6) shall incur no liability under or in respect of this Agreement by acting upon any notice, consent, certificate or other instrument or writing (which may be sent by any telecommunication device capable of creating a written

record (including electronic mail)) reasonably believed by it to be genuine and signed or sent by the proper party or parties.

Section 9.03 Rights of Agent Individually. (a) The Person serving as the Agent shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Agent in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any of its Subsidiaries or other Affiliate thereof as if such Person were not the Agent and without any duty to account therefor to the Lenders.

(b) Each Lender and each Issuer understands that the Person serving as Agent, acting in its individual capacity, and its Affiliates (collectively, the "Agent's Group") are engaged in a wide range of financial services and businesses (including investment management, financing, securities trading, corporate and investment banking and research) (such services and businesses are collectively referred to in this Section 9.03 as "Activities") and may engage in the Activities with or on behalf of one or more of the Loan Parties or their respective Affiliates. Furthermore, the Agent's Group may, in undertaking the Activities, engage in trading in financial products or undertake other investment businesses for its own account or on behalf of others (including the Loan Parties and their Affiliates and including holding, for its own account or on behalf of others, equity, debt and similar positions in any of the Borrower, another Loan Party or their respective Affiliates), including trading in or holding long, short or derivative positions in securities, loans or other financial products of one or more of the Loan Parties or their Affiliates. Each Lender and each Issuer understands and agrees that in engaging in the Activities, the Agent's Group may receive or otherwise obtain information concerning the Loan Parties or their Affiliates (including information concerning the ability of the Loan Parties to perform their respective Obligations hereunder and under the other Loan Documents) which information may not be available to any of the Lenders that are not members of the Agent's Group. None of the Agent nor any member of the Agent's Group shall have any duty to disclose to any Lender or use on behalf of the Lenders, and shall not be liable for the failure to so disclose or use, any information whatsoever about or derived from the Activities or otherwise (including any information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any Loan Party or any Affiliate of any Loan Party) or to account for any revenue or profits obtained in connection with the Activities, except that the Agent shall deliver or otherwise make available to each Lender such documents as are expressly required by any Loan Document to be transmitted by the Agent to the Lenders.

(c) Each Lender and each Issuer further understands that there may be situations where members of the Agent's Group or their respective customers (including the Loan Parties and their Affiliates) either now have or may in the future have interests or take actions that may

conflict with the interests of any one or more of the Lenders (including the interests of the Lenders hereunder and under the other Loan Documents). Each Lender and each Issuer agrees that no member of the Agent's Group is or shall be required to restrict its activities as a result of the Person serving as Agent being a member of the Agent's Group, and that each member of the Agent's Group may undertake any Activities without further consultation with or notification to any Lender or any Issuer. None of (i) this Agreement or any other Loan Document, (ii) the receipt by the Agent's Group of information concerning the Loan Parties or their Affiliates (including information concerning the ability of the Loan Parties to perform their respective Obligations hereunder and under the other Loan Documents) or (iii) any other matter shall give rise to any fiduciary, equitable or contractual duties (including without limitation any duty of trust or confidence) owing by the Agent or any member of the Agent's Group to any Lender including any such duty that would prevent or restrict the Agent's Group from acting on behalf of customers (including the Loan Parties or their Affiliates) or for its own account.

Section 9.04 Independent Credit Decisions. Each Lender and each Issuer acknowledges that it has, independently and without reliance upon the Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and each Issuer also acknowledges that it will, independently and without reliance upon the Agent or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement. The Agent shall promptly provide the Lenders and Issuers with copies of all notices of default and other formal notices sent or received by the Agent in accordance with Section 10.02, any written notice relating to changes in the Borrower's debt ratings received by the Agent from the Borrower or a ratings agency, any documents received by the Agent pursuant to Section 5.08 (except to the extent that the Borrower has furnished the same directly to the Lenders) and any other documents or notices received by the Agent with respect to this Agreement and requested in writing by any Lender.

Section 9.05 Indemnification. The Lenders severally agree to indemnify the Agent and each of its Affiliates, and each of their respective directors, officers, employees, agents and advisors (to the extent not reimbursed by the Borrower and without limiting the obligation of the Borrower to do so), in the proportion of their Pro Rata Shares, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against the Agent or any of its Affiliates, or any of their respective directors, officers, employees, agents and advisors, in any way relating to or arising out of this Agreement or the other Loan Documents or any action taken or omitted by the Agent under this Agreement or the other Loan Documents, provided that no Lender shall be liable for any portion of any of the foregoing (i) resulting from the gross negligence or willful misconduct of the Agent or such Affiliate, director, officer, employee, agent or advisor, (ii) on account of a strictly internal or regulatory matter relating to the Agent (such as relating to legal lending limit violation by the

Agent), or (iii) in connection with a breach of an agreement made by the Agent to a Lender under this Agreement. Without limitation of the foregoing, each Lender severally agrees to reimburse the Agent (to the extent not reimbursed by the Borrower and without limiting the obligation of the Borrower to do so) promptly upon demand for such Lender's Pro Rata Share of any reasonable out-of-pocket expenses (including fees) incurred by the Agent in connection with the preparation, administration, or enforcement of, or legal advice in respect of rights or responsibilities under, this Agreement or the other Loan Documents; provided, however, that no Lender shall be required to reimburse the Agent for any such expenses incurred (i) resulting from the Agent's gross negligence or willful misconduct, or (ii) in connection with a breach of an agreement made by the Agent to a Lender under this Agreement.

Section 9.06 Successor Agent. (a) The Agent may resign at any time by giving at least sixty (60) days' prior written notice thereof to the Lenders and the Borrower and may be removed at any time with or without cause by the Required Lenders. Upon any such resignation or removal, the Required Lenders shall have the right to appoint a successor Agent, subject to Section 9.06(b). If no successor Agent shall have been so appointed by the Required Lenders, and shall have accepted such appointment, within thirty (30) days after the retiring Agent's giving of notice of resignation or the Required Lenders' removal of the retiring Agent, then the retiring Agent may, on behalf of the Lenders, appoint a successor Agent, which shall be a commercial bank or federal savings bank organized under the laws of the United States of America or of any State thereof, subject to Section 9.06(b). Upon the acceptance of any appointment as Agent hereunder by a successor Agent, such successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from its duties and obligations under this Agreement. After any retiring Agent's resignation or removal hereunder as Agent, the provisions of this Article IX shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement.

(b) The appointment of any successor Agent that is not a Lender shall, as long as no Event of Default shall have occurred and be continuing, be subject to the prior written approval of the Borrower, which approval shall not be unreasonably withheld or delayed.

Section 9.07 Sharing of Payments, Etc. If any Lender shall obtain any payments (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) on account of any Note or Notes held by it in excess of its Pro Rata Share of payments on account of the Notes obtained by all Lenders, such Lender shall purchase from the other Lenders such participations in the Notes held by them as shall be necessary to cause such purchasing Lender to share the excess payment ratably with each of the other Lenders, provided, however, that if all or any portion of such excess payment is thereafter recovered from such purchasing Lender, such purchase from each Lender shall be rescinded and each applicable Lender shall repay to the purchasing Lender the purchase price to the extent of such recovery together with an amount equal to such Lender's ratable share (according to the proportion of (1) the amount of such

Lender's required repayment to (2) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered. The Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this Section 9.07 may, to the fullest extent permitted by law, exercise all its rights of payment (including the right of set-off) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation.

Section 9.08 Withholding Tax Matters. Each Lender which is a Non-United States Person agrees to execute and deliver to the Agent for delivery to the Borrower, before the first scheduled payment date in each year (and, in the case of a Lender that becomes a Lender hereunder by assignment, before the first scheduled payment date following such assignment), two duly completed copies of United States Internal Revenue Service Forms W-8BEN or W8ECI, or any successor forms, as appropriate, properly completed and certifying that such Lender is entitled to receive payments under this Agreement without withholding or deduction of United States federal taxes. Each Lender which is a Non-United States Person represents and warrants to the Borrower and to the Agent that, at the date of this Agreement, (i) its Lending Offices are entitled to receive payments of principal, interest, and fees hereunder without deduction or withholding for or on account of any taxes imposed by the United States or any political subdivision thereof and (ii) it is permitted to take the actions described in the preceding sentence under the laws and any applicable double taxation treaties of the jurisdictions specified in the preceding sentence. Each Lender which is a Non-United States Person further agrees that, to the extent any form claiming complete or partial exemption from withholding and deduction of United States federal taxes delivered under this Section 9.08 is found to be incomplete or incorrect in any material respect, such Lender shall execute and deliver to the Agent a complete and correct replacement form.

Section 9.09 Syndication Agents, Documentation Agents, Managing Agents or Co-Agents. None of the Lenders identified in this Agreement as a "Syndication Agent," "Documentation Agent," "Managing Agent" or "Co-Agent" shall have any right, power, obligation, liability, responsibility or duty under this Agreement other than those applicable to all Lenders as such. Without limiting the foregoing, none of such Lenders shall have or be deemed to have a fiduciary relationship with any Lender. Each Lender hereby makes the same acknowledgements with respect to such Lenders as it makes with respect to the Agent in Section 9.04.

ARTICLE X
MISCELLANEOUS

Section 10.01 Amendments, Etc. No amendment, modification, termination, or waiver of any provision of any Loan Document to which the Borrower is a party, nor consent to any departure by the Borrower from any Loan Document to which it is a party, shall in any event be effective unless the same shall be in writing and signed by the Required Lenders and the

Borrower, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no amendment, waiver or consent shall (a) unless in writing and signed by the Borrower and all of the Lenders do, or have the effect of doing, any of the following: (1) increase the Commitments of the Lenders (except for increases in the Aggregate Commitment in accordance with Section 2.02.2; provided that no such increase shall result in the Aggregate Commitment exceeding $700,000,000) or subject the Lenders to any additional obligations; (2) reduce the principal of, or interest on, the Notes or any fees (other than the Agent's fees) hereunder; (3) postpone any date fixed for any payment of principal of or interest on, the Notes or any fees (other than the Agent's fees) hereunder; (4) change the percentage of the Commitments or of the aggregate unpaid principal amount of the Notes or the number of Lenders which shall be required for the Lenders or any of them to take action hereunder (including, without limitation, any change in the percentage of Lenders required to extend the Termination Date under the provisions of Section 2.19; (5) release any Significant Guarantor or (except as otherwise provided in Section 8.01) release any sums held in the Facility Letter of Credit Collateral Account; or (6) amend, modify or waive any provision of the Guaranty, this Section 10.01 or clause (i) of Section 11.01; (b) unless in writing and signed by the Agent in addition to the Lenders required herein to take such action, affect the rights or duties of the Agent under any of the Loan Documents; (c) unless in writing and signed by the Swing Line Lender and the Required Lenders, affect any provisions of this Agreement that relate to the Swing Line Loans or otherwise affect the rights or duties of the Swing Line Lender; or (d) unless in writing and signed by the Issuers and the Required Lenders, affect any of the provisions of this Agreement that relate to the Facility Letters of Credit or otherwise affect the rights or duties of any Issuer.

Section 10.02 Notices, Etc. (a) All notices, demands, requests, consents and other communications provided for in this Agreement shall be given in writing, or by any telecommunication device capable of creating a written record (including electronic mail), and addressed to the party to be notified at its address for notices set forth on its signature page to this Agreement or in the case of any subsequent Lender, in its Administrative Questionnaire, or at such other address as shall be notified in writing (x) in the case of the Borrower and the Agent, to the other parties and (y) in the case of all other parties, to the Borrower and the Agent.

(b) All notices, demands, requests, consents and other communications described in Section 10.02(a) shall be effective (i) if delivered by hand, including any overnight courier service, upon personal delivery, (ii) if delivered by mail, when deposited in the mails, (iii) if delivered by posting to an Approved Electronic Platform, an Internet website or a similar telecommunication device requiring that a user have prior access to such Approved Electronic Platform, website or other device (to the extent permitted by Section 10.02(d) to be delivered thereunder), when such notice, demand, request, consent and other communication shall have been made generally available on such Approved Electronic Platform, Internet website or similar device to the class of Person being notified (regardless of whether any such Person must accomplish, and whether or not any such Person shall have accomplished, any action prior to

obtaining access to such items, including registration, disclosure of contact information, compliance with a standard user agreement or undertaking a duty of confidentiality) and such Person has been notified in respect of such posting that a communication has been posted to the Approved Electronic Platform, and (iv) if delivered by electronic mail or any other telecommunications device, when transmitted to an electronic mail address (or by another means of electronic delivery) as provided in Section 10.02(a); provided, however, that notices and communications to the Agent pursuant to Article II or Article IX shall not be effective until received by the Agent.

