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 December 31, 2008

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 (State or other jurisdiction of incorporation or organization)	58-2086934 (I.R.S. employer Identification no.)
1000 Abernathy Road, Suite 1200, Atlanta, Georgia (Address of principal executive offices)	30328 (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 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 February 6, 2009
Common Stock, $0.001 par value	39,253,799 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 this quarterly report and in Part I, Item 1A— Risk Factors of our Annual Report on Form 10-K for the fiscal year ended September 30, 2008. Such factors may include:

- the timing and final outcome of the United States Attorney investigation and other state and federal agency investigations, the putative class action lawsuits, the derivative claims, multi-party suits and similar proceedings as well as the results of any other litigation or government proceedings;
- additional asset impairment charges or writedowns;
- economic changes nationally or in local markets, including changes in consumer confidence, volatility of mortgage interest rates and inflation;
- continued or increased downturn in the homebuilding industry;
- estimates related to homes to be delivered in the future (backlog) are imprecise as they are subject to various cancellation risks which cannot be fully controlled;
- our ability to maintain the listing of our common stock on the New York Stock Exchange;
- continued or increased disruption in the availability of mortgage financing;
- our cost of and ability to access capital and otherwise meet our ongoing liquidity needs including the impact of any further downgrades of our credit ratings or reductions in our tangible net worth or liquidity levels;
- potential inability to comply with covenants in our debt agreements;
- 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 and the cost and availability of insurance, including the availability of insurance for the presence of moisture intrusion;
- 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

INDEX

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)

	December 31, 2008	September 30, 2008
ASSETS		
Cash and cash equivalents	**$ 436,856**	$ 584,334
Restricted cash	**18,987**	297
Accounts receivable (net of allowance of $6,816 and $8,915, respectively)	**31,545**	46,555
Income tax receivable	**173,152**	173,500
Inventory		
Owned inventory	**1,511,139**	1,545,006
Consolidated inventory not owned	**75,759**	106,655
Total inventory	**1,586,898**	1,651,661
Investments in unconsolidated joint ventures	**33,340**	33,065
Deferred tax assets	**20,072**	20,216
Property, plant and equipment, net	**37,853**	39,822
Goodwill	**—**	16,143
Other assets	**69,122**	76,206
Total assets	**$ 2,407,825**	$ 2,641,799
LIABILITIES AND STOCKHOLDERS' EQUITY		
Trade accounts payable	**$ 54,184**	$ 90,371
Other liabilities	**271,077**	358,592
Obligations related to consolidated inventory not owned	**48,133**	70,608
Senior Notes (net of discounts of $2,448 and $2,565, respectively)	**1,522,552**	1,522,435
Junior subordinated notes	**103,093**	103,093
Other secured notes payable	**51,406**	50,618
Model home financing obligations	**59,238**	71,231
Total liabilities	**2,109,683**	2,266,948
Stockholders' equity:		
Preferred stock (par value $.01 per share, 5,000,000 shares authorized, no shares issued)	**—**	—
Common stock (par value $0.001 per share, 80,000,000 shares authorized, 42,630,541 and 42,612,801 issued and 39,280,609 and 39,270,038 outstanding, respectively)	**43**	43
Paid-in capital	**560,489**	556,910
Retained earnings (accumulated deficit)	**(78,430)**	1,845
Treasury stock, at cost (3,349,932 and 3,342,763 shares, respectively)	**(183,960)**	(183,947)
Total stockholders' equity	**298,142**	374,851
Total liabilities and stockholders' equity	**$ 2,407,825**	$ 2,641,799

See Notes to Unaudited Condensed Consolidated Financial Statements.

Table of Contents

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

	Three Months Ended December 31,	
	2008	2007
Total revenue	**$ 232,364**	$ 500,654
Home construction and land sales expenses	**205,846**	436,316
Inventory impairments and option contract abandonments	**12,709**	168,512
Gross profit (loss)	**13,809**	(104,174)
Selling, general and administrative expenses	**56,209**	88,162
Depreciation and amortization	**3,783**	5,978
Goodwill impairment	**16,143**	—
Operating loss	**(62,326)**	(198,314)
Equity in loss of unconsolidated joint ventures	**(1,413)**	(16,140)
Other expense, net	**(18,279)**	(2,849)
Loss from continuing operations before income taxes	**(82,018)**	(217,303)
Benefit from income taxes	**(1,963)**	(79,642)
Loss from continuing operations	**(80,055)**	(137,661)
Loss from discontinued operations, net of tax	**(220)**	(575)
Net loss	**$ (80,275)**	$ (138,236)
Weighted average number of shares:		
Basic	**38,593**	38,539
Diluted	**38,593**	38,539
Earnings (loss) per share:		
Basic loss per share from continuing operations	**$ (2.08)**	$ (3.57)
Basic loss per share from discontinued operations	**$ —**	$ (0.02)
Basic loss per share	**$ (2.08)**	$ (3.59)
Diluted loss per share from continuing operations	**$ (2.08)**	$ (3.57)
Diluted loss per share from discontinued operations	**$ —**	$ (0.02)
Diluted loss per share	**$ (2.08)**	$ (3.59)

See Notes to Unaudited Condensed Consolidated Financial Statements.

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

	Three Months Ended December 31,	
	2008	2007
Cash flows from operating activities:		
Net loss	**$ (80,275)**	$ (138,236)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	**3,783**	6,058
Stock-based compensation expense	**3,015**	1,873
Inventory impairments and option contract abandonments	**12,709**	168,512
Goodwill impairment	**16,143**	—
Deferred income tax provision (benefit)	**144**	(43,929)
Excess tax benefit from equity-based compensation	**476**	388
Equity in loss of unconsolidated joint ventures	**1,413**	16,140
Cash distributions of income from unconsolidated joint ventures	**459**	882
Provision for doubtful accounts	**(2,099)**	1,977
Changes in operating assets and liabilities:		
Decrease (increase) in accounts receivable	**17,276**	(5,965)
Decrease (increase) in income tax receivable	**348**	(36,786)
Decrease in inventory	**31,573**	95,073
Decrease in other assets	**7,688**	9,511
Decrease in trade accounts payable	**(36,187)**	(19,314)
Decrease in other liabilities	**(88,340)**	(67,581)
Other changes	**(34)**	8
Net cash used in operating activities	**(111,908)**	(11,389)
Cash flows from investing activities:		
Capital expenditures	**(1,663)**	(4,194)
Investments in unconsolidated joint ventures	**(1,938)**	(4,979)
Changes in restricted cash	**(18,690)**	(90,816)
Net cash used in investing activities	**(22,291)**	(99,989)
Cash flows from financing activities:		
Repayment of other secured notes payable	**(192)**	(83,055)
Repayment of model home financing obligations	**(11,994)**	(1,829)
Debt issuance costs	**(604)**	(21,135)
Common stock redeemed	**(13)**	(12)
Excess tax benefit from equity-based compensation	**(476)**	(388)
Net cash used in financing activities	**(13,279)**	(106,419)
Decrease in cash and cash equivalents	**(147,478)**	(217,797)
Cash and cash equivalents at beginning of period	**584,334**	454,337
Cash and cash equivalents at end of period	**$ 436,856**	$ 236,540

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 accounting principles generally accepted in the United States of America for complete financial statements. In our opinion, all adjustments (consisting solely of normal recurring accruals) necessary for a fair presentation have been included in the accompanying financial statements. For further information and a discussion of our significant accounting policies other than as discussed below, refer to our audited consolidated financial statements appearing in the Beazer Homes’ Annual Report on Form 10-K for the fiscal year ended September 30, 2008 (the “2008 Annual Report”). Effective February 1, 2008, we exited the mortgage origination business. Results from our mortgage origination business are reported as discontinued operations in the accompanying unaudited condensed consolidated statements of operations for all periods presented. In addition, our historical segment information has been recast to reflect the change in reportable segments which occurred during the fourth quarter of fiscal 2008 (see Note 11).

Inventory Valuation — Held for Development. Our homebuilding inventories that are accounted for as held for development include land and home construction assets grouped together as communities. Land held for future development is stated at cost. 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*. 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. 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. 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 quarter ended December 31, 2008, we used discount rates of 17.0% to 21.3% in our estimated discounted cash flow impairment calculations. During the three months ended December 31, 2008 and 2007, we recorded impairments of our inventory of $12.0 million and $108.1 million, respectively, for land under development and homes under construction.

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

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

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

Additionally, in certain circumstances, management will re-evaluate the best use of an asset that is currently being accounted for as held for development. In such instances, management will review, among other things, the current and projected competitive 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 months ended December 31, 2008 and 2007, we recorded inventory impairments on land held for sale of approximately $0.3 million and $33.4 million, respectively.

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, have 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 will finalize our impairment calculations in the second quarter of fiscal 2009. Based on fiscal 2008 impairment tests, we determined that goodwill for certain of our reporting units was impaired and recorded impairment charges during the second and third quarter of fiscal 2008 in accordance with SFAS 142, *Goodwill and Intangible Assets*. No impairment of goodwill was recorded during the quarter ended December 31, 2007.

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 December 31, 2008 were as follows.

(in thousands)	September 30, 2007	Fiscal 2008 Impairments	September 30, 2008	**Fiscal 2009 Impairments**	**December 31, 2008**
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 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 December 31, 2008 and September 30, 2008, there was $11.9 million and $13.5 million, respectively, of total unrecognized compensation cost related to nonvested stock. The cost remaining at December 31, 2008 is expected to be recognized over a weighted average period of 3.1 years. For the three months ended December 31, 2008, and 2007 our total stock-based compensation expense, included in selling, general and administrative expenses (“SG&A”), was approximately $3.0 million ($2.1 million net of tax) and $1.9 million ($1.4 million net of tax), respectively.

Activity relating to nonvested stock awards for the three months ended December 31, 2008 is as follows:

	Three Months Ended December 31, 2008	
	Shares	Weighted Average Grant Date Fair Value
Beginning of period	782,866	$46.80
Granted	—	—
Vested	—	—
Forfeited	(4,411)	40.40
End of period	778,455	$46.83

In addition, during the three months ended December 31, 2008, employees surrendered 7,169 shares, to us in payment of minimum tax obligations upon the vesting of nonvested stock under our stock incentive plans. We valued the stock at the market price on the date of surrender, for an aggregate value of approximately $13,000.

The fair value of each option/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 the Beazer Homes' stock and other factors. Since we are currently not paying dividends, the expected dividend yield is $0.00. There were no options or SSAR grants in the three months ended December 31, 2008 or 2007. The following table summarizes stock options and SSARs outstanding as of December 31, 2008, as well as activity during the three months then ended:

	Three Months Ended December 31, 2008	
	Shares	Weighted-Average Exercise Price
Outstanding at beginning of period	1,848,995	$ 45.78
Granted	—	—
Exercised	—	—
Expired	(4,330)	41.78
Forfeited	(7,508)	46.66
Outstanding at end of period	1,837,157	$ 45.78
Exercisable at end of period	833,228	$ 34.46
Vested or expected to vest in the future	1,565,259	$ 43.73

At December 31, 2008, the weighted-average remaining contractual life for all options/SSARs outstanding, currently exercisable, and vested or expected to vest in the future was 3.93 years, 3.13 years and 3.83 years, respectively.

At December 31, 2008, 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 $1.58 as of December 31, 2008. 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 months ended December 31, 2008.

On August 5, 2008, at the Company's annual meeting of stockholders, the stockholders voted to approve amendments to the 1999 Plan to authorize a stock option/SSAR exchange program for eligible employees other than executive officers and directors. The Compensation Committee of the Board of Directors has the authority to determine whether and when to initiate the exchange program. As of December 31, 2008, stock options/SSARs to purchase 399,495 shares of the Company's common stock with exercise prices ranging from $26.51 to $62.02 per share were eligible to be exchanged for newly issued restricted shares of common stock under the exchange program. The exchange program has not yet been implemented and may not be implemented later than August 5, 2009.

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

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

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

In December 2007, the FASB issued SFAS 160, *Noncontrolling Interests in Consolidated Financial Statements — an Amendment of ARB 51*. SFAS 160 requires that a noncontrolling interest (formerly 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.

(2) Supplemental Cash Flow Information

During the three months ended December 31, 2008 and 2007, we paid interest of $48.0 million and $57.3 million, respectively. In addition, we paid income taxes of $217,000 and $140,000 for the three months ended December 31, 2008 and 2007, respectively. Subsequent to December 31, 2008, we received tax refunds totaling approximately $168 million. We also had the following non-cash activity (in thousands):

	Three Months Ended December 31,	
	2008	2007
Supplemental disclosure of non-cash activity:		
Decrease in consolidated inventory not owned	**$22,475**	$ 40,298
Land acquired through issuance of notes payable	**981**	9,506
Issuance of stock under deferred bonus stock plans	**1,040**	94
Decrease in retained earnings from FIN 48 adoption	—	(10,112)

(3) Investments in Unconsolidated Joint Ventures

As of December 31, 2008, we participated in 19 land development joint ventures in which Beazer Homes had less than a controlling interest. Equity in loss of unconsolidated joint ventures was $1.4 million and $16.1 million for the three months ended December 31, 2008 and 2007, respectively. Equity in loss of unconsolidated joint ventures for three months ended December 31, 2008 and 2007 included the writedown of our investment in certain of our joint ventures, reflecting $1.3 million and $12.8 million, respectively, of impairments of inventory held within those ventures in accordance with APB 18, *The Equity Method of Accounting for Investments in Common Stock*. 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 of our unconsolidated joint ventures. At December 31, 2008, these guarantees included, for certain joint ventures, construction completion guarantees, loan-to-value maintenance agreements, repayment guarantees and environmental indemnities. See Note 9 for further discussion of these guarantees. The following table presents our investment in our unconsolidated joint ventures, the total equity and outstanding borrowings of these joint ventures and our guarantees of the borrowings under our unconsolidated joint ventures, as of December 31, 2008 and September 30, 2008:

(in thousands)	December 31, 2008	September 30, 2008
Beazer’s investment in joint ventures	**$ 33,340**	$ 33,065
Total equity of joint ventures	**341,712**	340,674
Total outstanding borrowings of joint ventures	**525,382**	524,431
Beazer’s portion of loan to maintenance guarantees	**5,708**	5,839
Beazer’s portion of repayment guarantees	**39,255**	39,166

At December 31, 2008 and September 30, 2008, total borrowings outstanding above, include $327.9 million related to one joint venture in which we are a 2.58% partner. During fiscal 2008, the lender to this joint venture 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 (including our subsidiary Beazer Homes Holdings Corp.) are currently in discussions with the lender. Recently, the lender has filed individual lawsuits against some of the joint venture partners and certain of those partners’ parent companies (including the Company), seeking to recover damages under completion guarantees, among other claims. We intend to vigorously defend against this legal action. The Company’s share of the debt is approximately $9.6 million at December 31, 2008; however, due to the terms of the agreement, our total maximum repayment guarantee is $15.1 million, which is only triggered in the event of bankruptcy. Our equity interest at December 31, 2008 was $8.3 million in this joint venture.

As of December 31, 2008, the debt related to two of our other unconsolidated joint ventures has matured. Total borrowings outstanding related to these two joint ventures, in each of which we are a 50% partner, was $33.2 million. These joint ventures have received notice from the lender demanding payment in full. The Company and its joint venture partners are currently in discussions with the lenders under these various debt agreements. Both of these loans have repayment guarantees that are triggered in the event of bankruptcy. Our share related to these two repayment guarantees would be $16.6 million. See Note 9 for further discussion of repayment guarantees related to our unconsolidated joint ventures.

In addition, several of our other joint ventures were in default under their debt agreements as of December 31, 2008 or were at risk of defaulting. 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.

(4) Inventory

(in thousands)	December 31, 2008	September 30, 2008
Homes under construction	**$ 295,909**	$ 338,971
Development projects in progress	**622,118**	618,252
Land held for future development	**418,437**	407,320
Land held for sale	**82,966**	85,736
Model homes	**91,709**	94,727
Total owned inventory	**$ 1,511,139**	$ 1,545,006

Homes under construction includes homes finished and ready for delivery and homes in various stages of construction. We had 503 ($103.0 million) and 408 ($76.2 million) completed homes that were not subject to a sales contract at December 31, 2008 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 December 31, 2008 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):

	December 31, 2008				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	$ 341,466	$347,025	$25,116	$ 713,607	$ 348,475	$341,784	$26,515	$ 716,774
East Segment	389,590	47,683	3,722	440,995	394,643	44,387	3,642	442,672
Southeast Segment	169,753	23,729	13,596	207,078	165,231	21,149	14,841	201,221
Other	4,760	—	40,532	45,292	15,302	—	40,738	56,040
Unallocated	104,167	—	—	104,167	128,299	—	—	128,299
Total	$1,009,736	$418,437	$82,966	$1,511,139	$1,051,950	$407,320	$85,736	$1,545,006

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

	Quarter Ended December 31, 2008	2007
Development projects and homes in process (Held for Development)		
West	**$ 7,833**	$ 59,352
East	**2,903**	22,956
Southeast	**97**	9,437
Other	**44**	8,437
Unallocated	**1,110**	7,889
Subtotal	**$11,987**	$108,071
Land Held for Sale		
West	**$ 161**	$ —
East	**—**	—
Southeast	**15**	10,769
Other	**81**	22,671
Subtotal	**$ 257**	$ 33,440
Lot Option Abandonments		
West	**$ 12**	$ 45
East	**210**	2,098
Southeast	**49**	12,089
Other	**194**	12,769
Subtotal	**$ 465**	$ 27,001
Total	**$12,709**	$168,512

The inventory impaired during the three months ended December 31, 2008 represented 339 lots in 6 communities with an estimated fair value of $23.3 million compared to 2,886 lots in 62 communities with an estimated fair value of $186.5 million for the three months ended December 31, 2007. The impairments recorded on our held for development inventory, for all segments, primarily resulted from the continued decline in the homebuilding environment. Our fiscal 2009 first quarter inventory impairment assessment assumed that the significant decline in new home orders experienced during the quarter ended December 31, 2008 resulted from the unprecedented macro-economic events including the failure and near failure of several financial institutions. These events resulted in temporary, but significant curtailment of consumer and business credit activities. In addition, we assumed that increased sales incentives and/or home sale price reductions would not produce meaningful improvement in the pace of new home orders in light of this curtailed credit environment. In future periods, we may again determine that it is 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, it is reasonably possible that a future change in sales prices and absorption estimates could lead to additional impairments.

During the three months ended December 31, 2007, 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 $45.4 million at December 31, 2008. This amount includes non-refundable letters of credit of approximately $6.3 million. The total remaining purchase price, net of cash deposits, committed under all options was $437.9 million as of December 31, 2008. Only $33.2 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 months ended December 31, 2008 and 2007 of $0.5 million and $27.0 million, respectively. Southeast and Other Homebuilding segments represented 44.8% and 47.3% of the three-month fiscal 2008 abandonments, respectively, as we made the decision to abandon certain option contracts that no longer fit in our long-term strategic plan and related to our decision to exit our Ohio and Charlotte, North Carolina markets.

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

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

We have determined that we are the primary beneficiary of certain of these option contracts. Our risk is generally limited to the option deposits that we pay, and creditors of the sellers generally have no recourse to the general credit of the Company. Although we do not have legal title to the optioned land, for those option contracts for which we are the primary beneficiary, we are required to consolidate the land under option at fair value. We believe that the exercise prices of our option contracts approximate their fair value. Our consolidated balance sheets at December 31, 2008 and September 30, 2008 reflect consolidated inventory not owned of $75.8 million and $106.7 million, respectively. We consolidated $37.7 million and $46.9 million of lot option agreements as consolidated inventory not owned pursuant to FIN 46R as of December 31, 2008 and September 30, 2008, respectively. In addition, as of December 31, 2008 and September 30, 2008, we recorded $38.1 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 $48.1 million at December 31, 2008 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 December 31, 2008	Three Months Ended December 31, 2007
Capitalized interest in inventory, beginning of period	**$ 45,977**	$ 87,560
Interest incurred	**33,921**	29,104
Capitalized interest impaired	**(537)**	(4,952)
Interest expense not qualified for capitalization and included as other expense	**(21,237)**	—
Capitalized interest amortized to house construction and land sales expenses	**(12,693)**	(24,850)
Capitalized interest in inventory, end of period	**$ 45,431**	$ 86,862

(6) Earnings Per Share

In computing diluted loss per share for the three months ended December 31, 2008 and December 31, 2007, 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 December 31, 2008 and September 30, 2008 we had the following long-term debt *(in thousands)*:

	Maturity Date	December 31, 2008	September 30, 2008
Secured Revolving Credit Facility	July 2011	**$ —**	$ —
8 5/8% Senior Notes*	May 2011	**180,000**	180,000
8 3/8% Senior Notes*	April 2012	**340,000**	340,000
6 1/2% Senior Notes*	November 2013	**200,000**	200,000
6 7/8% Senior Notes*	July 2015	**350,000**	350,000
8 1/8% Senior Notes*	June 2016	**275,000**	275,000
4 5/8% Convertible Senior Notes*	June 2024	**180,000**	180,000
Junior subordinated notes	July 2036	**103,093**	103,093
Other secured notes payable	Various Dates	**51,406**	50,618
Model home financing obligations	Various Dates	**59,238**	71,231
Unamortized debt discounts		**(2,448)**	(2,565)
Total		**$ 1,736,289**	$ 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 is subject to further reductions to $250 million and $100 million if our consolidated tangible net worth (defined in the agreement as stockholders' equity less intangible assets as defined) falls below $350 million and $250 million, respectively. As of September 30, 2008, our consolidated tangible net worth was $314.4 million. As a result, the facility size was reduced to $250 million. Further, the facility size is subject to reduction to $200 million if our interest coverage ratio for the quarter ending June 30, 2010 is less than 1.0x.

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

There were no amounts outstanding under the Secured Revolving Credit Facility at December 31, 2008 or September 30, 2008; however, we had $56.0 million and $61.2 million of letters of credit outstanding under the Secured Revolving Credit Facility at December 31, 2008 and September 30, 2008, respectively.