(c) Notwithstanding Sections 10.02(a) and (b) (unless the Agent requests that the provisions of Sections 10.02(a) and (b) be followed) and any other provision in this Agreement or any other Loan Document providing for the delivery of any Approved Electronic Communication by any other means, the Borrower shall deliver all Approved Electronic Communications to the Agent by properly transmitting such Approved Electronic Communications in an electronic/soft medium in a format acceptable to the Agent to oploanswebadmin@citigroup.com or such other electronic mail address (or similar means of electronic delivery) as the Agent may notify to the Borrower. Nothing in this clause (c) shall prejudice the right of the Agent or any Lender to deliver any Approved Electronic Communication to the Borrower in any manner authorized in this Agreement or to request that the Borrower effect delivery in such manner.

(d) Each Lender, each Issuer and the Borrower agree that the Agent may, but shall not be obligated to, make the Approved Electronic Communications available to the Lenders and the Issuers by posting such Approved Electronic Communications on IntraLinks™ or a substantially similar electronic platform chosen by the Agent to be its electronic transmission system (the "Approved Electronic Platform").

(e) Although the Approved Electronic Platform and its primary web portal are secured with generally-applicable security procedures and policies implemented or modified by the Agent from time to time (including, as of the Closing Date, a dual firewall and a User ID/Password Authorization System) and the Approved Electronic Platform is secured through a single-user-per-deal authorization method whereby each user may access the Approved Electronic Platform only on a deal-by-deal basis, each of the Lenders, the Issuers and the Borrower acknowledges and agrees that the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution. In consideration for the convenience and other benefits afforded by such distribution and for the other consideration provided hereunder, the receipt and sufficiency of which is hereby acknowledged, each of the Lenders, the Issuers and the Borrower hereby approves distribution of the Approved Electronic Communications through the Approved Electronic Platform and understands and assumes the risks of such distribution.

(f) THE APPROVED ELECTRONIC PLATFORM AND THE APPROVED ELECTRONIC COMMUNICATIONS ARE PROVIDED "AS IS" AND "AS AVAILABLE". NONE OF THE AGENT NOR ANY OF ITS AFFILIATES WARRANT THE ACCURACY, ADEQUACY OR COMPLETENESS OF THE APPROVED ELECTRONIC COMMUNICATIONS OR THE APPROVED ELECTRONIC PLATFORM AND EACH EXPRESSLY DISCLAIMS ANY LIABILITY FOR ERRORS OR OMISSIONS IN THE APPROVED ELECTRONIC COMMUNICATIONS OR THE APPROVED ELECTRONIC PLATFORM. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY THE AGENT IN CONNECTION WITH THE APPROVED ELECTRONIC COMMUNICATIONS OR THE APPROVED ELECTRONIC PLATFORM.

(g) Each of the Lenders, the Issuers and the Borrower agrees that the Agent may, but (except as may be required by applicable law) shall not be obligated to, store the Approved Electronic Communications on the Approved Electronic Platform in accordance with the Agent's generally-applicable document retention procedures and policies.

Section 10.03 No Waiver. No failure or delay on the part of any Lender or the Agent or the Issuer in exercising any right, power, or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy hereunder. The making of a Loan or issuance, amendment or extension of a Facility Letter of Credit notwithstanding the existence of a Default or Event of Default shall not constitute any waiver or acquiescence of such Default or Event of Default, and the making of any Loan or issuance, amendment or extension of a Facility Letter of Credit notwithstanding any failure or inability to satisfy the conditions precedent to such Loan or issuance, amendment or extension of a Facility Letter of Credit shall not constitute any waiver or acquiescence with respect to such conditions precedent with respect to any subsequent Loans or subsequent issuance, amendment or extension of a Facility Letter of Credit. The rights and remedies provided herein are cumulative, and are not exclusive of any other rights, powers, privileges, or remedies, now or hereafter existing, at law, in equity or otherwise.

Section 10.04 Costs, Expenses, and Taxes. (a) The Borrower agrees to reimburse the Agent for any reasonable costs, internal charges and out-of-pocket expenses (including reasonable fees and time charges of attorneys for the Agent, which attorneys may be employees of the Agent) paid or incurred by the Agent in connection with the preparation, negotiation, execution, delivery, review, amendment, modification and administration of the Loan Documents. The Borrower also agrees to reimburse the Agent, the Lenders and the Issuers for any reasonable costs, internal charges and out-of-pocket expenses (including attorneys' fees and time charges of attorneys for the Agent, the Lenders and the Issuers which attorneys may be

employees of the Agent, the Lenders and the Issuers) paid or incurred by the Agent, the Arrangers, any Lender or Issuer in connection with the collection of the Obligations and enforcement of the Loan Documents, including during any workout or restructuring in respect of the Loan Documents.

(b) The Borrower shall pay any and all stamp and other taxes and fees payable or determined to be payable in connection with the execution, delivery, filing, and recording of any of the Loan Documents and the other documents to be delivered under any such Loan Documents, and agrees to hold the Agent and each of the Lenders harmless from and against any and all liabilities with respect to or resulting from any delay in paying or failing to pay such taxes and fees.

(c) All payments by the Borrower to or for the account of any Lender, Issuer or the Agent hereunder or under any Note or Reimbursement Agreement shall be made free and clear of and without deduction for any and all Taxes. If the Borrower shall be required by law to deduct any Taxes from or in respect of any such payable hereunder to any Lender, Issuer or the Agent, upon notice from the Agent to the Borrower (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this paragraph) such Lender, Issuer or the Agent (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower shall make such deductions, (iii) the Borrower shall pay the full amount deducted to the relevant authority in accordance with applicable law and (iv) the Borrower shall furnish to the Agent the original copy of a receipt evidencing payment thereof within 30 days after such payment is made.

(d) This Section 10.04 shall survive termination of this Agreement.

Section 10.05 Integration. This Agreement (including the Borrower's obligation to pay the fees as provided in Section 2.09(c) and the Fee Letter referred to therein) and the Loan Documents contain the entire agreement between the parties relating to the subject matter hereof and supersede all oral statements and prior writings with respect thereto.

Section 10.06 Indemnity. The Borrower hereby agrees to defend, indemnify, and hold the Agent and each Lender and each of their respective Affiliates, and each of their respective directors, officers, employees, agents and advisors (each an "Indemnified Party") harmless from and against all claims, damages, judgments, penalties, costs, and expenses (including reasonable attorney fees and court costs now or hereafter arising from the aforesaid enforcement of this clause) arising directly or indirectly from the activities of the Borrower and its Subsidiaries, its predecessors in interest, or third parties with whom it has a contractual relationship, or arising directly or indirectly from the violation of any environmental protection, health, or safety law, whether such claims are asserted by any governmental agency or any other person, other than claims, damages, judgments, penalties, costs and expenses arising as a result of any Indemnified

Party's willful misconduct or gross negligence as determined by a court of competent jurisdiction by a final and nonappealable judgment. This indemnity shall survive termination of this Agreement.

Section 10.07 CHOICE OF LAW. THE LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAW (OTHER THAN SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK).

Section 10.08 Severability of Provisions. Any provision of any Loan Document which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of such Loan Document or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 10.09 Counterparts. This Agreement may be executed in any number of counterparts and by the different parties to this Agreement in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Agreement. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or other electronic image shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 10.10 Headings. Article and Section headings in the Loan Documents are included in such Loan Documents for the convenience of reference only and shall not constitute a part of the applicable Loan Documents for any other purpose.

Section 10.11 CONSENT TO JURISDICTION. (a) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK SITTING IN THE CITY AND COUNTY OF NEW YORK OR OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, THE BORROWER HEREBY ACCEPTS FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS. THE PARTIES HERETO HEREBY IRREVOCABLY WAIVE ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, THAT ANY OF THEM MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY SUCH ACTION OR PROCEEDING IN SUCH RESPECTIVE JURISDICTIONS.

(b) THE BORROWER IRREVOCABLY CONSENTS TO THE SERVICE OF ANY AND ALL PROCESS IN SUCH ACTION OR PROCEEDING ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY LOAN DOCUMENT BY THE MAILING (BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID) OF COPIES OF SUCH PROCESS TO AN APPOINTED PROCESS AGENT OR THE BORROWER AT ITS ADDRESS SPECIFIED IN SECTION 10.02. THE BORROWER AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING CONTAINED IN THIS SECTION 10.11 SHALL AFFECT THE RIGHT OF THE AGENT OR ANY LENDER OR ISSUER TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST THE BORROWER OR ANY OTHER LOAN PARTY IN ANY OTHER JURISDICTION.

Section 10.12 WAIVER OF JURY TRIAL. THE BORROWER, THE AGENT EACH ISSUER AND EACH LENDER HEREBY WAIVE TRIAL BY JURY IN ANY JUDICIAL ACTION OR PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH ANY LOAN DOCUMENT OR THE RELATIONSHIP ESTABLISHED THEREUNDER.

Section 10.13 Governmental Regulation. Anything contained in this Agreement to the contrary notwithstanding, no Lender shall be obligated to extend credit to the Borrower in violation of any limitation or prohibition provided by any applicable statute or regulation.

Section 10.14 No Fiduciary Duty. The relationship between the Borrower and the Issuers and the Lenders and the Agent shall be solely that of borrower and lender. Neither the Agent nor any Issuer or Lender shall have any fiduciary responsibilities to the Borrower. Neither the Agent nor any Issuer or Lender undertakes any responsibility to the Borrower to review or inform the Borrower of any matter in connection with any phase of the Borrower's business or operations.

Section 10.15 Confidentiality. (a) Each of the Agent and the Lender Parties agree to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its respective Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document, any action or proceeding relating to this Agreement or any other Loan Document, the

enforcement of rights hereunder or thereunder or any litigation or proceeding to which the Agent or any Lender Party or any of its respective Affiliates may be a party, (f) subject to an agreement containing provisions substantially the same as those of this Section 10.15, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement, (ii) any actual or prospective party (or its managers, administrators, trustees, partners, directors, officers, employees, agents, advisors and other representatives) surety, reinsurer, guarantor or credit liquidity enhancer (or their advisors) to or in connection with any swap, derivative or other similar transaction under which payments are to be made by reference to the Obligations or to the Borrower and its obligations or to this Agreement or payments hereunder, (iii) to any rating agency when required by it, (iv) the CUSIP Service Bureau or any similar organization, (g) with the consent of the Borrower or (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section 10.15 or (y) becomes available to the Agent, any Lender Party or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower or any of its Subsidiaries. For purposes of this Section 10.15, "Information" means all information received from the Borrower or any of its Subsidiaries relating to the Borrower or any of its Subsidiaries or any of their respective businesses, other than any such information that is available to the Agent or any Lender Party on a nonconfidential basis prior to disclosure by the Borrower or any of its Subsidiaries, provided that, in the case of information received from the Borrower or any of its Subsidiaries after the date hereof, such information shall be deemed confidential unless it is clearly identified at the time of delivery as not being confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

(b) Certain of the Lenders may enter into this Agreement and take or not take action hereunder or under the other Loan Documents on the basis of information that does not contain material non-public information with respect to the Borrower or any of its Subsidiaries or their securities ("Restricting Information"). Other Lenders may enter into this Agreement and take or not take action hereunder or under the other Loan Documents on the basis of information that may contain Restricting Information. Each Lender Party acknowledges that United States federal and state securities laws prohibit any person from purchasing or selling securities on the basis of material, non-public information concerning the issuer of such securities or, subject to certain limited exceptions, from communicating such information to any other Person. Neither the Agent nor any of its Related Parties shall, by making any Communications (including Restricting Information) available to a Lender Party, by participating in any conversations or other interactions with a Lender Party or otherwise, make or be deemed to make any statement with regard to or otherwise warrant that any such information or Communication does or does not contain Restricting Information nor shall the Agent or any of its Related Parties be responsible or liable in any way for any decision a Lender Party may make to limit or to not limit

its access to Restricting Information. In particular, none of the Agent nor any of its Related Parties (i) shall have, and the Agent, on behalf of itself and each of its Related Parties, hereby disclaims, any duty to ascertain or inquire as to whether or not a Lender Party has or has not limited its access to Restricting Information, such Lender Party's policies or procedures regarding the safeguarding of material, nonpublic information or such Lender Party's compliance with applicable laws related thereto or (ii) shall have, or incur, any liability to the Borrower or any of its Subsidiaries or any Lender Party or any of their respective Related Parties arising out of or relating to the Agent or any of its Related Parties providing or not providing Restricting Information to any Lender Party.