Availability under the facility continues to be subject to satisfaction of a secured borrowing base. The amendment provided that the book value of the assets securing the facility must exceed 3.0x the outstanding loans and letters of credit. Such coverage level increases to 4.5x and 6.0x to the extent the facility size is reduced to $250 million or $100 million, respectively. As a result of the increase in collateral coverage to 4.5x during the first quarter of fiscal 2009, we were required to provide a total of $18.8 million in cash to fully collateralize our outstanding letters of credit which is included in restricted cash on the unaudited condensed consolidated balance sheet as of December 31, 2008. Subsequent to the filing of this Form 10-Q, we will be required to provide an additional $1.7 million in cash to fully collateralize our outstanding letters of credit. We intend to add approximately $250 million of additional real estate assets to the borrowing base over the next twelve months, which is anticipated to provide up to $35 million in additional borrowing base availability after providing for the return of the restricted cash. Assets in the borrowing base, and therefore any future availability are subject to required appraisals and other bank review procedures. The availability under our facility is not impacted by any actions of the respective credit rating agencies. The value of the real estate assets securing our borrowing base could decline should the downturn in our industry worsen. Any reduction in value could result in a reduction in available borrowing capacity under the Secured Revolving Credit Facility.

The interest margins under the Secured Revolving Credit Facility were increased and are now based on the facility size. Following the aforementioned amendment, the Eurodollar Margin under the facility was set at 4.5%. To the extent the facility size is reduced to $250 million or $100 million, the Eurodollar Margin will increase to 5.0% and 5.5%, respectively. As a result of the reduction in facility size to $250 million, the current Eurodollar Margin is now 5.0%.

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

Financial Covenant	Covenant Requirement	Actual
Consolidated Tangible Net Worth	> $100 million	$255 million
Minimum Liquidity	> $120 million of unrestricted cash and borrowing base availability OR Adjusted Coverage Ratio > 1.75x	$437 million of unrestricted cash and borrowing base availability and Adjusted Coverage Ratio of 2.67x

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

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

The indentures under which the Senior Notes were issued contain certain restrictive covenants, including limitations on payment of dividends. At December 31, 2008, 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. If triggered and fully subscribed, this could result in our having to purchase $134.5 million of notes, based on amounts outstanding at December 31, 2008.

In June 2004, we issued $180 million aggregate principal amount of 4 5/8% Convertible Senior Notes due 2024 (the "Convertible Senior Notes"). 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. The recording of such fees and expenses has been deferred and will be amortized as an adjustment to interest expense in accordance with EITF 96-19 — *Debtor's Accounting for a Modification or Exchange of Debt Instruments*.

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

Other Secured Notes Payable — We periodically acquire land through the issuance of notes payable. As of December 31, 2008 and September 30, 2008, we had outstanding notes payable of $51.4 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 5.6% to 9.0% at December 31, 2008. These notes are secured by the real estate to which they relate. During the first three months of fiscal 2009, we repaid $0.2 million of these secured notes payable.

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 $39.2 million at December 31, 2008. 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 $59.2 million and $71.2 million of debt as of December 31, 2008 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, 4.94% as of December 31, 2008, and expire at various times through 2015.

(8) Income Taxes

We determined, in accordance with SFAS 109, *Accounting for Income Taxes*, and based on an analysis of the positive and negative evidence, that it was not more likely than not that substantially all of our deferred tax assets will be realized. As a result, during fiscal 2008, we established a valuation allowance of $400.3 million for substantially all of our deferred tax assets. During the first quarter of fiscal 2009, we determined that an additional valuation allowance of $23.1 million was warranted. As of December 31, 2008, our deferred tax valuation allowance was $423.7 million. We have not changed our assessment regarding the recoverability of our deferred tax assets for the quarter ended December 31, 2008. Our tax benefit of $2.0 million for the three months ended December 31, 2008, resulted from the reduction in our liabilities for unrecognized tax benefits related to effectively settling a state examination and the expiration of certain statutes of limitations, offset by interest expense on our remaining liabilities for unrecognized tax benefits.

We will continue to assess the need for additional valuation allowances in the future. Our estimates of the recoverability of deferred tax assets are dependent upon future taxable income which requires significant judgment because the residential homebuilding industry is cyclical and is highly sensitive to changes in economic conditions. Due to uncertainties in the estimation process, particularly with respect to changes in facts and circumstances in future reporting periods (carryforward period assumptions), it is reasonably possible that we may be required to record additional valuation allowances on deferred tax assets and that such amounts could be material.

During the three months ended December 31, 2008, there have been no material changes to the components of the Company's total unrecognized tax benefit that, if recognized, would affect the Company's effective tax rate. It is reasonably possible that, within the next 12 months, total unrecognized tax benefits may decrease as a result of the potential resolution with the IRS relating to issues stemming from fiscal year 2003 through 2006 federal income tax returns, in addition to the resolution of various state income tax audits and/or appeals. The change that could occur within the next 12 months, however, cannot be estimated at this time. The statute of limitations for the Company's major tax jurisdictions remains open for examination for fiscal years 2003 through 2007.

We recognize accrued interest and penalties related to unrecognized tax benefits in the financial statements as a component of the income tax provision, consistent with our historical accounting policy. Our liability for unrecognized tax benefits combined with accrued interest and penalties is reflected as a component of other liabilities. The total amount of gross accrued interest and penalties was $13.5 million at December 31, 2008 and $12.8 million at September 30, 2008. Unrecognized tax benefits accrued was $55.4 million and $57.9 million as of December 31, 2008 and September 30, 2008, respectively.

Our income tax receivable was $173.2 million and $173.5 million as of December 31, 2008 and September 30, 2008, respectively. This receivable relates primarily to the carryback of losses incurred in fiscal 2008 and 2007 to open tax years in which we previously paid significant income taxes. We received approximately $168 million of this receivable subsequent to December 31, 2008.

We are currently under examination by the Internal Revenue Service ("IRS") for fiscal 2003 through fiscal 2006. We are also subject to various income tax examinations in the states in which we do business. During fiscal 2008, we completed a number of state examinations without any material effect on our fiscal 2008 net loss.

(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.

Our warranty reserves at December 31, 2008 and 2007 include accruals for Trinity Homes LLC ("Trinity") moisture intrusion issues discussed more fully below. Warranty reserves are included in other liabilities and the provision for warranty accruals is included in home construction and land sales expenses in the unaudited condensed consolidated financial statements. We record reserves covering anticipated warranty expense for each home closed. Management reviews the adequacy of warranty reserves each reporting period based on historical experience and management's estimate of the costs to remediate the claims and adjusts these provisions accordingly. Our review includes a quarterly analysis of the historical data and trends in warranty expense by operating segment. An analysis by operating segment allows us to consider market specific factors such as our warranty experience, the number of home closings, the prices of homes, product mix and other data in estimating our warranty reserves. In addition, our analysis also contemplates the existence of any non-recurring or community-specific warranty related matters that might not be contemplated in our historical data and trends. As a result of our analyses, we adjust our estimated warranty liabilities. While we believe that our warranty reserves are adequate as of December 31, 2008, historical data and trends may not accurately predict actual warranty costs, or future developments could lead to a significant change in the reserve. Our warranty reserves, which include amounts related to the Trinity moisture intrusion issues discussed below, are as follows (in thousands):

	Three Months Ended December 31,	
	2008	2007
Balance at beginning of period	**$40,822**	$57,053
Provisions	**248**	1,408
Payments	**(4,182)**	(9,505)
Balance at end of period	**$36,888**	$48,956

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

As of December 31, 2008, there were four pending lawsuits related to such complaints received by Trinity, including the 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 December 31, 2008, we have completed remediation of 1,861 homes related to 1,876 total Trinity claims.

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

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

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

The following accruals at December 31, 2008 represent our best estimates of the costs to resolve remaining claims associated with Trinity moisture intrusion issues. Changes in the accrual for Trinity moisture intrusion issues during the period were as follows (in thousands):

	Three Months Ended December 31,	
	2008	2007
Balance at beginning of period	**$ 2,759**	$ 12,116
Reductions	**(243)**	(612)
Payments	**(794)**	(3,043)
Balance at end of period	**$ 1,722**	$ 8,461

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

Guarantees

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 would be 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. Although generally there are not specific limits on the amount of funds we may be required to expend to perform on a construction completion guarantee, the practical limitation is the amount of the corresponding outstanding loan.

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 (although not generally requiring 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. During the three months ended December 31, 2008 and 2007, we were not required to make any payments on the loan to value maintenance guarantees. At December 31, 2008 and September 30, 2008 respectively, we had total loan to value maintenance guarantees of $5.7 million and $5.8 million related to our unconsolidated joint venture borrowings. We also have a loan to value maintenance agreement with one unconsolidated joint venture that also has a specific performance guarantee and a repayment guarantee. As of December 31, 2008, we believe that it is unlikely that this loan to value maintenance guarantee will be triggered. 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 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.

Repayment Guarantees

We and our joint venture partners have repayment guarantees related to certain joint ventures' borrowings. These repayment guarantees require the repayment of all or a portion of the debt of the unconsolidated joint venture in the event the joint venture defaults on its obligations under the borrowing or files for bankruptcy. During the three months ended December 31, 2008, we were not required to make payments related to any portion of the repayment guarantees. At December 31, 2008 and September 30, 2008 respectively, we had repayment guarantees of $39.3 million and $39.2 million related to the borrowings on these applicable unconsolidated joint ventures, some of which are only triggered upon bankruptcy of the joint venture. Two of these repayment guarantees (which are both only triggered upon a bankruptcy) are joint and several with our partners. In those cases, we 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 aggregate amount of the loans underlying these two repayment guarantees at December 31, 2008 was $33.2 million, of which our share of $16.6 million is included in the $39.3 million amount set forth above.

Environmental Indemnities

Additionally, we and our joint venture partners generally provide unsecured environmental indemnities to joint venture project lenders. In each case, we have performed due diligence on potential environmental risks. These indemnities obligate us to reimburse the project lenders for claims related to environmental matters for which they are held responsible. During the quarters ended December 31, 2008 and 2007, we were not required to make any payments related to environmental indemnities.

Several of our joint ventures are in default under their debt agreements at December 31, 2008 or are at risk of defaulting. We and our joint venture partners are currently in discussions with the lenders under these various debt agreements. See Note 3. We have guarantees of the types described above 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.

In general, we have not recorded a liability for the non-contingent aspect of any of these guarantees. 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. To date, we have not incurred any obligations related to the aforementioned guarantees. Based on these considerations, we have determined that it is reasonably possible that we will have to perform under the contingent aspects of certain of these guarantees. We have not recorded a liability for the contingent aspects of these guarantees as such guarantees are 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.

Investigations

United States Attorney, State and Federal Agency Investigations. Beazer Homes and its subsidiary, Beazer Mortgage Corporation ("Beazer Mortgage"), are under criminal and civil investigations by the United States Attorney's Office in the Western District of North Carolina 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 is fully cooperating with these investigations.

Independent Investigation. The Audit Committee of the Beazer Homes Board of Directors has completed the Investigation of Beazer Homes' mortgage origination business, including, among other things, investigating certain evidence that the Company's subsidiary, Beazer Mortgage, violated U.S. Department of Housing and Urban Development ("HUD") regulations and may have violated certain other laws and regulations in connection with certain of its mortgage origination activities. The Investigation also found evidence that employees of the Company's Beazer Mortgage subsidiary violated certain federal and/or state regulations, including HUD regulations. Areas of concern uncovered by the Investigation included our former practices in the areas of: down payment assistance program; the charging of discount points; the closure of certain HUD Licenses; closing accommodations; and the payment of a number of realtor bonuses and decorator allowances in certain Federal Housing Administration ("FHA") insured loans and non-FHA conventional loans originated by Beazer Mortgage dating back to at least 2000. The Investigation also uncovered limited improper practices in relation to the issuance of a number of non-FHA Stated Income Loans. We reviewed the loan documents and supporting documentation and determined that the assets were effectively isolated from the seller and its creditors (even in the event of bankruptcy). Based on that information, management continues to believe that sale accounting at the time of the transfer of the loans to third parties was appropriate. We intend to attempt to negotiate a settlement with prosecutors and regulatory authorities that would allow us to quantify our exposure associated with reimbursement of losses and payment of regulatory and/or criminal fines, if they are imposed. At this time, we believe that although it is probable that a liability exists related to this exposure, it is not reasonably estimable and would be inappropriate to record a liability as of December 31, 2008. 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 is expected to be completed in March 2009. The Company intends to vigorously defend against these actions. Given the inherent uncertainties in this litigation, as of December 31, 2008, no accrual has been recorded, as losses, if any, related to this matter are not both probable and reasonably estimable.

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 is expected to be completed in February 2009. The defendants intend to vigorously defend against these actions. Given the inherent uncertainties in this litigation, as of December 31, 2008, 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 December 31, 2008, 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 December 31, 2008, 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 December 31, 2008, 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 on January 9, 2009. The Company intends to vigorously defend against the action. Given the inherent uncertainties in this litigation, as of December 31, 2008, no accrual has been recorded, as losses, if any, related to this matter are not both probable and reasonably estimable.

We cannot predict or determine the timing or final outcome of the governmental investigations or the lawsuits or the effect that any adverse findings in the investigations or adverse determinations in the 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 matters. While we are cooperating with the governmental investigations, developments, including the expansion of the scope of the investigations, could negatively impact us, could divert the efforts and attention of our management team from the operation of our business, and/or result in further departures of executives or other employees. An unfavorable determination resulting from any governmental investigation could result in the filing of criminal charges, payment of substantial criminal or civil fines, 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 lawsuits could result in the payment by us of substantial monetary damages which may not be fully covered by insurance. Further, the legal costs associated with the investigations and the lawsuits and the amount of time required to be spent by management and the Board of Directors on these matters, even if we are ultimately successful, could have a material adverse effect on our business, financial condition and results of operations.

Other Matters

In November 2003, Beazer Homes received a request for information from the EPA pursuant to Section 308 of the Clean Water Act seeking information concerning the nature and extent of storm water discharge practices relating to certain of our projects completed or under construction. The EPA has since requested information on additional projects and has conducted site inspections at a number of locations. In certain instances, the EPA or the equivalent state agency has issued Administrative Orders identifying alleged instances of noncompliance and requiring corrective action to address the alleged deficiencies in storm water management practices. As of December 31, 2008, no monetary penalties had been imposed in connection with such Administrative Orders. The EPA has reserved the right to impose monetary penalties at a later date, the amount of which, if any, cannot currently be estimated. Beazer Homes has taken action to comply with the requirements of each of the Administrative Orders and is working to otherwise maintain compliance with the requirements of the Clean Water Act.

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

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

We have accrued $17.9 million in other liabilities related to these matters as of December 31, 2008 and September 30, 2008.

Recently, the lender of one of our unconsolidated joint ventures has filed individual lawsuits against some of the joint venture partners and certain of those partners' parent companies (including the Company), seeking to recover damages under completion guarantees, among other claims. We intend to vigorously defend against this legal action. We are a 2.58% partner in this joint venture (see Note 3 for additional information). In addition, an estimate of possible loss or range of loss if any, cannot presently be made with respect to the above matter. Given the inherent uncertainties in this litigation, as of December 31, 2008, 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 $334.9 million and $56.1 million, respectively, at December 31, 2008 related principally to our obligations to local governments to construct roads and other improvements in various developments. Total outstanding letters of credit includes approximately $6.8 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 December 31, 2008 or 2007. At December 31, 2008, 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 Form 10-K. The following information is in thousands:

	Three Months Ended December 31, 2008	Three Months Ended December 31, 2007
Revenue		
West	**$ 103,417**	$ 153,594
East	**73,191**	172,847
Southeast	**41,073**	107,778
Other homebuilding	**14,195**	65,133
Financial Services	**488**	1,302
Consolidated total	**$ 232,364**	$ 500,654

	Three Months Ended December 31, 2008	Three Months Ended December 31, 2007
Operating (loss) income		
West	**$ (6,246)**	$ (50,751)
East	**(3,424)**	(22,001)
Southeast	**(1,945)**	(27,521)
Other homebuilding	**(866)**	(44,617)
Financial Services	**(12)**	620
Segment total	**(12,493)**	(144,270)
Corporate and unallocated (a)	**(49,833)**	(54,044)
Total operating loss	**(62,326)**	(198,314)
Equity in loss of unconsolidated joint ventures	**(1,413)**	(16,140)
Other expense, net	**(18,279)**	(2,849)
Loss from continuing operations before income taxes	**$ (82,018)**	$ (217,303)

	Three Months Ended December 31, 2008	Three Months Ended December 31, 2007
Depreciation and amortization		
West	**$ 1,515**	$ 1,670
East	**763**	1,748
Southeast	**316**	1,005
Other homebuilding	**145**	661
Financial Services	**8**	7
Segment total	**2,747**	5,091
Corporate and unallocated (a)	**1,036**	887
Consolidated total	**$ 3,783**	$ 5,978

	December 31, 2008	September 30, 2008
Assets (b)		
West	**$ 748,798**	$ 779,863
East	**496,327**	507,412
Southeast	**225,930**	225,125
Other homebuilding	**48,924**	64,123
Financial Services	**35,497**	38,156
Corporate and unallocated (c)	**852,219**	1,024,681
Discontinued operations	**130**	2,439
Consolidated total	**$ 2,407,825**	$ 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 months ended December 31, 2008, corporate and unallocated also includes $16.1 million of goodwill impairments and $2.2 million of investigation-related costs. For the three months ended December 31, 2007, corporate and unallocated includes $7.0 million of investigation-related costs.

(b) Segment assets as of September 30, 2008 include goodwill assigned from prior acquisitions. See Note 1 for goodwill by segment as of December 31, 2008 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
December 31, 2008
(in thousands)

	Beazer Homes USA, Inc.	Guarantor Subsidiaries	Non-Guarantor Subsidiaries	Consolidating Adjustments	Consolidated Beazer Homes USA, Inc.
ASSETS					
Cash and cash equivalents	$ 440,199	$ 1,509	$ 506	$ (5,358)	$ 436,856
Restricted cash	18,782	205	—	—	18,987
Accounts receivable (net of allowance of $6,816)	—	31,487	58	—	31,545
Income tax receivable	173,152	—	—	—	173,152
Owned inventory	—	1,511,139	—	—	1,511,139
Consolidated inventory not owned	—	75,759	—	—	75,759
Investments in unconsolidated joint ventures	3,093	30,247	—	—	33,340
Deferred tax assets, net	20,072	—	—	—	20,072
Property, plant and equipment, net	—	37,853	—	—	37,853
Investments in subsidiaries	393,691	—	—	(393,691)	—
Intercompany	991,908	(1,000,398)	3,132	5,358	—
Other assets	34,548	28,116	6,458	—	69,122
Total assets	$2,075,445	$ 715,917	$10,154	$(393,691)	$2,407,825
LIABILITIES AND STOCKHOLDERS' EQUITY					
Trade accounts payable	$ —	$ 54,184	$ —	$ —	$ 54,184
Other liabilities	91,214	173,412	6,451	—	271,077
Intercompany	1,206	—	(1,206)	—	—
Obligations related to consolidated inventory not owned	—	48,133	—	—	48,133
Senior notes (net of discounts of $2,448)	1,522,552	—	—	—	1,522,552
Junior subordinated notes	103,093	—	—	—	103,093
Other notes payable	—	51,406	—	—	51,406
Model home financing obligations	59,238	—	—	—	59,238
Total liabilities	1,777,303	327,135	5,245	—	2,109,683
Stockholders' equity	298,142	388,782	4,909	(393,691)	298,142
Total liabilities and stockholders' equity	$2,075,445	$ 715,917	$10,154	$(393,691)	$2,407,825

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 December 31, 2008					
Total revenue	$ —	$ 232,134	$230	$ —	$ 232,364
Home construction and land sales expenses	12,693	193,153	—	—	205,846
Inventory impairments and option contract abandonments	537	12,172	—	—	12,709
Gross (loss) profit	(13,230)	26,809	230	—	13,809
Selling, general and administrative expenses	—	56,149	60	—	56,209
Depreciation and amortization		3,783			3,783
Goodwill impairment	—	16,143	—	—	16,143
Operating (loss) income	(13,230)	(49,266)	170	—	(62,326)
Equity in (loss) of unconsolidated joint ventures	—	(1,413)	—	—	(1,413)
Other (expense) income, net	(21,237)	2,952	6	—	(18,279)
(Loss) income before income taxes	(34,467)	(47,727)	176	—	(82,018)
(Benefit from) provision for income taxes	(12,556)	10,522	71	—	(1,963)
Equity in loss of subsidiaries	(58,144)	—	—	58,144	—
Net (loss) income from continuing operations	(80,055)	(58,249)	105	58,144	(80,055)
Net loss from discontinued operations	—	(220)	—	—	(220)
Equity in loss of subsidiaries	(220)	—	—	220	—
Net (loss) income	$ (80,275)	$ (58,469)	$105	$ 58,364	$ (80,275)
Three Months Ended December 31, 2007					
Total revenue	$ —	$ 500,450	$204	$ —	$ 500,654
Home construction and land sales expenses	24,850	411,466	—	—	436,316
Inventory impairments and option contract abandonments	4,952	163,560	—	—	168,512
Gross (loss) profit	(29,802)	(74,576)	204	—	(104,174)
Selling, general and administrative expenses	—	88,114	48	—	88,162
Depreciation and amortization	—	5,978	—	—	5,978
Operating (loss) income	(29,802)	(168,668)	156	—	(198,314)
Equity in (loss) of unconsolidated joint ventures	—	(16,140)	—	—	(16,140)
Other (expense) income, net	(6,510)	3,617	44	—	(2,849)
(Loss) income before income taxes	(36,312)	(181,191)	200	—	(217,303)
(Benefit from) provision for income taxes	(13,592)	(66,124)	74	—	(79,642)
Equity in loss of subsidiaries	(114,941)	—	—	114,941	—
Net (loss) income from continuing operations	(137,661)	(115,067)	126	114,941	(137,661)
Net loss from discontinued operations	—	(575)	—	—	(575)
Equity in loss of subsidiaries	(575)	—	—	575	—
Net (loss) income	$(138,236)	$(115,642)	$126	$115,516	$(138,236)