(c) The Borrower agrees that (i) all Communications it provides to the Agent intended for delivery to the Lender Parties whether by posting to the Approved Electronic Platform or otherwise shall be clearly and conspicuously marked "PUBLIC" if such Communications do not contain Restricting Information which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof, (ii) by marking Communications "PUBLIC," the Borrower shall be deemed to have authorized the Agent and the Lender Parties to treat such Communications as either publicly available information or not material information (although, in this latter case, such Communications may contain sensitive business information and, therefore, remain subject to the confidentiality undertakings of Section 10.15(a)) for purposes of United States Federal and state securities laws, (iii) all Communications marked "PUBLIC" may be delivered to all Lender Parties and may be made available through a portion of the Approved Electronic Platform designated "Public Side Information," and (iv) the Agent shall be entitled to treat any Communications that are not marked "PUBLIC" as Restricting Information and may post such Communications to a portion of the Approved Electronic Platform not designated "Public Side Information." Neither the Agent nor any of its Affiliates shall be responsible for any statement or other designation by the Borrower regarding whether a Communication contains or does not contain material non-public information with respect to the Borrower or any of its Subsidiaries or their securities nor shall the Agent or any of its Affiliates incur any liability to the Borrower or any of its Subsidiaries, any Lender Party or any other Person for any action taken by the Agent or any of its Affiliates based upon such statement or designation, including any action as a result of which Restricting Information is provided to a Lender Party that may decide not to take access to Restricting Information. Nothing in Section 10.15(b) or this Section 10.15(c) shall modify or limit a Lender Party's obligations under Section 10.15(a) with regard to Communications and the maintenance of the confidentiality of or other treatment of Information.

(d) Each Lender Party acknowledges that circumstances may arise that require it to refer to Communications that might contain Restricting Information. Accordingly, each Lender Party agrees that it will nominate at least one designee to receive Communications (including Restricting Information) on its behalf and identify such designee (including such designee's contact information) on such Lender Party's Administrative Questionnaire. Each Lender Party agrees to notify the Agent from time to time of such Lender Party's designee's

e-mail address to which notice of the availability of Restricting Information may be sent by electronic transmission.

(e) Each Lender Party acknowledges that Communications delivered under this Agreement and under the other Loan Documents may contain Restricting Information and that such Communications are available to all Lender Parties generally. Each Lender Party that elects not to take access to Restricting Information does so voluntarily and, by such election, acknowledges and agrees that the Agent and other Lender Parties may have access to Restricting Information that is not available to such electing Lender Party. None of the Agent nor any Lender Party with access to Restricting Information shall have any duty to disclose such Restricting Information to such electing Lender Party or to use such Restricting Information on behalf of such electing Lender Party, and shall not be liable for the failure to so disclose or use, such Restricting Information.

(f) The provisions of this Section 10.15 are designed to assist the Agent, the Lender Parties, the Borrower and its Subsidiaries in complying with their respective contractual obligations and applicable law in circumstances where certain Lender Parties express a desire not to receive Restricting Information notwithstanding that certain Communications under this Agreement or under the other Loan Documents or other information provided to the Lender Parties under this Agreement or the other Loan Documents may contain Restricting Information. Neither the Agent nor any of its Related Parties warrants or makes any other statement with respect to the adequacy of such provisions to achieve such purpose nor does the Agent or any of its Related Parties warrant or make any other statement to the effect that adherence to such provisions by the Borrower and its Subsidiaries or by the Lender Parties will be sufficient to ensure compliance by the Borrower or such Subsidiary or Lender Party with its contractual obligations or its duties under applicable law in respect of Restricting Information and each Lender Party assumes the risks associated therewith.

Section 10.16 USA Patriot Act Notification. Each Lender that is subject to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act") hereby notifies the Borrower that pursuant to the requirements of the Act, it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with the Act.

Section 10.17 Register. The Agent, acting for this purpose as an agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount of the Loans and Facility Letter of Credit Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Agent, the Issuers and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms

hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, the Issuers and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

Section 10.18 Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, the no party hereto shall assert, and each such party hereby waives, any claim against all other parties hereto, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof and any Facility Letter of Credit and the use thereof.

ARTICLE XI
BENEFIT OF AGREEMENT; ASSIGNMENTS; PARTICIPATIONS

Section 11.01 Successors and Assigns. The provisions of this Agreement and the other Loan Documents shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of an Issuer that issues any Facility Letter of Credit), except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder or under the other Loan Documents without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder or under the other Loan Documents except in accordance with this Article XI. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of an Issuer that issues any Facility Letter of Credit) and Participants (to the extent provided in Section 11.03)) any legal or equitable right, remedy or claim under or by reason.

Section 11.02 Assignments.

(a) Subject to the conditions set forth in Section 11.02(b), any Lender may assign to one or more assignees all or a portion of its rights and obligations under this Agreement and the other Loan Documents (including all or a portion of its Commitment and the Loans at the time owing to it); provided that the written consents (which consents shall not be unreasonably withheld or delayed) of the Agent and (unless an Event of Default has occurred and is continuing) the Borrower shall be required prior to an assignment becoming effective with respect to an assignee which, prior to such assignment, is not a Lender, an Affiliate of a Lender or an Approved Fund.

(b) Assignments shall be subject to the following additional conditions:

(i) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement,

(ii) the parties to each assignment shall execute and deliver to the Agent an Assignment and Assumption ("Assignment and Assumption") in substantially the form of Exhibit F hereto, together with a processing and recordation fee of $3,500; and

(iii) the assignee, if it shall not be a Lender, shall deliver to the Agent an Administrative Questionnaire.

(c) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in Section 11.02(b)(ii) and any written consent to such assignment required by Section 11.02(a), the Agent shall accept such Assignment and Assumption and record the information contained therein in the Register; provided that if either the assigning Lender or the assignee shall have failed to make any payment required to be made by it pursuant to Section 2.04(a), 2.21(d), 2.22.6(b) or 9.05, the Agent shall have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment shall have been made in full, together with all accrued interest thereon. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

Section 11.03 Participations. Any Lender may, without the consent of the Borrower, the Agent, the Issuer or the Swing Line Lender, sell participations to one or more banks or other entities (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement and the other Loan Documents (including all or a portion of its Commitment and the Loans owing to it); provided that (i) such Lender's obligations under this Agreement and the other Loan Documents shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) such Lender shall remain the holder of any such Note for all purposes under the Loan Documents, (iv) all amounts payable by the Borrower under this Agreement shall be determined as if such Lender had not sold participating interests and (v) the Borrower, the Agent, the Issuer and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver that (i) forgives principal, interest or fees (other than Agent's fees) or reduces the interest rate (other

than Agent's fees), (ii) postpones any date fixed for any regularly scheduled payment of principal of, or interest or fees (other than Agent's fees) or (iii) releases any Significant Guarantor.

Section 11.04 Pledge to Federal Reserve Bank. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender to a Federal Reserve Bank, and this Article shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

[remainder of page intentionally left blank; signature pages follow]

[Signature Page to Amended and Restated Credit Agreement]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first written.

BEAZER HOMES USA, INC.

By: /s/ Jeffrey S. Hoza
Name: Jeffrey S. Hoza
Title: Vice President & Treasurer

Address for Notices

1000 Abernathy Road
Suite 1200
Atlanta, Georgia 30328

Attention: President
Tel: (770) 829-3700
Fax: (770) 481-0431

CITIBANK, N.A., as the Agent and as a Lender,
the Swing Line Lender and an Issuer

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

Address for Notices of Borrowings

Citi Origination Operations
Global Loans Delaware
1615 Brett Road, Ops III
New Castle, DE 19720
Attn: Kisha Bailey
Tel: (302) 894-6004
Fax:
Email: kisha.bailey@citi.com

Address for all other Notices

Citibank, N.A.
Citi Markets and Banking
North America Investment Banking — North America Homebuilding
388 Greenwich Street
New York, NY 10013
Attn: Marni McManus
Tel: (212) 816-7461
Fax: (646) 291-1193
Email: marni.mcmanus@citi.com

Schedule I

COMMITMENT SCHEDULE

Lenders	Commitment Percentage	Commitment
Citibank, N.A.	100%	$22,000,000
TOTAL	100%	$22,000,000

AMENDED AND RESTATED EMPLOYMENT AGREEMENT

THIS AMENDED AND RESTATED EMPLOYMENT AGREEMENT (this "Agreement") is made effective as of the 6th day of August, 2009 (the "Effective Date") by and between BEAZER HOMES USA, INC., a Delaware corporation (the "Company"), and MICHAEL H. FURLOW, an individual resident of the State of Georgia ("Executive").

WITNESSETH:

WHEREAS, the Company and Executive have heretofore entered into an Employment Agreement dated September 1, 2004, as amended (the "Existing Agreement"); and

WHEREAS, the Company and Executive desire to amend certain provisions of, and to restate in its entirety the Existing Agreement as provided herein.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained, the Company and Executive hereby agree as follows:

1. **Employment and Duties**.

(a) The Company hereby agrees to employ Executive for the Term (as hereinafter defined) as its Division President-Charleston/Myrtle Beach/Savannah. The parties agree that effective on the date hereof Executive shall resign his position as Executive Vice President and Chief Operating Officer of the Company and any other positions he has with the Company's subsidiaries and affiliates. If requested by the Board of Directors of the Company (the "Board"), Executive shall also serve on the Board without additional compensation, if requested. Executive shall also serve, if requested by the Board, as an executive officer and/or director of any subsidiaries and/or affiliated companies and shall comply with the policy of the Compensation Committee of the Board (the "Compensation Committee") with regard to retention or forfeiture of any director's fees. As used in this Agreement, the term "affiliated companies" shall include any company controlled by, controlling or under common control with the Company.

(b) The Executive shall have such management and oversight responsibilities and authority as are necessary to efficiently administer the affairs of the Division and as are customary of an Division President. All powers herein granted to the Executive are subject to supervisory approval of the President and Chief Executive Officer of the Company (the "CEO"), and the Executive may be given such further reasonably related supervisory duties, powers and prerogatives as may be delegated to him from time to time by said CEO. The Executive shall report exclusively to the CEO and further shall render such advice to the CEO as said CEO may from time to time request.

(c) During the Term, and excluding any periods of vacation and sick leave to which the Executive is entitled, Executive shall devote substantially all of his business time and efforts to the business and affairs of the Company and, to the extent necessary to discharge the responsibilities assigned to the Executive hereunder, use the Executive's reasonable best efforts to perform faithfully such responsibilities. In performing such duties hereunder, Executive shall comply with the policies and procedures as adopted from time to time by the Board, shall give the Company the benefit of his special knowledge, skills, contacts and business experience, shall perform his duties and carry out his responsibilities hereunder in a diligent manner.

(d) During the Employment Term, it shall not be a violation of this Agreement for the Executive to (i) with the prior approval of the CEO in each case, serve on corporate, civic or charitable boards or committees, (ii) with the prior approval of the Board in each case, deliver lectures, fulfill speaking engagements or teach at educational institutions, and (iii) manage personal investments, so long as such activities do not significantly interfere or constitute a

conflict of interest with the performance of the Executive's responsibilities as an employee of the Company in accordance with this Agreement.

(e) The principal location for performance of Executive's services hereunder shall be at the offices of Beazer Homes USA, Inc. in Charleston, South Carolina, subject to reasonable travel requirements during the course of such performance. Executive shall not be required, without his consent, to regularly report to any office of the Company which is located more than thirty-five (35) miles from the Division's current office location set forth above, provided Executive will be expected to travel to the extent reasonably necessary to fulfill his responsibilities.

2. **Employment Term.** The term of Executive's employment hereunder (the "Term") shall commence effective as of the date hereof and shall end on the second anniversary thereof (the "Expiration Date"), unless sooner terminated as provided herein.

3. **Compensation and Benefits**

(a) **Base Salary**. During the first year of the Term, the Executive shall receive an annual base salary ("Annual Base Salary") in the amount of $569,800.00 and in the second year of the Term an Annual Base Salary in the amount of $800,000.00, payable in accordance with the Company's normal payroll practices (but not less frequently than monthly). During the Term, the Annual Base Salary shall be reviewed by the CEO (for purposes of increase only) at least annually. Any increase in Annual Base Salary shall not serve to limit or reduce any other obligation to the Executive under this Agreement. Annual Base Salary shall not be reduced after any such increase and the term Annual Base Salary as utilized in this Agreement shall refer to Annual Base Salary as so increased. Notwithstanding anything contained herein to the contrary, in the event that the Company shall implement a Company-wide reduction in executive base compensation, then, solely for such purpose and only during the continuation of such Company-wide reduction, the Company shall have the right to reduce the Annual Base Salary then payable hereunder in a manner that is consistent with said Company-wide reduction.

(b) **Bonuses; Stock Incentive Plans**. Executive will be eligible to and shall participate in the Company's bonus and stock incentive plans at the discretion of the Compensation Committee of the Board. The amount and terms of, and the targets, conditions and restrictions applicable to each bonus or other incentive award shall be subject to the provisions of any such plan and of the applicable award letter duly executed and delivered by the Company.