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 three months ended December 31, 2008					
Net cash used in operating activities	$ (35,252)	$ (77,126)	$ 470	$ —	$(111,908)
Cash flows from investing activities:					
Capital expenditures	—	(1,663)	—	—	(1,663)
Investments in unconsolidated joint ventures	—	(1,938)	—	—	(1,938)
Changes in restricted cash	(18,782)	92	—	—	(18,690)
Net cash used in investing activities	(18,782)	(3,509)	—	—	(22,291)
Cash flows from financing activities:					
Repayment of other secured notes payable	—	(192)	—	—	(192)
Repayment of model home financing obligations	(11,994)	—	—	—	(11,994)
Debt issuance costs	(604)	—	—	—	(604)
Common stock redeemed	(13)	—	—	—	(13)
Tax benefit from stock transactions	(476)	—	—	—	(476)
Advances to/from subsidiaries	(68,536)	67,530	31	975	—
Net cash (used in) provided by financing activities	(81,623)	67,338	31	975	(13,279)
(Decrease) increase in cash and cash equivalents	(135,657)	(13,297)	501	975	(147,478)
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	$ 440,199	$ 1,509	$ 506	$ (5,358)	$ 436,856
For the three months ended December 31, 2007					
Net cash (used in) provided by operating activities	$ (39,102)	$ 27,972	$ (259)	$ —	$ (11,389)
Cash flows from investing activities:					
Capital expenditures	—	(4,194)	—	—	(4,194)
Investments in unconsolidated joint ventures	—	(4,979)	—	—	(4,979)
Changes in restricted cash	—	(90,816)	—	—	(90,816)
Net cash used in investing activities	—	(99,989)	—	—	(99,989)
Cash flows from financing activities:					
Repayment of other secured notes payable	—	(83,055)	—	—	(83,055)
Repayment of model home financing obligations	(1,829)	—	—	—	(1,829)
Debt issuance costs	(21,135)	—	—	—	(21,135)
Common stock redeemed	(12)	—	—	—	(12)
Tax benefit from stock transactions	(388)	—	—	—	(388)
Advances to/from subsidiaries	(31,637)	145,457	(528)	(113,292)	—
Net cash (used in) provided by financing activities	(55,001)	62,402	(528)	(113,292)	(106,419)
Decrease in cash and cash equivalents	(94,103)	(9,615)	(787)	(113,292)	(217,797)
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	$ 353,193	$ 85	$ 772	$(117,510)	$ 236,540

(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 December 31, 2007 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 December 31, 2008, 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 months ended December 31, 2008 and 2007 were as follows (dollars in thousands):

	Three Months Ended December 31,	
	2008	2007
Total revenue	**$ —**	$2,494
Loss from discontinued operations before income taxes	**(220)**	(922)
Benefit from income taxes	**—**	(347)
Loss from discontinued operations, net of tax	**$(220)**	$ (575)

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

	December 31, 2008	September 30, 2008
ASSETS		
Accounts receivable	**2**	2,305
Residential mortgage loans available-for-sale	**94**	94
Other	**34**	40
Assets of discontinued operations	**$ 130**	$ 2,439
LIABILITIES		
Trade accounts payable and other liabilities	**$ 381**	$ 360
Liabilities of discontinued operations	**$ 381**	$ 360

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

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

We have responded to this challenging environment with a disciplined approach to the business with continued reductions in direct costs, overhead expenses and land spending. We did not pursue a strategy of additional sales incentives or sales price reductions during the quarter in an effort to generate additional sales absorptions due to our belief that those strategies would not significantly improve the number of new home orders this quarter. We believe that the confluence of the new Congress and the new White House administration will enact a fiscal stimulus package focused on job creation and increased availability of credit and that results of these stimuli may ultimately lead to improved sales absorptions without continued degradation of home sales margins. 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.

We have also 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, which was concluded during the first quarter of fiscal 2008, entailed an evaluation of both external market factors and our position in each market and has 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 December 31, 2008, these markets represented approximately 2% of the Company's total assets and are aggregated in our Other Homebuilding segment.

In addition, as disclosed in our 2007 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 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 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. We intend to attempt to negotiate a settlement with prosecutors and regulatory authorities that would allow us to quantify our exposure associated with reimbursement of losses and payment of regulatory and/or criminal fines, if they are imposed. See Note 9 to the unaudited condensed consolidated financial statements for additional discussion of this matter. At this time, we believe that although it is probable that a liability exists related to this exposure, it is not reasonably estimable and would be inappropriate to record a liability as of December 31, 2008.

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 is 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, may adversely impact 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. While we expect the impact of this legislation will generally be favorable to the economy, the impact on our operations is not yet determinable.

Outlook: We expect that the remainder of fiscal 2009 will pose significant challenges for us. Like many other homebuilders, we have experienced a material reduction in revenues and margins and we incurred significant net losses in fiscal 2008 and the first quarter of fiscal 2009. These net losses were driven primarily by asset impairment and lot option abandonment charges incurred in those periods.

We believe that the homebuilding market will remain challenging throughout fiscal 2009 and, as a result, it is likely that we will also incur additional net losses in 2009, which will further reduce our stockholders’ equity.

Certain of our property-specific secured notes payable agreements contain covenants that require us to maintain minimum levels of stockholders’ equity (or some variation, such as tangible net worth) or maximum levels of debt to stockholders’ equity. Although the specific covenants and related definitions vary among the agreements, further reductions in our stockholders’ equity, absent the receipt of waivers, may cause breaches of some or all of these covenants. Breaches of certain of these covenants, to the extent they lead to an acceleration, may result in cross defaults under our senior notes. The dollar value of property-specific secured notes payable agreements containing stockholders’ equity-related covenants totaled $39.2 million at December 31, 2008. 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.

In addition, the size of our Secured Revolving Credit Facility, which has recently been reduced to $250 million, is subject to further reduction to $100 million if our consolidated tangible net worth (defined in the agreement as stockholders’ equity less intangible assets as defined) falls below $250 million. At December 31, 2008, our consolidated tangible net worth for purposes of this covenant was $255 million. If our consolidated tangible net worth falls below $100 million, we would be in default of the Secured Revolving Credit Facility. Under such circumstances, the lenders could terminate the facility, accelerate our obligations thereunder or require us to post cash collateral to support our existing letters of credit. At December 31, 2008, we had letters of credit outstanding of $56.0 million under the Secured Revolving Credit Facility. An acceleration of this facility may also result in cross defaults under our senior notes.

Decreased levels of stockholders’ equity may also trigger our obligations to consummate offers to purchase 10% of our non-convertible senior notes at par if our consolidated tangible net worth is less than $85 million at the end of any two consecutive fiscal quarters. If triggered and fully subscribed, this could result in our having to purchase $134.5 million of notes, based on amounts outstanding at December 31, 2008.

Further, several of our joint ventures are in default under their debt agreements at December 31, 2008 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 $45.0 million at December 31, 2008. See Notes 3 and 9 to the unaudited condensed consolidated financial statements.

As noted in Note 9 to the unaudited condensed consolidated financial statements, we are under criminal and civil investigations by the United States Attorney’s office in the Western District of North Carolina and other federal and state agencies. The investigations could result in, among other consequences, the payment of substantial criminal or civil fines or penalties. As of December 31, 2008, we are not able to estimate the potential magnitude of such potential fines or penalties.

Our cash and cash equivalents at December 31, 2008 was $436.9 million. Although we expect to incur a net loss during the remainder of fiscal 2009, we received cash tax refunds of approximately $168 million in January 2009 which, we believe together with our cash and cash equivalents as of December 31, 2008, cash generated from our operations during the remainder of fiscal 2009 and availability, if any, under our Secured Revolving Credit Facility will be adequate to meet our liquidity needs during fiscal 2009. Additionally, we may be able to reduce our investment in land and homes to generate further liquidity. However, if we are required to fund all of the potential obligations associated with lower levels of stockholders’ equity and joint venture defaults, we would have cash requirements, not including any fines or penalties associated with the government investigations, totaling approximately $275 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. We currently intend to attempt to resolve our issues with government authorities before pursuing any significant changes in the capital structure.

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), goodwill valuation, revenue recognition, 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 first 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:

	Quarter Ended December 31,	
($ in thousands)	**2008**	2007
Revenues:		
Homebuilding	**$ 230,411**	$ 491,787
Land and lot sales	**1,465**	7,565
Financial Services	**488**	1,302
Total	**$ 232,364**	$ 500,654
Gross profit (loss)		
Homebuilding	**$ 13,108**	$ (107,755)
Land and lot sales	**213**	2,279
Financial Services	**488**	1,302
Total	**$ 13,809**	$ (104,174)
Selling, general and administrative (SG&A) expenses:		
Homebuilding	**$ 55,717**	$ 87,487
Financial Services	**492**	675
Total	**$ 56,209**	$ 88,162
Depreciation and amortization	**$ 3,783**	$ 5,978
As a percentage of total revenue:		
Gross Margin	**5.9%**	-20.8%
SG&A — homebuilding	**24.0%**	17.5%
SG&A — Financial Services	**0.2%**	0.1%
Goodwill impairment	**$ 16,143**	$ —
Equity in loss of unconsolidated joint ventures from:		
Joint venture activities	**$ (120)**	$ (3,305)
Impairments	**(1,293)**	(12,835)
Equity in loss of unconsolidated joint ventures	**$ (1,413)**	$ (16,140)
Effective tax rate from continuing operations	**2.4%**	36.7%

Three Months Ended December 31, 2008 Compared to Three Months Ended December 31, 2007

Revenues. The continued deterioration of the housing industry contributed to a 53.6% decrease in revenues in the quarter ended December 31, 2008 compared to the quarter ended December 31, 2007. Homes closed decreased by 53.2% to 938 from 2,006 for the quarters ended December 31, 2008 and December 31, 2007, respectively, as tightening of mortgage credit availability, an increase in home foreclosures and other economic factors impacted consumer homebuyers. This decline was especially pronounced throughout our markets in our East and Southeast segments. The average sales price of homes closed remained relatively flat compared to the same quarter of the prior year due to changes in the mix and location of homes closed from period to period; however, average sales price for similar products did decrease throughout fiscal 2008 primarily due to increased price competition and subsequent price discounting and increasing sales incentives related to the challenging market conditions, including the increased number of foreclosed homes on the market at below average sales prices.

In addition, we had $1.5 million and $7.6 million of land sales for the three months ended December 31, 2008 and 2007, respectively.

Gross Profit (Loss). Gross margin for three months ended December 31, 2008 was 5.9% compared to a gross margin of -20.8% for the comparable period of the prior year. Gross margins continued to be negatively impacted by weakness in the homebuilding industry. The increase in gross margin was directly related to non-cash pre-tax inventory impairments and option contract abandonments of $12.7 million for the three months ended December 31, 2008 compared to $168.5 million for the three months ended December 31, 2007. During the quarter ended December 31, 2008, given the significant turmoil in the general economy and the mortgage markets in particular and the general hesitancy of consumers to make a significant investment in a home, we purposefully did not reduce the sales price of homes to increase sales absorptions, and, therefore, impairments for the quarter may not be indicative of an improving trend.

In an effort to redeploy assets to more profitable endeavors, we executed several land sales in the comparable period of the prior year. We realized a gain on land sales of $0.2 million and $2.3 million for the three months ended December 31, 2008 and 2007, respectively.

Selling, General and Administrative Expense. Selling, general and administrative expense (“SG&A”) totaled $56.2 million in the quarter ended December 31, 2008 and $88.2 million in the quarter ended December 31, 2007. The 36.2% decrease in SG&A expense during the periods presented 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. SG&A expense for the quarters ended December 31, 2008 and 2007 included $0.9 million and $3.2 million, respectively, in severance costs and $2.2 million and $7.0 million, respectively, of investigation related costs. As of December 31, 2008, we had reduced our overall number of employees by 609 or 32% as compared to December 31, 2007, or a cumulative reduction of 70% since September 30, 2006. In January 2009, in an effort to further manage operating expenses in this challenging environment, we reduced our personnel by an additional 300 employees. We anticipate approximately $4.0 million of severance and other costs related to these January 2009 layoffs.

As a percentage of total revenue, SG&A expenses were 24.2% and 17.6% in the quarters ended December 31, 2008 and 2007, respectively. The increase in SG&A costs as a percentage of total revenue is primarily related to the impact of fixed overhead expenses on reduced revenues.

Depreciation and Amortization. Depreciation and amortization (“D&A”) totaled $3.8 million and $6.0 million for the three months ended December 31, 2008 and 2007, 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). In addition, we believe the unprecedented macro-economic events, including the failure and near failure of several significant financial institutions, have 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 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. The goodwill impairment charges were based on estimates of the fair value of the reporting units. These charges are reported in Corporate and Unallocated and are not allocated to our homebuilding segments.

Joint Venture Impairment Charges. As of December 31, 2008, we participated in 19 land development joint ventures in which we had less than a controlling interest. 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. As a result of the further deterioration of the housing market in fiscal 2008 and the first quarter of fiscal 2009, we wrote down our investment in certain of our joint ventures reflecting $1.3 million and $12.8 million of impairments of inventory held within those joint ventures during the quarters ended December 31, 2008 and 2007, respectively. If these adverse market conditions continue or worsen, we may have to take further writedowns of our investments in these joint ventures that may have a material adverse effect on our financial position and results of operations.

Income Taxes. Our effective tax rate for continuing operations was 2.4% and 36.7% for the three months ended December 31, 2008 and 2007, respectively. The effective tax rate for the quarter ended December 31, 2008 was impacted by the $16.1 million non-deductible, non-cash goodwill impairment charge discussed above and the valuation allowance on deferred tax assets. 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, 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 benefit of $2.0 million for the three months ended December 31, 2008, resulted from the reduction in our liabilities for unrecognized tax benefits related to effectively settling a state examination 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 months ended December 31, 2008 is due to our valuation allowance, state income taxes incurred and the non-deductible goodwill impairment charge. The principal difference between our effective rate and the U.S. federal statutory rate for the three months ended December 31, 2007 is due to state income taxes incurred.

Segment Results for the Three Months Ended December 31, 2008 and 2007:

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):

	Homebuilding Revenues			Average Selling Price		
	Quarter Ended December 31,			Quarter Ended December 31,		
	2008	2007	Change	**2008**	2007	Change
West	**$ 102,912**	$ 150,023	-31.4%	**$ 234.4**	$ 246.9	-5.1%
East	**73,191**	172,840	-57.7%	**270.1**	256.1	5.5%
Southeast	**41,028**	107,778	-61.9%	**227.9**	237.4	-4.0%
Other	**13,280**	61,146	-78.3%	**276.7**	224.0	23.5%
Total	**$ 230,411**	$ 491,787	-53.1%	**$ 245.6**	$ 244.7	0.4%

Homebuilding revenues decreased for the quarter ended December 31, 2008 compared to comparable period of the prior year due to a 53.2% overall decrease in closings, related to reduced demand, a continued high rate of cancellations and excess capacity in both new and resale markets (including increased foreclosures available at lower prices) as investors continued to divest of prior home purchases and potential homebuyers have difficulty selling their homes and/or obtaining financing. In addition, credit tightening in the mortgage markets and a decline in consumer confidence in all of our markets further compounded the market deterioration in the quarter ended December 31, 2008.

Homebuilding revenues in our West segment decreased 31.4% driven by decreased closings of 27.3% and decreased average sales prices of 5.1%. These decreases were particularly impacted by credit tightening in the mortgage markets, the existence of excess capacity in both new home and resale markets and a decline in consumer confidence in all of our markets in this segment.

For the quarter ended December 31, 2008, our East segment homebuilding revenues decreased by 57.7% driven by a 59.9% decline in closings. This decline reflects the impact of excess capacity in the resale markets and competitive pricing pressures. The increase in average sales prices in the East segment represents a change in the mix of products sold within the markets and is not indicative of an increase in home prices for comparable products.

Our Southeast segment continued to be challenged by significant declines in demand, high cancellations and excess capacity in both the new home and resale markets, driving a decrease in homebuilding revenues of 61.9% for the quarter ended December 31, 2008 as compared to the same period of the prior year. Home closings in the Southeast segment decreased by 60.4% from the prior year due to deteriorating market conditions and competitive pressures. The decrease in closings was driven by higher cancellations, 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 decreased 78.3% in the quarter ended December 31, 2008 due to decreased closings of 82.4% 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. The increase in average sales prices in this segment represents a change in the mix of products sold within the markets and is not indicative of an increase in home prices for comparable products. As of December 31, 2008, we had 4 homes in backlog related to these communities and 915 lots held for sale.

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

	Quarter Ended December 31,		
	2008	2007	Change
West	**$ 505**	$ 3,571	-85.9%
East	**—**	7	-100.0%
Southeast	**45**	—	100.0%
Other	**915**	3,987	-77.1%
Total	**$ 1,465**	$ 7,565	-80.6%

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 West segment in both periods relate to land and lots sold that did not fit within our homebuilding programs in this segment.

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

	Quarter Ended December 31, 2008		Quarter Ended December 31, 2007	
	Gross Profit (Loss)	**Gross Margin**	Gross (Loss) Profit	Gross Margin
West	**$ 11,718**	**11.4%**	$ (30,883)	-20.6%
East	**7,960**	**10.9%**	(102)	-0.1%
Southeast	**4,932**	**12.0%**	(14,035)	-13.0%
Other	**1,325**	**10.0%**	(35,539)	-58.1%
Corporate & unallocated	**(12,827)**		(27,196)	
Total homebuilding	**13,108**	**5.7%**	(107,755)	-21.9%
Land and lot sales	**213**	**14.5%**	2,279	30.1%
Financial services	**488**	**100.0%**	1,302	100.0%
Total	**$ 13,809**	**5.9%**	$(104,174)	-20.8%

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 a $12.2 million reduction in the amortization of capitalized interest costs due to a lower capitalizable inventory base and an increase in disallowed interest for capitalization which is recorded as other expense in the unaudited condensed consolidated financial statements. The three months ended December 31, 2007 also included additional expenses related to the impairment of capitalized interest and indirect costs in connection with our impairment of inventory held for development.

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

	Quarter Ended December 31,		
	2008	2007	Change
West	**$ (49)**	$ 1,606	-103.1%
East	**—**	5	-100.0%
Southeast	**39**	—	n/a
Other	**223**	668	-66.6%
Total	**$ 213**	$ 2,279	-90.7%

Inventory Impairments. The following tables set forth, by reportable segment, the inventory impairments and lot option abandonment charges recorded for the three months ended December 31, 2008 and 2007 (in thousands):

	Quarter Ended December 31,	
	2008	2007
Development projects and homes in process (Held for Development)		
West	**$ 7,833**	$ 59,352
East	**2,903**	22,956
Southeast	**97**	9,437
Other	**44**	8,437
Unallocated	**1,110**	7,889
Subtotal	**$11,987**	$108,071
Land Held for Sale		
West	**$ 161**	$ —
East	**—**	—
Southeast	**15**	10,769
Other	**81**	22,671
Subtotal	**$ 257**	$ 33,440
Lot Option Abandonments		
West	**$ 12**	$ 45
East	**210**	2,098
Southeast	**49**	12,089
Other	**194**	12,769
Subtotal	**$ 465**	$ 27,001
Total	**$12,709**	$168,512

The inventory impaired during the three months ended December 31, 2008 represented 339 lots in 6 communities with an estimated fair value of $23.3 million compared to 2,886 lots in 62 communities with an estimated fair value of $186.5 million for the three months ended December 31, 2007. The impairments recorded on our held for development inventory, for all segments, primarily resulted from the continued decline in the homebuilding environment. Our fiscal 2009 first quarter inventory impairment assessment assumed that the significant decline in new home orders experienced during the quarter ended December 31, 2008 resulted from the unprecedented macro-economic events including the failure and near failure of several financial institutions. These events resulted in temporary, but significant curtailment of consumer and business credit activities. In addition, we assumed that increased sales incentives and/or home sale price reductions would not produce meaningful improvement in the pace of new home orders in light of this curtailed credit environment. In future periods, we may again determine that it is 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, it is reasonably possible that a future change in sales prices and absorption estimates could lead to additional impairments.

During the three months ended December 31, 2007, 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 $45.4 million at December 31, 2008. This amount includes non-refundable letters of credit of approximately $6.3 million. The total remaining purchase price, net of cash deposits, committed under all options was $437.9 million as of December 31, 2008. Only $33.2 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 months ended December 31, 2008 and 2007 of $0.5 million and $27.0 million, respectively. Southeast and Other Homebuilding segments represented 44.8% and 47.3% of the three-month fiscal 2008 abandonments, respectively, as we made the decision to abandon certain option contracts that no longer fit in our long-term strategic plan and related to our decision to exit our Ohio and Charlotte, North Carolina markets.

Unit Data by Segment

	New Orders, net			Cancellation Rates		Closings		
	Three Months Ended December 31,							
	2008	2007	Change	**2008**	2007	**2008**	2007	Change
West	**253**	455	-44.4%	**49.6%**	47.0%	**439**	604	-27.3%
East	**201**	313	-35.8%	**40.9%**	57.1%	**271**	675	-59.9%
Southeast	**79**	286	-72.4%	**45.9%**	34.3%	**180**	454	-60.4%
Other	**12**	198	-93.9%	**50.0%**	38.7%	**48**	273	-82.4%
Total	**545**	1,252	-56.5%	**45.6%**	46.6%	**938**	2,006	-53.2%

New Orders and Backlog: New orders, net of cancellations, decreased 56.5% to 545 units for the three months ended December 31, 2008 compared to 1,252 units for the same period in the prior year driven by weaker market conditions resulting in reduced demand. In addition, during the first quarter of fiscal 2009, given the significant turmoil in the general economy and the mortgage markets in particular, we purposefully did not reduce the sales prices of homes to increase home sales absorptions. For the three months ended December 31, 2008, we experienced cancellation rates of 45.6% compared to 46.6% for the same period of the prior year. These cancellation rates in both periods reflect the continued challenging market environment which includes the inability of many potential homebuyers to sell their existing homes and obtain affordable financing. The increase in cancellation rates in our Other Homebuilding segment primarily relates to our decision to exit all of the markets in this segment.

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 December 31, 2008 of $227.2 million decreased 62.5% from $605.2 million at December 31, 2007, related to a decrease in the number of homes in backlog from 2,231 units at

December 31, 2007 to 965 units at December 31, 2008. 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.

	Backlog at December 31,		
	2008	2007	Change
West	**341**	656	-48.0%
East	**415**	955	-56.5%
Southeast	**205**	322	-36.3%
Other	**4**	298	-98.7%
Total	**965**	2,231	-56.7%

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

Derivative Instruments and Hedging Activities. We are exposed to fluctuations in interest rates. From time to time, we enter into derivative agreements to manage interest costs and hedge against risks associated with fluctuating interest rates. As of December 31, 2008, 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 $147.5 million and $217.8 million in cash during the first quarter of fiscal 2009 and 2008, respectively, primarily for the payment of liabilities incurred during the fourth quarter of the prior fiscal year. As of December 31, 2008, our liquidity position consisted of $436.9 million in cash and cash equivalents. Subsequent to December 31, 2008, we further improved our liquidity position with our receipt of approximately $168 million in tax refunds that were included in income tax receivables as of December 31, 2008.