(c) **Incentive, Savings and Retirement Plans**. During the Term, the Executive shall be entitled to participate in all incentive, savings and retirement plans, practices, policies and programs applicable generally to other Division Presidents of the Company and its affiliated companies.

(d) **Welfare Benefit Plans**. During the Term, the Executive and/or the Executive's family, as the case may be, shall be eligible for participation in and shall receive all benefits under welfare benefit plans, practices, policies and programs provided by the Company and its affiliated companies (including, without limitation, medical, prescription, dental, disability, employee life, group life, accidental death and travel accident insurance plans and programs) to the extent applicable generally to other Division Presidents of the Company and its affiliated companies.

(e) **Expenses**. The Company will pay or reimburse Executive for all reasonable and necessary out-of-pocket expenses incurred by him in the performance of his duties under this Agreement. Executive shall keep detailed and accurate records of expenses incurred in connection with the performance of his duties hereunder and reimbursement therefore shall be in accordance with policies and procedures to be established from time to time by the Board.

(f) **Office and Support Staff**. During the Term, the Executive shall be entitled to an office or offices of a size and with furnishings and other appointments, and to secretarial and other assistance, consistent with the Executive's position and title.

(g) **Vacation**. During the Term, Executive shall be entitled to twenty (20) working days of compensated vacation in each fiscal year, to be taken at times which do not unreasonably interfere with the performance of Executive's duties hereunder. Any unused vacation time from any fiscal year shall be subject to accumulation or forfeiture in accordance with Company policy as in effect from time to time.

(h) **Company Automobile**. Executive currently has use of a Company leased automobile. He may continue use of such car until the Expiration Date, provided however, if during the Term he so elects, he shall be provided with a Company leased automobile generally of the same type and cost as other Division Presidents.

4. **Termination of Employment.**

(a) **Death or Disability**. The Executive's employment shall terminate automatically upon the Executive's death during the Term. If the Disability of the Executive occurs during the Term (pursuant to the definition of Disability set forth below), the Company may give to the Executive written notice in accordance with Section 9(c) of this Agreement of its intention to terminate the Executive's employment. In such event, the Executive's employment with the Company shall terminate effective on the 30th day after receipt of such notice by the Executive (the "Disability Effective Date"), provided that, within the 30 days after such receipt, the Executive shall not have returned to full-time performance of the Executive's duties. For purposes of this Agreement, "Disability" shall mean the absence of the Executive from the Executive's duties with the Company on a full-time basis for 120 consecutive business days as a result of incapacity due to mental or physical illness which is determined to be total and permanent by a physician selected by the Company or its insurers and acceptable to the Executive or the Executive's legal representative.

(b) **Cause**. The Company may terminate the Executive's employment for Cause. For purposes of this Agreement, "Cause" shall mean:

(i) any act or failure to act by Executive done with the intent to harm in any material respect the financial interests or reputation of the Company or any affiliated companies;

(ii) Executive being convicted of (or entering a plea of guilty or *nolo contendere* to) a felony (other than a felony involving a motor vehicle);

(iii) Executive's dishonesty, misappropriation or fraud with regard to the Company or any affiliated companies (other than good faith expense account disputes);

(iv) a grossly negligent act or failure to act by Executive which has a material adverse affect on the Company or any affiliated companies;

(v) the material breach by Executive of his agreements or obligations under this Agreement which has a material adverse effect on the Company, which breach, if curable, is not cured by Executive within fifteen (15) days after written notice from the Company which specifically identifies the material breach which the Company believes that Executive has committed; or

(vi) the continued refusal to follow the directives of the CEO or the Board or their designees which are consistent with Executive's duties and responsibilities identified in Section 1 hereof; provided that the foregoing refusal shall not be "cause" if Executive in good faith believes that such direction is illegal, unethical or immoral and promptly so notifies the CEO or Board, as the case may be, in writing.

(c) **Notice of Termination**. Any termination by the Company for Cause shall be communicated by Notice of Termination to the Executive given in accordance with Section 9(c) of this Agreement. For purposes of this Agreement, a "Notice of Termination" means a written notice which (i) indicates the specific termination provision in this Agreement relied upon, (ii) to the extent applicable, sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Executive's employment under the provision so indicated and (iii) if the Date of Termination (as defined below) is other than the date of receipt of such notice, specifies the termination date (which date shall be not more than thirty days after the giving of such notice). The failure by the Company to set forth in the Notice of Termination any fact or circumstance which contributes to a showing of Cause shall not waive any right of the Company hereunder or preclude the Company from asserting such fact or circumstance in enforcing the Company's rights hereunder.

(d) **Date of Termination**. "Date of Termination" means (i) if the Executive's employment is terminated by the Company for Cause, the date of receipt of the Notice of Termination or, subject to applicable cure periods, any later date specified therein, as the case may be, (ii) if the Executive's employment is terminated by the Company other than for Cause or Disability, the Date of Termination shall be the date on which the Company notifies the Executive of such termination and (iii) if the Executive's employment is terminated by reason of death or Disability, the Date of Termination shall be the date of death of the Executive or the Disability Effective Date, as the case may be.

5. **Obligations of the Company upon Termination**.

(a) **Other Than for Cause**. If, during the Term, the Company shall terminate the Executive's employment other than for Cause:

(i) the Company shall pay to the Executive in a lump sum in cash within 30 days after the Date of Termination the aggregate of the following amounts: (1) the Executive's Annual Base Salary through the Date of Termination to the extent not theretofore paid, (2) any accrued but unpaid annual bonus ("Annual Bonus") respecting any completed fiscal year ending prior to the Date of Termination, (3) the product of (x) the Average Annual Bonus (hereinafter defined) and (y) a fraction, the numerator of which is the number of days in the current fiscal year through the Date of Termination, and the denominator of which is 365 and (4) any compensation previously deferred by the Executive (together with any accrued interest or earnings thereon) and any accrued vacation pay, in each case to the extent not theretofore paid (the sum of the amounts described in clauses (1), (2), (3) and (4) shall be hereinafter referred to as the "Accrued Obligations").

The term "Average Annual Bonus" shall mean the arithmetic average of the Executive's bonuses (whether paid or deferred) under the Company's annual incentive plans during the last three full fiscal years prior to the Date of Termination or for such lesser period as the Executive has been employed by the Company (annualized in the event that the Executive was not employed by the Company for the whole of any such fiscal year). Without limiting the generality of the foregoing definition, the

"Average Annual Bonus" shall include the following components, if any, pursuant to the Company's Amended and Restated VCIP Rules *(*or any successor incentive plan, for so long as any of same shall exist)*:*

(a) Cash payouts from VC and IVC awards and the "Bank" payout, subject to the Payout Cap, all at full face value;

(b) Any excess in the Bank discounted at 75% of face value (which shall, for purposes hereof, be deemed to be fully vested);

(c) 10% of the Bank contributed to the Deferred Compensation Plan, at full face value (which shall, for purposes hereof, be deemed to be fully vested); and

(d) Any deferred bonus under the VCIP which is invested in stock under the Company's Corporate Management Stock Purchase Program, at full face value of said bonus (which shall, for purposes hereof, be deemed to be fully vested);

(ii) so long as the Executive is and remains in compliance in all material respects with his obligations under Section 6 below, the Company shall pay to the Executive an amount equal to the sum of (1) Executive's Annual Base Salary (at the rate in effect on the Date of Termination), and (2) the Average Annual Bonus for a period of two years from the Date of Termination, (the "Severance Period"), at the same time that payments of Annual Base Salary and Annual Bonus would otherwise have become due and payable during said period in the absence of such termination;

(iii) so long as the Executive is and remains in compliance in all material respects with his obligations under Section 6 below, during the Severance Period, or such longer period as may be provided by the terms of the appropriate plan, program, practice or policy, the Company shall continue benefits to the Executive and/or the Executive's family at least equal to those which would have been provided to them in accordance with the plans, programs, practices and policies described in Section 3(d) of this Agreement if the Executive's employment had not been terminated, provided, however, that if the Executive becomes reemployed with another employer and receives medical or other welfare benefits under another employer provided plan, the medical and other welfare benefits described herein shall cease; and

(iv) to the extent not theretofore paid or provided, the Company shall timely pay or provide to the Executive any other amounts or benefits required to be paid or provided or which the Executive is eligible to receive under any plan, program, policy or practice or contract or agreement of the Company and its affiliated companies (such other amounts and benefits shall be hereinafter referred to as the "Other Benefits").

(b) **Death**. If the Executive's employment is terminated by reason of the Executive's death, this Agreement shall terminate without further obligations to the Executive's legal representatives under this Agreement, other than for payment of Accrued Obligations and the timely payment or provision of Other Benefits. Accrued Obligations shall be paid to the Executive's estate or beneficiary, as applicable, in a lump sum in cash within 30 days of the Date of Termination.

(c) **Disability**. If the Executive's employment is terminated by reason of the Executive's Disability, this Agreement shall terminate without further obligations to the Executive, other than for payment of Accrued Obligations and the timely payment or provision of Other Benefits. Accrued Obligations shall be paid to the Executive or the Executive's legal representative in a lump sum in cash within 30 days of the Date of Termination.

(d) **Cause**. If the Executive's employment shall be terminated for Cause, this Agreement shall terminate without further obligations to the Executive other than the obligation to pay to the Executive (x) his Annual Base Salary through the Date of Termination, (y) the amount of any compensation previously deferred by the Executive, and (z) Other Benefits, in each case to the extent theretofore unpaid. If the Executive voluntarily terminates employment during the Term, this Agreement shall terminate without further obligations to the Executive, other than for Accrued Obligations and the timely payment or provision of Other Benefits. In such case, all Accrued Obligations shall be paid to the Executive in a lump sum in cash within 30 days of the Date of Termination.

(e) **Payment of Deferred Compensation**. Notwithstanding anything to the contrary contained in this Section 5 and subject to Section 10 hereof, the timing of payments by the Company of any deferred compensation which is part of the Accrued Obligations shall remain subject to the terms and conditions of the applicable deferred compensation plan, and any payment election previously made by the Executive.

6. **Employment Covenants**.

(a) **Covenant Not to Compete**. Executive recognizes and acknowledges that the Company is placing its confidence and trust in Executive. Executive, therefore, covenants and agrees that during the Applicable Non-Compete Period (as defined below) Executive shall not, either directly or indirectly, without the prior written consent of the Board (which may be withheld in the sole and absolute discretion of the Board):

(i) Engage in or carry on any business or in any way become associated with any business in the Restricted Area (as hereinafter defined) which is similar to or is in competition with the Business of the Company (as hereinafter defined). As used in this Section 6(a), the term (1) "Business of the Company" shall mean and include all business activities in which the Company and/or any affiliated companies have engaged (or have prepared written plans to engage) at any time during the Term, including but not limited to, the purchase of land (or options therefor) for development and the construction of residential homes for resale to consumers, and (2) "Restricted Area" shall mean and include anywhere in the United States of America or in any foreign country in which the Company or any affiliated companies then engage (or have within the preceding three years engaged) in business.

(ii) in connection with any business which is similar to or is in competition with the Business of the Company in the Restricted Area, solicit the business of any person or entity, on behalf of himself or any other person or entity, which is or has been at any time during the Term a customer or supplier of the Company including, but not limited to, former or present customers or suppliers with whom Executive has had personal contact during, or by reason of, his relationship with the Company;

(iii) Be or become an employee, agent, consultant, representative, director or officer of, or be otherwise in any manner associated with, any person, firm, corporation, association or other entity which is engaged in or is carrying on any business which is similar to or in competition with the Business of the Company in the Restricted Area;

(iv) Solicit for employment or employ any person employed by the Company at any time during the twelve (12) month period immediately preceding such solicitation or employment; or

"(v) Be or become a shareholder, joint venturer, owner (in whole or in part), or partner, or be or become associated with or have any proprietary or financial interest in or of any firm, corporation, association or other entity which is engaged in or is carrying on any business which is similar to or in competition with the Business of the Company in the Restricted Area (a "Competing Entity"). Notwithstanding the preceding sentence, (A) passive equity investments by Executive of $100,000 or less in any Competing Entity, or (B) investments, in any amount, in any publicly traded mutual fund, index fund or similar investment vehicle which fund or investment vehicle owns any proprietary or financial interest in any Competing Entity, shall not be deemed to violate this Section 6(a)(v)."

Executive further warrants and represents that, because of his varied skill and abilities, he does not need to compete with the Business of the Company and that this Agreement will not prevent him from earning a livelihood and acknowledges that the restrictions contained in this Section 6 constitute reasonable protections for the Company.