Our decrease in cash and cash equivalents as of December 31, 2008 as compared to cash and cash equivalents of $584.3 million at September 30, 2008, was due primarily to cash used in operating activities of $111.9 million relating primarily to the significant reductions in trade accounts payable and other liabilities and compared to net cash used in operations of $11.4 million in the comparable period of the prior year. Based on the applicable year's closings, as of December 31, 2008, our land bank includes a 5.2 year supply of owned and optioned land/lots for current and future development. Our ending land bank includes 36,642 owned and optioned lots and represents 7.5% and 37.0% decreases from the land bank as of September 30, 2008 and December 31, 2007, 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 December 31, 2007 to December 31, 2008 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 $22.3 million compared to $100.0 million for the three months ended December 31, 2008 and 2007, respectively, as we were able to reduce the amount of cash restricted under our amended Revolving Credit Facility.

Net cash used in financing activities was $13.3 million for the three months ended December 31, 2008 related primarily to the repayment of certain secured notes payable and model home financing obligations and the payment of debt issuance costs. Net cash used in financing activities was $106.4 million for the comparable prior of fiscal 2008 and consisted primarily of the repayment of $83.1 million of other secured notes payable and $21.1 million of debt issuance costs.

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

We fulfill our short-term cash requirements with cash generated from our operations and funds available from our Secured Revolving Credit Facility. There were no amounts outstanding under the Secured Revolving Credit Facility at December 31, 2008 or September 30, 2008; however, we had $56.0 million and $61.2 million of letters of credit outstanding under the Secured Revolving Credit Facility at December 31, 2008 and September 30, 2008, respectively. We believe that the cash and cash equivalents at December 31, 2008 of $436.9 million, the subsequent receipt of our income tax refunds of approximately $168 million in January 2009, cash generated from our operations and availability, if any, under our Secured Revolving Credit Facility will be adequate to meet our liquidity needs during fiscal 2009. However, if we are required to fund all of the potential obligations associated with lower levels of stockholders' equity and joint venture defaults, as more fully discussed above, we would have cash requirements, not including any fines or penalties associated with the government investigations, totaling approximately $275 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, payment of regulatory and/or criminal fines or our inability to increase our availability under our Secured Revolving Credit Facility, as described in more detail below, could require us to obtain additional equity or debt financing. Any such equity transactions or debt financing may be on terms less favorable or at higher costs than our current financing sources, 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. We currently intend to attempt to resolve our issues with government authorities before pursuing any significant changes in the capital structure.

Borrowings

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

	Maturity Date	**December 31, 2008**	September 30, 2008
Secured Revolving Credit Facility	July 2011	**$ —**	$ —
8 5/8% Senior Notes*	May 2011	**180,000**	180,000
8 3/8% Senior Notes*	April 2012	**340,000**	340,000
6 1/2% Senior Notes*	November 2013	**200,000**	200,000
6 7/8% Senior Notes*	July 2015	**350,000**	350,000
8 1/8% Senior Notes*	June 2016	**275,000**	275,000
4 5/8% Convertible Senior Notes*	June 2024	**180,000**	180,000
Junior subordinated notes	July 2036	**103,093**	103,093
Other secured notes payable	Various Dates	**51,406**	50,618
Model home financing obligations	Various Dates	**59,238**	71,231
Unamortized debt discounts		**(2,448)**	(2,565)
Total		**$ 1,736,289**	$ 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 is subject to further reductions to $250 million and $100 million if our consolidated tangible net worth (defined in the agreement as stockholders' equity less intangible assets as defined) falls below $350 million and $250 million, respectively. As of September 30, 2008, our consolidated tangible net worth was $314.4 million. As a result, the facility size was reduced to $250 million. Further, the facility size is subject to reduction to $200 million if our interest coverage ratio for the quarter ending June 30, 2010 is less than 1.0x.

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

There were no amounts outstanding under the Secured Revolving Credit Facility at December 31, 2008 or September 30, 2008; however, we had $56.0 million and $61.2 million of letters of credit outstanding under the Secured Revolving Credit Facility at December 31, 2008 and September 30, 2008, respectively.

Availability under the facility continues to be subject to satisfaction of a secured borrowing base. The amendment provided that the book value of the assets securing the facility must exceed 3.0x the outstanding loans and letters of credit. Such coverage level increases to 4.5x and 6.0x to the extent the facility size is reduced to $250 million or $100 million, respectively. As a result of the increase in collateral coverage to 4.5x during the first quarter of fiscal 2009, we were required to provide a total of $18.8 million in cash to fully collateralize our outstanding letters of credit which is included in restricted cash on the unaudited condensed consolidated balance sheet as of December 31, 2008. Subsequent to the filing of this Form 10-Q, we will be required to provide an additional $1.7 million in cash to fully collateralize our outstanding letters of credit. We intend to add approximately $250 million of additional real estate assets to the borrowing base over the next twelve months, which is anticipated to provide up to $35 million in additional borrowing base availability after providing for the return of the restricted cash. Assets in the borrowing base, and therefore any future availability are subject to required appraisals and other bank review procedures. The availability under our facility is not impacted by any actions of the respective credit rating agencies. The value of the real estate assets securing our borrowing base could decline should the downturn in our industry worsen. Any reduction in value could result in a reduction in available borrowing capacity under the Secured Revolving Credit Facility.

The interest margins under the Secured Revolving Credit Facility were increased and are now based on the facility size. Following the aforementioned amendment, the Eurodollar Margin under the facility was set at 4.5%. To the extent the facility size is reduced to $250 million or $100 million, the Eurodollar Margin will increase to 5.0% and 5.5%, respectively. As a result of the reduction in facility size to $250 million, the current Eurodollar Margin is now 5.0%.

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

Financial Covenant	Covenant Requirement	Actual
Consolidated Tangible Net Worth	> $100 million	$255 million
Minimum Liquidity	> $120 million of unrestricted cash and borrowing base availability OR Adjusted Coverage Ratio > 1.75x	$437 million of unrestricted cash and borrowing base availability and Adjusted Coverage Ratio of 2.67x

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

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

The indentures under which the Senior Notes were issued contain certain restrictive covenants, including limitations on payment of dividends. At December 31, 2008, 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. If triggered and fully subscribed, this could result in our having to purchase $134.5 million of notes, based on amounts outstanding at December 31, 2008.

In June 2004, we issued $180 million aggregate principal amount of 4 5/8% Convertible Senior Notes due 2024 (the "Convertible Senior Notes"). 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. The recording of such fees and expenses has been deferred and will be amortized as an adjustment to interest expense in accordance with EITF 96-19 — *Debtor's Accounting for a Modification or Exchange of Debt Instruments*.

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

Other Secured Notes Payable — We periodically acquire land through the issuance of notes payable. As of December 31, 2008 and September 30, 2008, we had outstanding notes payable of $51.4 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 5.6% to 9.0% at December 31, 2008. These notes are secured by the real estate to which they relate. During the first three months of fiscal 2009, we repaid $0.2 million of these secured notes payable.

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 $39.2 million at December 31, 2008. 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 $59.2 million and $71.2 million of debt as of December 31, 2008 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, 4.94% as of December 31, 2008, 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 December 31, 2008 or 2007. At December 31, 2008, 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 December 31, 2008, 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 December 31, 2008, we controlled 36,642 lots (a 5-year supply based on the last twelve months' closings). We owned 75.3%, or 27,614 lots, and 9,028 lots, 24.6%, 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 $45.4 million at December 31, 2008. This amount includes non-refundable letters of credit of $6.3 million. The total remaining purchase price, net of cash deposits, committed under all options was $437.9 million as of December 31, 2008. Only $33.2 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 December 31, 2008 and September 30, 2008 reflect consolidated inventory not owned of $75.8 million and $106.7 million, respectively. We consolidated $37.7 million and $46.9 million of lot option agreements as consolidated inventory not owned pursuant to FIN 46R as of December 31, 2008 and September 30, 2008, respectively. In addition, as of December 31, 2008 and September 30, 2008, we recorded $38.1 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 $48.1 million at December 31, 2008 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 $33.3 million and $33.1 million at December 31, 2008 and September 30, 2008, respectively.

Our joint ventures typically obtain secured acquisition and development financing. At December 31, 2008, our unconsolidated joint ventures had borrowings outstanding totaling $525.4 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 December 31, 2008, we had repayment guarantees of $39.3 million and loan-to-value maintenance guarantees of $5.7 million of debt of unconsolidated joint ventures. Several of our joint ventures are in default under their debt agreements at December 31, 2008 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. See Notes 3 and 9 to the unaudited condensed consolidated financial statements.

We had total outstanding letters of credit and performance bonds of approximately $56.1 million and $334.9 million, respectively, at December 31, 2008 related principally to our obligations to local governments to construct roads and other improvements in various developments. Total outstanding letters of credit includes approximately $6.8 million related to our land option contracts discussed above.

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

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

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

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 December 31, 2008, we had $98.4 million of variable rate debt outstanding. Based on our average outstanding borrowings under our variable rate debt at December 31, 2008, a one-percentage point increase in interest rates would negatively impact our annual pre-tax earnings by approximately $1.0 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 December 31, 2008.

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 December 31, 2008 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

Investigations

United States Attorney, State and Federal Agency Investigations. Beazer Homes and its subsidiary, Beazer Mortgage Corporation ("Beazer Mortgage"), are under criminal and civil investigations by the United States Attorney's Office in the Western District of North Carolina 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 is fully cooperating with these investigations.

Independent Investigation. The Audit Committee of the Beazer Homes Board of Directors has completed the Investigation of Beazer Homes' mortgage origination business, including, among other things, investigating certain evidence that the Company's subsidiary, Beazer Mortgage, violated U.S. Department of Housing and Urban Development ("HUD") regulations and may have violated certain other laws and regulations in connection with certain of its mortgage origination activities. The Investigation also found evidence that employees of the Company's Beazer Mortgage subsidiary violated certain federal and/or state regulations, including HUD regulations. Areas of concern uncovered by the Investigation included our former practices in the areas of: down payment assistance program; the charging of discount points; the closure of certain HUD Licenses; closing accommodations; and the payment of a number of realtor bonuses and decorator allowances in certain Federal Housing Administration ("FHA") insured loans and non-FHA conventional loans originated by Beazer Mortgage dating back to at least 2000. The Investigation also uncovered limited improper practices in relation to the issuance of a number of non-FHA Stated Income Loans. We reviewed the loan documents and supporting documentation and determined that the assets were effectively isolated from the seller and its creditors (even in the event of bankruptcy). Based on that information, management continues to believe that sale accounting at the time of the transfer of the loans to third parties was appropriate. We intend to attempt to negotiate a settlement with prosecutors and regulatory authorities that would allow us to quantify our exposure associated with reimbursement of losses and payment of regulatory and/or criminal fines, if they are imposed. At this time, we believe that although it is probable that a liability exists related to this exposure, it is not reasonably estimable and would be inappropriate to record a liability as of December 31, 2008. 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 is expected to be completed in March 2009. The Company intends to vigorously defend against these actions.

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 is expected to be 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 on January 9, 2009. The Company intends to vigorously defend against the action.

We cannot predict or determine the timing or final outcome of the governmental investigations or the lawsuits or the effect that any adverse findings in the investigations or adverse determinations in the 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 matters. While we are cooperating with the governmental investigations, developments, including the expansion of the scope of the investigations, could negatively impact us, could divert the efforts and attention of our management team from the operation of our business, and/or result in further departures of executives or other employees. An unfavorable determination resulting from any governmental investigation could result in the filing of criminal charges, payment of substantial criminal or civil fines, 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 lawsuits could result in the payment by us of substantial monetary damages which may not be fully covered by insurance. Further, the legal costs associated with the investigations and the lawsuits and the amount of time required to be spent by management and the Board of Directors on these matters, even if we are ultimately successful, could have a material adverse effect on our business, financial condition and results of operations.