As used in this Section 6, "Applicable Non-Compete Period" shall mean the following:

(A) at all times that the Executive is employed by the Company; and

(B) for a period of time after the Executive's employment under this Agreement is terminated for any reason equal to the greater of

(i) 180 days; or

(ii) such longer period of time that the Executive is entitled to receive payments under Sections 5(a)(ii) or (iii) above.

(b) **Confidential Information**. Executive agrees that all Confidential Information shall be the sole property of the Company, and Executive agrees that he shall not during the Term nor thereafter, use for his benefit or the benefit of others or disclose at any time Confidential Information or take with him upon termination of this Agreement any records, papers, reports, lists, computer tapes or disks or any other materials of any nature that contain any Confidential Information. "Confidential Information" shall mean all information other than General Knowledge (defined below) relating to the Company's: (i) business or existing projects including all those in various stages of research and development including all unpublished plans for new products or services; (ii) financial information, internal business procedures and other information which relate to the way the Company conducts its business and which are not publicly available; (iii) data written by the Company's employees or others, including source codes, object codes, marketing and development plans, budgets, forecasts, forecast assumptions and future plans and potential strategies of the Company which have been or are being discussed; (iv) unpublished pricing data; (v) identity, buying habits and practices of the Company, its suppliers and customers to the extent not publicly available; (vi) information regarding the skills or compensation of employees of the Company; (vii) the Intellectual Property of the Company and any information pertaining thereto; (viii) materials and information supplied by customers or clients to the Company that contain data regarding any research, products, procedures or the like; and (ix) any other information deemed confidential by the Company by marking such information with the word "Confidential" or similar word; by orally advising the Executive that the information is confidential or by treating the information in such a manner that the Executive should reasonably believe it to be deemed confidential by the Company. "General Knowledge" shall mean (i) general skills or experience

gained during Executive's employment with, consultation for or work for the Company; and (ii) information and data publicly available.

(c) **Records**. All files, records, memoranda and other documents regarding former, existing or prospective customers of the Company or relating in any manner whatsoever to Confidential Information or the Business of the Company (collectively, "Records"), whether prepared by Executive or otherwise coming into his possession, shall be the exclusive property of the Company. All Records shall be immediately placed in the physical possession of the Company upon the termination of Executive's employment with the Company, or at any other time specified by the Board. The retention and use by Executive of duplicates in any form of Records is prohibited after the termination of Executive's employment with the Company.

(d) **Breach**. Executive hereby recognizes and acknowledges that irreparable injury or damage shall result to the Company in the event of a breach or threatened breach by Executive of any of the terms or provisions of this Section 6, and Executive therefore agrees that the Company shall be entitled to an injunction restraining Executive from engaging in any activity constituting such breach or threatened breach. Nothing contained herein shall be construed as prohibiting the Company from pursuing any other remedies available to the Company at law or in equity for such breach or threatened breach, including but not limited to, the recovery of damages from Executive and, if Executive is an employee of the Company, the termination of his employment with the Company in accordance with the terms and provisions of this Agreement.

(e) **Survival**. Notwithstanding the termination of the employment of Executive or the termination of this Agreement, the provisions of this Section 6 shall survive and be binding upon Executive unless a written agreement which specifically refers to the termination of the obligations and covenants of this Section 6 is executed by the Company. Notwithstanding the foregoing, this Section 6 shall not survive the termination of this Agreement as the result of the Change Of Control Agreement (hereinafter defined) becoming effective.

(f) **Blue-Penciling**. Should any court or other legally constituted authority determine that for any such agreement or covenant to be effective it must be modified to limit its duration or scope, the parties hereto shall consider such agreement or covenant to be amended or modified with respect to duration and/or scope so as to comply with the orders of any such court or other legally constituted authority, and as to all other portions of such agreement or covenants they shall remain in full force and effect as originally written.

7. **No Mitigation**. In no event shall the Executive be obligated to seek other employment or take any other action by way of mitigation of the amounts payable to the Executive under any of the provisions of this Agreement and such amounts shall not be reduced whether or not the Executive obtains other employment. The Company agrees to pay as incurred, to the full extent permitted by law, all legal fees and expenses which the Executive may reasonably incur as a result of any contest by (i) the Company, provided that the Executive prevails in at least one material issue, (ii) the Executive or (iii) others, of the validity or enforceability of, or liability under, any provision of this Agreement or any guarantee of performance thereof (including, without limitation, as a result of any contest by the Executive about the amount of any payment pursuant to this Agreement), plus in each case interest on any delayed payment at the applicable Federal rate provided for in Section 7872(f)(2)(A) of the Internal Revenue Code of 1986, as amended (the "Code").

8. **Successors**.

(a) This Agreement is personal to the Executive and without the prior written consent of the Company shall not be assignable by the Executive otherwise than by will or the laws of descent and distribution. This Agreement shall inure to the benefit of and be enforceable by the Executive's legal representatives.

(b) This Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns.

9. **Miscellaneous**.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without reference to principles of conflict of laws. Any legal action, suit or proceeding arising out of or relating to this Agreement shall be instituted in the state or federal courts in the State of Delaware and the parties agree not to assert, in any action, suit or proceeding by way of motion, as a defense or otherwise, any claim that either party is not personally subject to the jurisdiction of such court, or that such action, suit or proceeding is brought in an inconvenient forum, or that the venue is improper or that the subject matter hereof cannot be enforced in such court. The parties hereby irrevocably submit to the jurisdiction of any such court in any such action, suit or proceeding and agree that service of all process in any such action, suit or proceeding in any such court may be made by registered or certified mail, return receipt requested, to its address set forth in this Agreement, such service being hereby acknowledged by such party to be sufficient for personal jurisdiction in any action against such party in any such court and to be otherwise effective and binding service in every respect.

(b) The captions of this Agreement are not part of the provisions hereof and shall have no force or effect. This Agreement may not be amended or modified otherwise than by a written agreement executed by the parties hereto or their respective successors and legal representatives.

(c) All notices and other communications hereunder shall be in writing and shall be given by hand delivery to the other party, by FedEx or other commercial overnight courier or by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the Executive:

P.O. Box 422175, Atlanta, GA 30342

If to the Company:

1000 Abernathy Road
Suite 1200
Atlanta, Georgia 30328
Attention: Company Secretary

or to such other address as either party shall have furnished to the other in writing in accordance herewith. Notice and communications shall be effective when actually received by the addressee.

(d) The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

(e) The Company may withhold from any amounts payable under this Agreement such Federal, state, local or foreign taxes as shall be required to be withheld pursuant to any applicable law or regulation.

(f) The Company's failure to insist upon strict compliance with any provision of this Agreement or the failure to assert any right the Company may have hereunder shall not be deemed to be a waiver of such provision or right or any other provision or right of this Agreement.

(g) This Agreement supersedes any and all other prior or contemporaneous agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof including, without limitation, the Existing Agreement, and this Agreement contains all of the

covenants and agreements between the parties with respect to employment of Executive by the Company, provided, however, that nothing contained herein shall impair Executive's right to (i) any salary, bonus or other payments accrued through the effective date hereof and owing to Executive pursuant to the Existing Agreement or (ii) any award of restricted stock and grants of options to acquire shares of the Company's common stock referred to in the Existing Agreement and the award letters delivered by the Company to Executive in connection therewith.

Reference is hereby made to that certain Employment Agreement dated as of February 3, 2006, as amended (the "Change Of Control Agreement") by and between the Company and the Executive. Notwithstanding anything contained herein to the contrary, (i) this Agreement shall not supersede the Change of Control Agreement, and (ii) upon the "Effective Date" occurring under the Change of Control Agreement, this Agreement shall be superseded by the Change of Control Agreement.

(h) This Agreement may be executed via facsimile transmission signature and in counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument.

10. **Special Provision Regarding Section 409A of the Internal Revenue Code.**

This Agreement is intended to comply with Section 409A of the Internal Revenue Code of 1986, as amended (the "Code") and will be interpreted in a manner intended to comply with Section 409A of the Code. Notwithstanding anything herein to the contrary, in the event any payments or benefits required to be provided hereunder are deemed to constitute payments of "nonqualified deferred compensation" that is subject to the requirements of Section 409A of the Code, then the time and manner in which such payment or benefit is provided shall be adjusted, to the extent reasonably possible, so that payment or distribution is made at a time and in a manner that is consistent with the requirements of such Section 409A (and applicable proposed or final Treasury regulations or other guidance issued or to be issued by the Internal Revenue Service). This Section 10 may, for example, require that certain payments to Executive following his termination of employment be delayed until the date that is six (6) months after the date of his separation from service with the Company (the "Delay Period") if, at the time of Executive's termination of employment with the Company, Executive is a "specified employee" (as that term is used for purposes of Section 409A(2)(B)(i)). Upon the expiration of the Delay Period, all payments and benefits delayed pursuant to this Section 10 (whether they would have otherwise been payable in a single sum or in installments in the absence of such delay) shall be paid or reimbursed to the Executive in a lump sum, and any remaining payments and benefits due under this Agreement shall be paid or provided in accordance with the normal payment dates specified for them herein.

To the extent any reimbursements or in-kind benefits due to Executive under this Agreement constitutes "deferred compensation" under Section 409A of the Code, any such reimbursements or in-kind benefits shall be paid to Executive in a manner consistent with Treas. Reg. Section 1.409A-3(i)(1)(iv). Each payment made under this Agreement shall be designated as a "separate payment" within the meaning of Section 409A of the Code. The Executive shall be deemed to have a "termination of employment" under this Agreement for purposes of entitling him to any "nonqualified deferred compensation" that is subject to the requirements of Section 409A only to the extent the Executive has a "separation from service," as that term is defined in Section 409A and the applicable Treasury regulations applying all of the default rules thereunder. The Company shall consult with Executive in good faith regarding the implementation of the provisions of this Section 10.

IN WITNESS WHEREOF, the parties hereto have executed this **AMENDED AND RESTATED EMPLOYMENT AGREEMENT** effective as of the date first written above.

BEAZER HOMES USA, INC.

By: /s/ Ian J. McCarthy
Name: Ian J. McCarthy
Title: President and Chief Executive Officer

EXECUTIVE

/s/ Michael H. Furlow
MICHAEL H. FURLOW

SUPPLEMENTAL EMPLOYMENT AGREEMENT

AGREEMENT by and between Beazer Homes USA, Inc., a Delaware corporation (the "Company") and MICHAEL H. FURLOW (the "Executive"), dated as of the 6th day of August, 2009.

The Board of Directors of the Company (the "Board"), has determined that it is in the best interests of the Company and its shareholders to assure that the Company will have the continued dedication of the Executive, notwithstanding the possibility, threat or occurrence of a Change of Control (as defined below) of the Company. The Board believes it is imperative to diminish the inevitable distraction of the Executive by virtue of the personal uncertainties and risks created by a pending or threatened Change of Control and to encourage the Executive's full attention and dedication to the Company currently and in the event of any threatened or pending Change of Control, and to provide the Executive with compensation and benefits arrangements upon a Change of Control which ensure that the compensation and benefits expectations of the Executive will be satisfied and which are competitive with those of other corporations. Therefore, in order to accomplish these objectives, the Board has caused the Company to enter into this Agreement.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. Certain Definitions.

(a) The "Effective Date" shall mean the first date during the Change of Control Period (as defined in Section 1(b)) on which a Change of Control (as defined in Section 2) occurs. Anything in this Agreement to the contrary notwithstanding, if a Change of Control occurs and if the Executive's employment with the Company is terminated prior to the date on which the Change of Control occurs, and if it is reasonably demonstrated by the Executive that such termination of employment (i) was at the request of a third party who has taken steps reasonably calculated to effect a Change of Control or (ii) otherwise arose in connection with or in anticipation of a Change of Control, then for all purposes of this Agreement the "Effective Date" shall mean the date immediately prior to the date of such termination of employment.

(b) The "Change of Control Period" shall mean the period commencing on the date hereof and ending on the second anniversary of the date hereof.

2. Change of Control. For the purpose of this Agreement, a "Change of Control" shall mean:

(a) The acquisition by any individual, entity or group (within the meaning of Section 13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) (a "Person") of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 25% or more of either (i) the then outstanding shares of common stock of the Company (the "Outstanding Company Common Stock") or (ii) the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the "Outstanding Company Voting Securities"); provided, however, that for purposes of this subsection (a), the following acquisitions shall not constitute a Change of Control: (i) any acquisition directly from the Company, (ii) any acquisition by the Company, (iii) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any corporation controlled by the Company or (iv) any acquisition by any corporation pursuant to a transaction which complies with clauses (i), (ii) and (iii) of subsection (c) of this Section 2; or

(b) Individuals who, as of the date hereof, constitute the Board (the "Incumbent Board") cease for any reason to constitute at least a majority of the Board; provided, however, that any individual becoming a director subsequent to the date hereof whose election, or nomination for election by the Company's shareholders, was approved by a vote of at least a

majority of the directors then comprising the Incumbent Board shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board; or

(c) Consummation of a reorganization, merger or consolidation or sale or other disposition of all or substantially all of the assets of the Company (a "Business Combination"), in each case, unless, following such Business Combination, (i) all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the Outstanding Company Common Stock and Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than 50% of, respectively, the then outstanding shares of common stock and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the corporation resulting from such Business Combination (including, without limitation, a corporation which as a result of such transaction owns the Company or all or substantially all of the Company's assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership, immediately prior to such Business Combination of the Outstanding Company Common Stock and Outstanding Company Voting Securities, as the case may be, (ii) no Person (excluding any corporation resulting from such Business Combination or any employee benefit plan (or related trust) of the Company or such corporation resulting from such Business Combination) beneficially owns, directly or indirectly, 20% or more of, respectively, the then outstanding shares of common stock of the corporation resulting from such Business Combination or the combined voting power of the then outstanding voting securities of such corporation except to the extent that such ownership existed prior to the Business Combination and (iii) at least a majority of the members of the board of directors of the corporation resulting from such Business Combination were members of the Incumbent Board at the time of the execution of the initial agreement, or of the action of the Board, providing for such Business Combination; or

(d) Approval by the shareholders of the Company of a complete liquidation or dissolution of the Company.

(e) Notwithstanding the foregoing, a Change of Control shall not be deemed to have occurred unless it is also a "change in control event" as described in Treasury Reg. Section 1.409A-3(i)(5) of the Internal Revenue Code of 1986, as amended (the "Code").

3. Employment Period. The Company hereby agrees to continue the Executive in its employ, and the Executive hereby agrees to remain in the employ of the Company, subject to the terms and conditions of this Agreement, for the period commencing on the Effective Date and ending on the second anniversary of the date hereof (the "Employment Period").

4. Terms of Employment.

(a) Position and Duties.

(i) During the Employment Period, (A) the Executive's position (including status, offices, titles and reporting requirements), authority, duties and responsibilities shall be at least commensurate in all material respects with the most significant of those held, exercised and assigned from the date hereof to the Effective Date and (B) the Executive's services shall be performed at Charleston, South Carolina or any office or location less than 35 miles from such location.

(ii) During the Employment Period, and excluding any periods of vacation and sick leave to which the Executive is entitled, the Executive agrees to devote

reasonable attention and time during normal business hours to the business and affairs of the Company and, to the extent necessary to discharge the responsibilities assigned to the Executive hereunder, to use the Executive's reasonable best efforts to perform faithfully such responsibilities. During the Employment Period it shall not be a violation of this Agreement for the Executive to (A) serve on corporate, civic or charitable boards or committees, (B) deliver lectures, fulfill speaking engagements or teach at educational institutions and (C) manage personal investments, so long as such activities do not significantly interfere with the performance of the Executive's responsibilities as an employee of the Company in accordance with this Agreement. It is expressly understood and agreed that to the extent that any such activities have been conducted by the Executive prior to the Effective Date, the continued conduct of such activities (or the conduct of activities similar in nature and scope thereto) subsequent to the Effective Date shall not thereafter be deemed to interfere with the performance of the Executive's responsibilities to the Company.

(b) Compensation.

(i) Base Salary. During the Employment Period, the Executive shall receive an annual base salary ("Annual Base Salary"), which shall be paid at a monthly rate, at least equal to twelve times the highest monthly base salary paid or payable, including any base salary which has been earned but deferred, to the Executive by the Company and its affiliated companies in respect of the twelve month period immediately preceding the month in which the Effective Date occurs. Annual Base Salary shall be payable in accordance with the Company's normal payroll practices (but not less frequently than monthly). During the Employment Period, the Annual Base Salary shall be reviewed (for purposes of increase only) no more than 12 months after the last salary increase awarded to the Executive prior to the Effective Date and thereafter at least annually. Any increase in Annual Base Salary shall not serve to limit or reduce any other obligation to the Executive under this Agreement. Annual Base Salary shall not be reduced after any such increase and the term Annual Base Salary as utilized in this Agreement shall refer to Annual Base Salary as so increased. As used in this Agreement, the term "affiliated companies" shall include any company controlled by, controlling or under common control with the Company.

(ii) Annual Bonus. In addition to Annual Base Salary, the Executive shall be awarded, for each fiscal year ending during the Employment Period, an annual bonus (the "Annual Bonus") in cash at least equal to the arithmetic average of the Executive's bonuses (whether paid or deferred) under the Company's or its predecessor's annual incentive plans during the last three full fiscal years prior to the Effective Date or for such lesser period as the Executive has been employed by the Company or its predecessor (annualized in the event that the Executive was not employed by the Company for the whole of any such fiscal year), (the "Average Annual Bonus"). Each such Annual Bonus shall be paid no later than the end of the third month of the fiscal year next following the fiscal year for which the Annual Bonus is awarded, unless the Executive shall elect to defer the receipt of such Annual Bonus. Without limiting the generality of the foregoing definition, the "Average Annual Bonus" shall include the following components, if any, pursuant to the Company's Amended and Restated EVCIP Rules *(*or any successor incentive plan, for so long as any of same shall exist):

(a) Cash payouts from VC and IVC awards and the "Bank" payout, subject to the Payout Cap, all at full face value;

(b) Any excess in the Bank discounted at 75% of face value (which shall, for purposes hereof, be deemed to be fully vested);

(c) 10% of the Bank contributed to the Deferred Compensation Plan, at full face value (which shall, for purposes hereof, be deemed to be fully vested); and

(d) Any deferred bonus under the EVCIP which is invested in stock under the Company's Corporate Management Stock Purchase Program, at full face value of said bonus (which shall, for purposes hereof, be deemed to be fully vested);

(iii) Incentive, Savings and Retirement Plans. During the Employment Period, the Executive shall be entitled to participate in all incentive, savings and retirement plans, practices, policies and programs applicable generally to other most senior executives of the Company and its affiliated companies, but in no event shall such plans, practices, policies and programs provide the Executive with incentive opportunities (measured with respect to both regular and special incentive opportunities, to the extent, if any, that such distinction is applicable), savings opportunities and retirement benefit opportunities, in each case, less favorable, in the aggregate, than the most favorable of those provided by the Company and its affiliated companies for the Executive under such plans, practices, policies and programs as in effect at any time from the date hereof until the Effective Date or if more favorable to the Executive, those provided generally at any time after the Effective Date to other peer executives of the Company and its affiliated companies.

(iv) Welfare Benefit Plans. During the Employment Period, the Executive and/or the Executive's family, as the case may be, shall be eligible for participation in and shall receive all benefits under welfare benefit plans, practices, policies and programs provided by the Company and its affiliated companies (including, without limitation, medical, prescription, dental, disability, employee life, group life, accidental death and travel accident insurance plans and programs) to the extent applicable generally to other most senior executives of the Company and its affiliated companies, but in no event shall such plans, practices, policies and programs provide the Executive with benefits which are less favorable, in the aggregate, than the most favorable of such plans, practices, policies and programs in effect for the Executive at any time from the date hereof until the Effective Date or, if more favorable to the Executive, those provided generally at any time after the Effective Date to other peer executives of the Company and its affiliated companies.

(v) Expenses. During the Employment Period, the Executive shall be entitled to receive prompt reimbursement for all reasonable expenses incurred by the Executive in accordance with the most favorable policies, practices and procedures of the Company and its affiliated companies in effect for the Executive at any time from the date hereof until the Effective Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

(vi) Fringe Benefits. During the Employment Period, the Executive shall be entitled to fringe benefits, including, without limitation, tax and financial planning services, payment of club dues, and, if applicable, use of an automobile and payment of related expenses, in accordance with the most favorable plans, practices, programs and policies of the Company and its affiliated companies in effect for the Executive at any time from the date hereof until the Effective Date

or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

(vii) Office and Support Staff. During the Employment Period, the Executive shall be entitled to an office or offices of a size and with furnishings and other appointments, and to exclusive personal secretarial and other assistance, at least equal to the most favorable of the foregoing provided to the Executive by the Company and its affiliated companies at any time from the date hereof until the Effective Date or, if more favorable to the Executive, as provided generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

(viii) Vacation. During the Employment Period, the Executive shall be entitled to paid vacation in accordance with the most favorable plans, policies, programs and practices of the Company and its affiliated companies as in effect for the Executive at any time from the date hereof until the Effective Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies.

5. Termination of Employment.

(a) Death or Disability. The Executive's employment shall terminate automatically upon the Executive's death during the Employment Period. If the Disability of the Executive occurs during the Employment Period (pursuant to the definition of Disability set forth below), the Company may give to the Executive written notice in accordance with Section 13(c) of this Agreement of its intention to terminate the Executive's employment. In such event, the Executive's employment with the Company shall terminate effective on the 30th day after receipt of such notice by the Executive (the "Disability Effective Date"), provided that, within the 30 days after such receipt, the Executive shall not have returned to full-time performance of the Executive's duties. For purposes of this Agreement, "Disability" shall mean the absence of the Executive from the Executive's duties with the Company on a full-time basis for 180 consecutive business days as a result of incapacity due to mental or physical illness which is determined to be total and permanent by a physician selected by the Company or its insurers and acceptable to the Executive or the Executive's legal representative.

(b) Cause. The Company may terminate the Executive's employment for Cause. For purposes of this Agreement, "Cause" shall mean:

(i) the willful and continued failure of the Executive to perform substantially the Executive's duties with the Company or one of its affiliates (other than any such failure resulting from incapacity due to physical or mental illness), for more than 15 days after a written demand for substantial performance is delivered to the Executive by the Board or the Chief Executive Officer of the Company which specifically identifies the manner in which the Board or Chief Executive Officer believes that the Executive has not substantially performed the Executive's duties, or

(ii) the willful engaging by the Executive in illegal conduct or gross misconduct which is materially and demonstrably injurious to the Company.

For purposes of this provision, no act or failure to act, on the part of the Executive, shall be considered "willful" unless it is done, or omitted to be done, by the Executive in bad faith or without reasonable belief that the Executive's action or omission was in the best interests of the Company. Any act, or failure to act, based upon authority given pursuant to a resolution duly adopted by the Board or upon the instructions of the President and Chief Executive Officer of the

Company or based upon the advice of counsel for the Company shall be conclusively presumed to be done, or omitted to be done, by the Executive in good faith and in the best interests of the Company. The cessation of employment of the Executive shall not be deemed to be for Cause unless and until there shall have been delivered to the Executive a copy of a resolution duly adopted by the affirmative vote of not less than three-quarters of the entire membership of the Board at a meeting of the Board called and held for such purpose (after reasonable notice is provided to the Executive and the Executive is given an opportunity, together with counsel, to be heard before the Board), finding that, in the good faith opinion of the Board, the Executive is guilty of the conduct described in subparagraph (i) or (ii) above, and specifying the particulars thereof in detail.

(c) Good Reason. The Executive's employment may be terminated by the Executive for Good Reason. For purposes of this Agreement, "Good Reason" shall mean:

(i) the assignment to the Executive of any duties inconsistent in any respect with the Executive's position (including status, offices, titles and reporting requirements), authority, duties or responsibilities as contemplated by Section 4(a) of this Agreement, or any other action by the Company which results in a diminution in such position, authority, duties or responsibilities, excluding for this purpose an isolated, insubstantial and inadvertent action not taken in bad faith and which is remedied by the Company within 15 days after receipt of notice thereof given by the Executive;

(ii) any failure by the Company to comply with any of the provisions of Section 4(b) of this Agreement, other than an isolated, insubstantial and inadvertent failure not occurring in bad faith and which is remedied by the Company within 15 days after receipt of notice thereof given by the Executive;

(iii) the Company's requiring the Executive to be based at any office or location other than as provided in Section 4(a)(i)(B) hereof or the Company's requiring the Executive to travel on Company business to a substantially greater extent than required immediately prior to the Effective Date, which is not remedied by the Company within 15 days after receipt of notice thereof given by the Executive;

(iv) any purported termination by the Company of the Executive's employment otherwise than as expressly permitted by this Agreement; or

(v) any failure by the Company to comply with and satisfy Section 11(c) of this Agreement, which is not remedied by the Company within 15 days after receipt of notice thereof given by the Executive.

Anything in this Agreement to the contrary notwithstanding, a termination by the Executive for any reason during the 30 day period immediately following the six (6) month anniversary of the Effective Date shall be deemed to be a termination for Good Reason for all purposes of this Agreement. A termination pursuant to the immediately preceding sentence is sometimes hereinafter referred to as a "Permitted Executive Termination".

(d) Notice of Termination. Any termination of the Executive's employment by the Company or by the Executive shall be communicated by Notice of Termination to the other party hereto given in accordance with Section 13(c) of this Agreement. For purposes of this Agreement, a "Notice of Termination" means a written notice which (i) indicates the specific termination provision in this Agreement relied upon, (ii) to the extent applicable, sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Executive's employment under the provision so indicated and (iii) if the Date of Termination (as defined below) is other than the date of receipt of such notice, specifies the termination date (which date

shall be not more than thirty days after the giving of such notice). The failure by the Executive or the Company to set forth in the Notice of Termination any fact or circumstance which contributes to a showing of Good Reason or Cause shall not waive any right of the Executive or the Company, respectively, hereunder or preclude the Executive or the Company, respectively, from asserting such fact or circumstance in enforcing the Executive's or the Company's rights hereunder.

(e) Date of Termination. "Date of Termination" means (i) if the Executive's employment is terminated by the Company for Cause, or by the Executive for Good Reason, the date of receipt of the Notice of Termination or, subject to applicable cure periods, any later date specified therein, as the case may be, (ii) if the Executive's employment is terminated by the Company other than for Cause or Disability, the Date of Termination shall be the date on which the Company notifies the Executive of such termination and (iii) if the Executive's employment is terminated by reason of death or Disability, the Date of Termination shall be the date of death of the Executive or the Disability Effective Date, as the case may be.

6. Obligations of the Company upon Termination.

(a) Good Reason; Other Than for Cause. If, during the Employment Period, the Company shall terminate the Executive's employment other than for Cause or the Executive shall terminate employment for Good Reason (including, without limitation, a Permitted Executive Termination):

(i) the Company shall pay to the Executive in a lump sum in cash within 30 days after the Date of Termination the aggregate of the following amounts:

A. the sum of (1) the Executive's Annual Base Salary through the Date of Termination to the extent not theretofore paid, (2) any accrued but unpaid Annual Bonus respecting any completed fiscal year ending prior to the Date of Termination, (3) the product of (x) the Average Annual Bonus and (y) a fraction, the numerator of which is the number of days in the current fiscal year through the Date of Termination, and the denominator of which is 365 and (4) any compensation previously deferred by the Executive (together with any accrued interest or earnings thereon) and any accrued vacation pay, in each case to the extent not theretofore paid (the sum of the amounts described in clauses (1), (2), (3) and (4) shall be hereinafter referred to as the "Accrued Obligations"). Anything contained herein to the contrary notwithstanding, the timing of payment by the Company of any deferred compensation shall remain subject to the terms and conditions of the applicable deferred compensation plan and any payment election previously made by the Executive; **provided, however**, that, if at the time of Termination, Executive is a "specified employee" within the meaning of Section 409A of the Internal Revenue Code, as amended, then payments shall not be made before the date which is six (6) months after the date of separation from service with the Company (or, if earlier, the date of the Executive's death); and

B. the amount equal to the product of (1) two (2), and (2) the sum of (x) the Executive's Annual Base Salary and (y) the Highest Annual Bonus (as hereinafter defined); and

(ii) for two (2) years after the Executive's Date of Termination, or such longer period as may be provided by the terms of the appropriate plan, program, practice or policy, the Company shall continue benefits to the Executive and/or the Executive's family at least equal to those which would have been provided to them in accordance with the plans, programs, practices and policies described in Section 4(b)(iv) of this Agreement if the Executive's employment had not been

terminated or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and its affiliated companies and their families, provided, however, that if the Executive becomes reemployed with another employer and is eligible to receive medical or other welfare benefits under another employer provided plan, the medical and other welfare benefits described herein shall be secondary to those provided under such other plan during such applicable period of eligibility. For purposes of determining eligibility (but not the time of commencement of benefits) of the Executive for retiree benefits pursuant to such plans, practices, programs and policies, the Executive shall be considered to have remained employed until two (2) years after the Date of Termination and to have retired on the last day of such period;

(iii) the Company shall, at its sole expense as incurred, provide the Executive with outplacement services in accordance with the Company's policies with regard to outplacement then in effect; and

(iv) to the extent not theretofore paid or provided, the Company shall timely pay or provide to the Executive any other amounts or benefits required to be paid or provided or which the Executive is eligible to receive under any plan, program, policy or practice or contract or agreement of the Company and its affiliated companies (such other amounts and benefits shall be hereinafter referred to as the "Other Benefits").

For purposes hereof, the term "Highest Annual Bonus" shall mean the highest of the Executive's bonuses (whether paid or deferred) under the Company's or its predecessor's annual incentive plans during the last three full fiscal years prior to the Effective Date or for such lesser period as the Executive has been employed by the Company or its predecessor (annualized in the event that the Executive was not employed by the Company for the whole of any such fiscal year).

(b) Death. If the Executive's employment is terminated by reason of the Executive's death during the Employment Period, this Agreement shall terminate without further obligations to the Executive's legal representatives under this Agreement, other than for payment of Accrued Obligations and the timely payment or provision of Other Benefits. Accrued Obligations shall be paid to the Executive's estate or beneficiary, as applicable, in a lump sum in cash within 30 days of the Date of Termination. With respect to the provision of Other Benefits, the term Other Benefits as utilized in this Section 6(b) shall include, without limitation, and the Executive's estate and/or beneficiaries shall be entitled to receive, benefits at least equal to the most favorable benefits provided by the Company and affiliated companies to the estates and beneficiaries of the most senior executives of the Company and such affiliated companies under such plans, programs, practices and policies relating to death benefits, if any, as in effect with respect to other most senior executives and their beneficiaries at any time from the date hereof until the Effective Date or, if more favorable to the Executive's estate and/or the Executive's beneficiaries, as in effect on the date of the Executive's death with respect to other most senior executives of the Company and its affiliated companies and their beneficiaries.

(c) Disability. If the Executive's employment is terminated by reason of the Executive's Disability during the Employment Period, this Agreement shall terminate without further obligations to the Executive, other than for payment of Accrued Obligations and the timely payment or provision of Other Benefits. Accrued Obligations shall be paid to the Executive or the Executive's legal representative in a lump sum in cash within 30 days of the Date of Termination. With respect to the provision of Other Benefits, the term Other Benefits as utilized in this Section 6(c) shall include, and the Executive shall be entitled after the Disability Effective Date to receive, disability and other benefits at least equal to the most favorable of those generally provided by the Company and its affiliated companies to disabled executives and/or their families in

accordance with such plans, programs, practices and policies relating to disability, if any, as in effect generally with respect to other peer executives and their families at any time from the date hereof until the Effective Date or, if more favorable to the Executive and/or the Executive's family, as in effect at any time thereafter generally with respect to other peer executives of the Company and its affiliated companies and their families.

(d) Cause; Other than for Good Reason. If the Executive's employment shall be terminated for Cause during the Employment Period, this Agreement shall terminate without further obligations to the Executive other than the obligation to pay to the Executive (x) his Annual Base Salary through the Date of Termination, (y) the amount of any compensation previously deferred by the Executive, and (z) Other Benefits, in each case to the extent theretofore unpaid. If the Executive voluntarily terminates employment during the Employment Period, excluding a termination for Good Reason, this Agreement shall terminate without further obligations to the Executive, other than for Accrued Obligations and the timely payment or provision of Other Benefits. In such case, all Accrued Obligations shall be paid to the Executive in a lump sum in cash within 30 days of the Date of Termination.

7. Non-exclusivity of Rights. Nothing in this Agreement shall prevent or limit the Executive's continuing or future participation in any plan, program, policy or practice provided by the Company or any of its affiliated companies and for which the Executive may qualify, nor, subject to Section 13(f), shall anything herein limit or otherwise affect such rights as the Executive may have under any contract or agreement with the Company or any of its affiliated companies. Amounts which are vested benefits or which the Executive is otherwise entitled to receive under any plan, policy, practice or program of or any contract or agreement with the Company or any of its affiliated companies at or subsequent to the Date of Termination shall be payable in accordance with such plan, policy, practice or program or contract or agreement except as explicitly modified by this Agreement.

8. Full Settlement. The Company's obligation to make the payments provided for in this Agreement and otherwise to perform its obligations hereunder shall not be affected by any set-off, counterclaim, recoupment, defense or other claim, right or action which the Company may have against the Executive or others. Each and every payment made hereunder by the Company shall be final, and the Company shall not seek to recover all or any part of such payment from the Executive or from whomsoever may be entitled thereto, for any reasons whatsoever. In no event shall the Executive be obligated to seek other employment or take any other action by way of mitigation of the amounts payable to the Executive under any of the provisions of this Agreement and such amounts shall not be reduced whether or not the Executive obtains other employment. The Company agrees to pay as incurred, to the full extent permitted by law, all legal fees and expenses which the Executive may reasonably incur as a result of any contest by (i) the Company, provided that the Executive prevails in at least one material issue, (ii) the Executive or (iii) others, of the validity or enforceability of, or liability under, any provision of this Agreement or any guarantee of performance thereof (including, without limitation, as a result of any contest by the Executive about the amount of any payment pursuant to this Agreement), plus in each case interest on any delayed payment at the applicable Federal rate provided for in Section 7872(f) (2) (A) of the Internal Revenue Code of 1986, as amended (the "Code").

9. Certain Additional Payments by the Company.

(a) Anything in this Agreement to the contrary notwithstanding and except as set forth below, in the event it shall be determined that any payment or distribution by the Company to or for the benefit of the Executive (whether paid or payable or distributed or distributable pursuant to the terms of this Agreement or otherwise, but determined without regard to any additional payments required under this Section 9) (a "Payment") would be subject to the excise tax imposed by Section 4999 of the Code or any interest or penalties are incurred by the Executive with respect to such excise tax (such excise tax, together with any such interest and penalties, are hereinafter collectively referred to as the "Excise Tax"), then the Executive shall be

entitled to receive an additional payment (a “Gross-Up Payment”) in an amount such that after payment by the Executive of all taxes (including any interest or penalties imposed with respect to such taxes), including, without limitation, any income taxes (and any interest and penalties imposed with respect thereto) and Excise Tax imposed upon the Gross-Up Payment, the Executive retains an amount of the Gross-Up Payment equal to the Excise Tax imposed upon the Payments. Notwithstanding the foregoing provisions of this Section 9(a), if it shall be determined that the Executive is entitled to a Gross-Up Payment, but that the Payments do not exceed 110% of the greatest amount (the “Reduced Amount”) that could be paid to the Executive such that the receipt of Payments would not give rise to any Excise Tax, then no Gross-Up Payment shall be made to the Executive and the Payments, in the aggregate, shall be reduced to the Reduced Amount.

(b) Subject to the provisions of Section 9(c), all determinations required to be made under this Section 9, including whether and when a Gross-Up Payment is required and the amount of such Gross-Up Payment and the assumptions to be utilized in arriving at such determination, shall be made by such certified public accounting firm as may be designated by the Company (the “Accounting Firm”) which shall provide detailed supporting calculations both to the Company and the Executive within 15 business days of the receipt of notice from the Executive that there has been a Payment, or such earlier time as is requested by the Company. In the event that the Accounting Firm is serving as accountant or auditor for the individual, entity or group effecting the Change of Control, the Company shall appoint another nationally recognized accounting firm to make the determinations required hereunder (which accounting firm shall then be referred to as the Accounting Firm hereunder). All fees and expenses of the Accounting Firm shall be borne solely by the Company. Any Gross-Up Payment, as determined pursuant to this Section 9, shall be paid by the Company to the Executive within five days of the receipt of the Accounting Firm’s determination. Any determination by the Accounting Firm shall be binding upon the Company and the Executive. As a result of the uncertainty in the application of Section 4999 of the Code at the time of the initial determination by the Accounting Firm hereunder, it is possible that Gross-Up Payments which will not have been made by the Company should have been made (“Underpayment”), consistent with the calculations required to be made hereunder. In the event that the Company exhausts its remedies pursuant to Section 9(c) and the Executive thereafter is required to make a payment of any Excise Tax, the Accounting Firm shall determine the amount of the Underpayment that has occurred and any such Underpayment shall be promptly paid by the Company to or for the benefit of the Executive.

(c) The Executive shall notify the Company in writing of any claim by the Internal Revenue Service that, if successful, would require the payment by the Company of the Gross-Up Payment. Such notification shall be given as soon as practicable but no later than ten business days after the Executive is informed in writing of such claim and shall apprise the Company of the nature of such claim and the date on which such claim is requested to be paid. The Executive shall not pay such claim prior to the expiration of the 30-day period following the date on which it gives such notice to the Company (or such shorter period ending on the date that any payment of taxes with respect to such claim is due). If the Company notifies the Executive in writing prior to the expiration of such period that it desires to contest such claim, the Executive shall:

(i) give the Company any information reasonably requested by the Company relating to such claim,

(ii) take such action in connection with contesting such claim as the Company shall reasonably request in writing from time to time, including, without limitation, accepting legal representation with respect to such claim by an attorney reasonably selected by the Company,

(iii) cooperate with the Company in good faith in order effectively to contest such claim, and

(iv) permit the Company to participate in any proceedings relating to such claim;

provided, however, that the Company shall bear and pay directly all costs and expenses (including additional interest and penalties) incurred in connection with such contest and shall indemnify and hold the Executive harmless, on an after-tax basis, for any Excise Tax or income tax (including interest and penalties with respect thereto) imposed as a result of such representation and payment of costs and expenses. Without limitation on the foregoing provisions of this Section 9(c), the Company shall control all proceedings taken in connection with such contest and, at its sole option, may pursue or forgo any and all administrative appeals, proceedings, hearings and conferences with the taxing authority in respect of such claim and may, at its sole option, either direct the Executive to pay the tax claimed and sue for a refund or contest the claim in any permissible manner, and the Executive agrees to prosecute such contest to a determination before any administrative tribunal, in a court of initial jurisdiction and in one or more appellate courts, as the Company shall determine; provided, however, that if the Company directs the Executive to pay such claim and sue for a refund, the Company shall advance the amount of such payment to the Executive, on an interest-free basis and shall indemnify and hold the Executive harmless, on an after-tax basis, from any Excise Tax or income tax (including interest or penalties with respect thereto) imposed with respect to such advance or with respect to any imputed income with respect to such advance; and further provided that any extension of the statute of limitations relating to payment of taxes for the taxable year of the Executive with respect to which such contested amount is claimed to be due is limited solely to such contested amount. Furthermore, the Company's control of the contest shall be limited to issues with respect to which a Gross-Up Payment would be payable hereunder and the Executive shall be entitled to settle or contest, as the case may be, any other issue raised by the Internal Revenue Service or any other taxing authority.

(d) If, after the receipt by the Executive of an amount advanced by the Company pursuant to Section 9(c), the Executive becomes entitled to receive any refund with respect to such claim, the Executive shall (subject to the Company's complying with the requirements of Section 9(c)) promptly pay to the Company the amount of such refund (together with any interest paid or credited thereon after taxes applicable thereto). If, after the receipt by the Executive of an amount advanced by the Company pursuant to Section 9(c), a determination is made that the Executive shall not be entitled to any refund with respect to such claim and the Company does not notify the Executive in writing of its intent to contest such denial of refund prior to the expiration of 30 days after such determination, then such advance shall be forgiven and shall not be required to be repaid and the amount of such advance shall offset, to the extent thereof, the amount of Gross-Up Payment required to be paid.

(e) Any Gross-Up Payment required under this Section 9 will be made by the end of the Executive's taxable year next following the Executive's taxable year in which the Executive remits the related taxes. In addition, any right to the reimbursement of expenses incurred due to a tax audit or litigation addressing the existence or amount of a tax liability will be made by the end of the Executive's taxable year following the Executive's taxable year in which the taxes that are the subject of the audit or litigation are remitted to the taxing authority, or where as a result of such audit or litigation no taxes are remitted, the end of the Executive's taxable year following the Executive's taxable year in which the audit is completed or there is a final and nonappealable settlement or other resolution of the litigation.

10. Confidential Information. The Executive shall hold in a fiduciary capacity for the benefit of the Company all secret or confidential information, knowledge or data relating to the Company or any of its affiliated companies, and their respective businesses, which shall have been obtained by the Executive during the Executive's employment by the Company or any of its affiliated companies and which shall not be or become public knowledge (other than by acts by the Executive or representatives of the Executive in violation of this Agreement). After termination of the Executive's employment with the Company, the Executive shall not, without the prior

written consent of the Company or as may otherwise be required by law or legal process, communicate or divulge any such information, knowledge or data to anyone other than the Company and those designated by it. In no event shall an asserted violation of the provisions of this Section 10 constitute a basis for deferring or withholding any amounts otherwise payable to the Executive under this Agreement.

11. Successors.

(a) This Agreement is personal to the Executive and without the prior written consent of the Company shall not be assignable by the Executive otherwise than by will or the laws of descent and distribution. This Agreement shall inure to the benefit of and be enforceable by the Executive's legal representatives.

(b) This Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns.

(c) The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to assume expressly and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. As used in this Agreement, "Company" shall mean the Company as hereinbefore defined and any successor to its business and/or assets as aforesaid which assumes and agrees to perform this Agreement by operation of law, or otherwise.

12. Covenant Not to Compete. In the event of a Permitted Executive Termination, Executive covenants and agrees that during the Non-Compete Period (as defined below) Executive shall not, either directly or indirectly, without the prior written consent of the Board (which may be withheld in the sole and absolute discretion of the Board):

(i) Engage in or carry on any business or in any way become associated with any business in the Restricted Area (as hereinafter defined) which is similar to or is in competition with the Business of the Company (as hereinafter defined). As used in this Section 12, the term (1) "Business of the Company" shall mean and include all business activities in which the Company and/or any affiliated companies have engaged (or have prepared written plans to engage) at any time during the Term, including but not limited to, the purchase of land (or options therefor) for development and the construction of residential homes for resale to consumers, and (2) "Restricted Area" shall mean and include anywhere in the United States of America or in any foreign country in which the Company or any affiliated companies then engage (or have within the preceding three years engaged) in business;

(ii) in connection with any business which is similar to or is in competition with the Business of the Company in the Restricted Area, solicit the business of any person or entity, on behalf of himself or any other person or entity, which is or has been at any time during the Term a customer or supplier of the Company including, but not limited to, former or present customers or suppliers with whom Executive has had personal contact during, or by reason of, his relationship with the Company;

(iii) Be or become an employee, agent, consultant, representative, director or officer of, or be otherwise in any manner associated with, any person, firm, corporation, association or other entity which is engaged in or is carrying on any business which is similar to or in competition with the Business of the Company in the Restricted Area;

(iv) Solicit for employment or employ any person employed by the Company at any time during the twelve (12) month period immediately preceding such solicitation or employment; or

(v) Be or become a shareholder, joint venturer, owner (in whole or in part), or partner, or be or become associated with or have any proprietary or financial interest in or of any firm, corporation, association or other entity which is engaged in or is carrying on any business which is similar to or in competition with the Business of the Company in the Restricted Area (a "Competing Entity"). Notwithstanding the preceding sentence, (A) passive equity investments by Executive of $100,000 or less in any Competing Entity, or (B) investments, in any amount, in any publicly traded mutual fund, index fund or similar investment vehicle which fund or investment vehicle owns any proprietary or financial interest in any Competing Entity, shall not be deemed to violate this Section 12(v).

For purposes of identifying the Restricted Area, Executive hereby recognizes and acknowledges that the existing Business of the Company currently extends throughout the States of Georgia, Tennessee, South Carolina, North Carolina, California, Arizona, Nevada, Florida, New Jersey, Delaware, Maryland, Virginia, West Virginia, Texas, New York, Colorado, Mississippi, Indiana, Kentucky, Ohio, Pennsylvania, Washington, D.C. and New Mexico. Executive further warrants and represents that, because of his varied skill and abilities, he does not need to compete with the Business of the Company and that this Agreement will not prevent him from earning a livelihood and acknowledges that the restrictions contained in this Section 12 constitute reasonable protections for the Company.

As used in this Section 12, the "Non-Compete Period" shall mean for a period of one (1) year after the date of the termination of Executive's employment in connection with such Permitted Executive Termination.

13. Miscellaneous.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without reference to principles of conflict of laws. Any legal action, suit or proceeding arising out of or relating to this Agreement shall be instituted in the state or federal courts in the State of Delaware and the parties agree not to assert, in any action, suit or proceeding by way of motion, as a defense or otherwise, any claim that either party is not personally subject to the jurisdiction of such court, or that such action, suit or proceeding is brought in an inconvenient forum, or that the venue is improper or that the subject matter hereof cannot be enforced in such court. The parties hereby irrevocably submit to the jurisdiction of any such court in any such action, suit or proceeding.

(b) The captions of this Agreement are not part of the provisions hereof and shall have no force or effect. This Agreement may not be amended or modified otherwise than by a written agreement executed by the parties hereto or their respective successors and legal representatives.

(c) All notices and other communications hereunder shall be in writing and shall be given by hand delivery to the other party, by FedEx or other commercial overnight courier or by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the Executive:

P.O. Box 422175, Atlanta, GA 30342

If to the Company:

1000 Abernathy Road
Suite 1200
Atlanta, Georgia 30328
Attention: Company Secretary

or to such other address as either party shall have furnished to the other in writing in accordance herewith. Notice and communications shall be effective when actually received by the addressee.

(d) The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

(e) The Company may withhold from any amounts payable under this Agreement such Federal, state, local or foreign taxes as shall be required to be withheld pursuant to any applicable law or regulation.

(f) The Executive's or the Company's failure to insist upon strict compliance with any provision of this Agreement or the failure to assert any right the Executive or the Company may have hereunder, including, without limitation, the right of the Executive to terminate employment for Good Reason pursuant to Section 5(c)(i) through (v) of this Agreement, shall not be deemed to be a waiver of such provision or right or any other provision or right of this Agreement.

(g) Except as may otherwise be provided under any other written agreement between the Executive and the Company, the Executive and the Company acknowledge that the employment of the Executive by the Company is "at will" and, subject to Section 1 hereof, prior to the Effective Date, the Executive's employment and/or this Agreement may be terminated by either the Executive or the Company at any time prior to the Effective Date, in which case the Executive shall have no further rights under this Agreement. From and after the Effective Date, this Agreement shall supersede any other agreement between the parties with respect to the subject matter hereof and, upon the Effective Date, any such other agreement shall be null, void and of no further force or effect. Furthermore, from and after the date of this Agreement, this Agreement shall amend, restate and supersede that certain Employment Agreement dated as of September 1, 2004 between the Company and the Executive, which Employment Agreement shall be null, void and of no further force or effect.

14. Compliance with Section 409A of the Code. This Agreement is intended to comply with Section 409A of the Internal Revenue Code of 1986, as amended (the "Code") and will be interpreted in a manner intended to comply with Section 409A of the Code. Notwithstanding anything herein to the contrary, in the event any payments or benefits required to be provided hereunder are deemed to constitute payments of "nonqualified deferred compensation" that is subject to the requirements of Section 409A of the Code, then the time and manner in which such payment or benefit is provided shall be adjusted, to the extent reasonably possible, so that payment or distribution is made at a time and in a manner that is consistent with the requirements of such Section 409A (and applicable proposed or final Treasury regulations or other guidance issued or to be issued by the Internal Revenue Service). This Section 14 may, for example, require that certain payments to Executive following his termination of employment be delayed until the date that is six (6) months after the date of his separation from service with the Company (the "Delay Period") if, at the time of Executive's termination of employment with the Company, Executive is a "specified employee" (as that term is used for purposes of Section 409A(2)(B)(i)). Upon the expiration of the Delay Period, all payments and benefits delayed pursuant to this Section 14 (whether they would have otherwise been payable in a single sum or in installments in the absence of such delay) shall be paid or reimbursed to the Executive in a lump sum, and any remaining payments and benefits due under this Agreement shall be paid or provided in accordance with the normal payment dates specified for them herein.

To the extent any reimbursements or in-kind benefits due to Executive under this Agreement constitutes “deferred compensation” under Section 409A of the Code, any such reimbursements or in-kind benefits shall be paid to Executive in a manner consistent with Treas. Reg. Section 1.409A-3(i)(1)(iv). Each payment made under this Agreement shall be designated as a “separate payment” within the meaning of Section 409A of the Code. The Executive shall be deemed to have a “termination of employment” under this Agreement for purposes of entitling him to any “nonqualified deferred compensation” that is subject to the requirements of Section 409A only to the extent the Executive has a “separation from service,” as that term is defined in Section 409A and the applicable Treasury regulations applying all of the default rules thereunder. The Company shall consult with Executive in good faith regarding the implementation of the provisions of this Section 14.

IN WITNESS WHEREOF, the Executive has hereunto set the Executive’s hand and, pursuant to the authorization from its Board of Directors, the Company has caused these presents to be executed in its name on its behalf, all as of the day and year first above written.

/s/ Michael H. Furlow
MICHAEL H. FURLOW

BEAZER HOMES USA, INC.

By /s/ Ian J. McCarthy
Ian J. McCarthy
President and Chief Executive Officer

Exhibit 31.1

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 third 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: August 7, 2009

/s/ Ian J. McCarthy
Ian J. McCarthy
President and Chief Executive Officer

Exhibit 31.2

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 third 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: August 7, 2009

/s/ Allan P. Merrill

Allan P. Merrill
Executive Vice President and Chief Financial Officer

Exhibit 32.1

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 June 30, 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: August 7, 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.

Exhibit 32.2

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 June 30, 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: August 7, 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.