Other Matters

In November 2003, Beazer Homes received a request for information from the EPA pursuant to Section 308 of the Clean Water Act seeking information concerning the nature and extent of storm water discharge practices relating to certain of our projects completed or under construction. The EPA has since requested information on additional projects and has conducted site inspections at a number of locations. In certain instances, the EPA or the equivalent state agency has issued Administrative Orders identifying alleged instances of noncompliance and requiring corrective action to address the alleged deficiencies in storm water management practices. As of December 31, 2008, no monetary penalties had been imposed in connection with such Administrative Orders. The EPA has reserved the right to impose monetary penalties at a later date, the amount of which, if any, cannot currently be estimated. Beazer Homes has taken action to comply with the requirements of each of the Administrative Orders and is working to otherwise maintain compliance with the requirements of the Clean Water Act.

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

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

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

Item 1A. Risk Factors

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

If we do not meet the New York Stock Exchange continued listing requirements, our common stock may be delisted, which could have an adverse impact on the liquidity and market price of our common stock and could require us to repurchase our 4 5/8% Convertible Senior Notes due 2024.

Our common stock is currently listed on the New York Stock Exchange ("NYSE"). If we do not meet the NYSE continued listing requirements, the NYSE may take action to delist our common stock. The continued listing requirements of the NYSE require, among other things, that (1) the average closing price of our common stock be above $1.00 over 30 consecutive trading days, (2) our average market capitalization be not less than $75 million over 30 consecutive trading days if at the same time our stockholders' equity is less than $75 million and (3) our average market capitalization be not less than $25 million (currently lowered on a temporary basis by the NYSE to $15 million) over 30 consecutive trading days. Recently, the price of our common stock and our market capitalization have declined significantly. As of February 6, 2009 our trailing 30-day average closing stock price was $1.25 and our trailing 30-day average market capitalization was $49.1 million. Our stockholders' equity as of December 31, 2008 was $298.1 million. In the event the Company receives notice that it is out of compliance with the requirement described in item (1) above, the Company will have a period of six months to bring its share price and 30-day average share price to at least $1.00 and, under certain circumstances, an additional six months to obtain shareholder approval of curative actions if needed. In the event the Company receives a notice that it is out of compliance with the requirements set forth in item (2) above, the Company will have an opportunity to submit a plan to the NYSE in order to bring itself into compliance with these requirements within 18 months of submission of such plan. However, there can be no assurance that we will be able to take such actions in a timely manner or at all. The NYSE requirement set forth in item (3) above does not provide any opportunity to cure or correct non-compliance. A delisting of our common stock could negatively impact us by: (i) reducing the liquidity and market price of our common stock; (ii) reducing the number of investors willing to hold or acquire our common stock, which could negatively impact our ability to raise equity financing; (iii) decreasing the amount of news and analyst coverage for us.

In addition, delisting of our common stock on the NYSE would constitute a "fundamental change" under the indenture governing our 4 5/8% Convertible Senior Notes due 2024 (the "Convertible Senior Notes") unless we are able to list our common stock on another exchange or have it quoted on an established over the counter trading market. If such a fundamental change occurs, holders of the Convertible Senior Notes will be entitled to require us to repurchase their Convertible Senior Notes at a price equal to 100% of the principal amount of the Convertible Senior Notes to be repurchased. In order to fund any required repurchases, we might be required to seek additional financing for such amounts. We can give no assurance that we would be able to obtain such financing, on favorable terms, or at all.

Item 5. Other Information

None.

Item 6. Exhibits

10.1 Employment Letter for Kenneth F. Khoury, effective January 5, 2009

10.2 Change of Control Employment Agreement effective December 5, 2008 for Kenneth F. Khoury

10.3 Second Amendment to Amended and Restated Employment Agreement of Ian J. McCarthy effective December 31, 2008

10.4 Second Amendment to Amended and Restated Employment Agreement of Michael H. Furlow effective December 31, 2008

10.5 First Amendment to Employment Agreement of Allan P. Merrill effective December 31, 2008

10.6 First Amendment to Amended and Restated Supplemental Employment Agreement of Ian J. McCarthy effective December 31, 2008

10.7 First Amendment to Amended and Restated Supplemental Employment Agreement of Michael H. Furlow effective December 31, 2008

10.8 First Amendment to Change of Control Employment Agreement of Allan P. Merrill effective December 31, 2008

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.

Table of Contents

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: February 9, 2009

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

EXHIBIT 10.1

November 25, 2008

Revised

Mr. Kenneth F. Khoury
894 Wescott Lane
Atlanta, Georgia 30319

Dear Ken:

I am pleased to extend our offer of employment to you on the following terms:

You will be appointed Executive Vice President, General Counsel reporting to me. Your duties will include, but not be limited to, overseeing all legal work for the Company, including supervising the Legal Department staff and monitoring outside counsel.

Your first day of employment will be January 5, 2009 and will begin with a New Employee Orientation at 8:30 a.m. Please report to Suite 1200 of NorthPark Building 400 (12th Floor) between 8:00 a.m. and 8:30 a.m.

Your salary will be $400,000 per year, paid semi-monthly. You will participate in the Discretionary Bonus Plan for FY2009 (October 1, 2008 through September 30, 2009). The performance goals for that plan are currently being formulated and will address achievement levels of numeric business metrics and individual goals. The Discretionary Plan does not identify a target bonus for participants, but instead is based upon levels of achievement for the performance goals. Any bonus payment will be prorated for employment during the FY. Please note that amounts calculated under the bonus program can be increased or decreased by the Compensation Committee of the Board of Directors. In addition, the bonus program is subject to change and bonuses are not guaranteed. It is important to note that no bonus is earned until the date paid and you must be an active employee on that date to be eligible to receive a bonus.

The Compensation Committee of the Board of Directors grants equity awards from time to time. Previously, the Committee has awarded restricted stock and stock-settled stock appreciation rights. At this time, equity grants are prohibited for executives at your level. However, after that prohibition has been lifted you will be eligible to receive grants at the sole discretion of the Compensation Committee.

Each January 1st, you will be granted four (4) weeks of vacation.

Upon employment, you will be provided with a Change in Control agreement. The Company's Amended and Restated Employment Agreement, more commonly referred to as our "Change in Control Agreement", is intended to provide you with protection should there be an acquisition or material change in the organization of the Company. A copy is enclosed.

The By-Laws of the Company provide for indemnification of specific officers, including executive vice-presidents. However, due to certain recent decisions interpreting by-laws under Delaware law and to protect certain officers against future changes to the Company's By-Laws, the Board has decided to provide Indemnity Agreements to certain officers to provide a contractual indemnification right in addition to the By-Laws. As an executive vice-president you are entitled to such an Indemnity Agreement. A copy is enclosed.

You will be eligible to participate in the Deferred Compensation Plan. You will receive materials directly from MullinTBG, our record keeper.

Executives at this level have a stock ownership requirement to accumulate 3.0 times base salary over a four (4) year period. However, the program has been deferred for FY 2009. You are eligible to defer a portion of your bonus via the Corporate Management Stock Purchase Program to buy restricted stock units at a 20% discount. This is one way in which you can accumulate BZH stock. This program was suspended for 2008 and has been suspended for FY 2009.

If elected, medical, dental, vision and life insurance will begin on the first of the month following 30 days of employment. You have 30 days from your date of hire to enroll. Life insurance coverage is one times base annual salary and will be paid by the Company. Medical and dental coverage are at a cost supplemented by the Company. You are considered a highly paid employee for purposes of health care coverage premiums. Your contribution will be 10% higher than that of non-highly paid employees. Vision, supplemental life and AD&D coverage are at employee expense. Details are available now upon request and will also be provided upon employment.

On the first of the month following 30 days of employment and age 21, you will automatically be enrolled in our 401(k) Plan at a deferral rate of 4%, which will be invested in the age-appropriate Fidelity Freedom Fund. Your deferral rate will be automatically increased in 1% increments beginning January 1, 2010, and continuing until reaching 6%. You may call Fidelity or go on-line to elect any other percentage or investment, or to stop this automatic enrollment.

This offer of employment is contingent upon your satisfactory completion of a pre-employment drug test. Enclosed is a form for you to take to any area Quest Diagnostics lab. Call 800-877-7484 to find a location near you. You ***must*** complete the drug screen **no later than December 8, 2008**.

This offer is also contingent upon the satisfactory results of a background check which will include but not be limited to a review of your Department of Motor Vehicles, criminal and credit history records. Please complete the following forms and return them via facsimile to Jennifer Jones at fax# (770) 698-0463 **no later than December 8, 2008**. In addition, return the original of each of these forms by U.S. Mail or hand delivery as soon as possible.

- Employment Application
- Pre-Application Information Releases
- Consumer Report and Investigative Consumer Report Disclosure and Authorization

You shall work only in the interests of the Company and shall not engage in, or have any interest in, any other business without the prior written consent of the Company. All Company matters shall be treated as private and confidential.

Beazer Homes classifies all employees as “regular” after 90 days of employment with the Company. The 90-day assessment period provides an opportunity for you to demonstrate your ability, interest, and skill required by your job assignment. During this period, either you or the Company may decide to terminate employment without giving a reason and with no adverse effect on your record. This provision does not affect the employee’s or employer’s right to terminate employment at any time for good cause or no cause whatsoever. Your 90-day assessment period review will occur on or before the ninetieth day after employment begins.

This offer letter is not intended to create a contract of employment. Your employment is at will. Either you or the Company may terminate this employment relationship at any time, for any reason with or without cause. No one has the authority to change this relationship except as specifically documented in writing and signed by the President of Beazer Homes USA, Inc. No other commitments have been made.

Employment with Beazer Homes is subject to the terms and procedures of the Beazer Homes RCB (Resolving Concerns at Beazer) Program, which provides the sole and exclusive means of resolution of all grievances, disputes and claims arising out of or relating to applications for employment, employment or termination of employment. A brochure summarizing the Program is enclosed. You may receive a detailed description of the RCB Program upon request and will also have access to the Program after your employment with Beazer Homes commences.

In anticipation of your acceptance of these terms and conditions, I would like to take this opportunity to welcome you to Beazer Homes for what I trust will be a happy and mutually rewarding relationship.

Sincerely yours,

/s/ Ian J. McCarthy
Ian J. McCarthy
President and
Chief Executive Officer

Enclosures

cc: Fred Fratto
Bob Baxter / Korn Ferry

AMENDED & RESTATED EMPLOYMENT AGREEMENT

AGREEMENT by and between Beazer Homes USA, Inc., a Delaware corporation (the "Company") and Kenneth F. Khoury (the "Executive"), dated as of the 5th day of December, 2008.

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; provided, however, that commencing on the date one year after the date hereof, and on each annual anniversary of such date (such date and each annual anniversary thereof shall be hereinafter referred to as the "Renewal Date"), unless previously terminated, the Change of Control Period shall be automatically extended so as to terminate two years from such Renewal Date, unless at least 60 days prior to the Renewal Date the Company shall give notice to the Executive that the Change of Control Period shall not be so extended.

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.

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 such date (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 at any time during the 120 day period immediately preceding the Effective Date and (B) the Executive's services shall be performed at the location where the Executive was employed immediately preceding the Effective Date 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 during the 120-day period immediately preceding 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 during the 120 day period immediately preceding 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 during the 120 day period immediately preceding 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 during the 120 day period immediately preceding 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 during the 120 day period immediately preceding 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 during the 120 day period immediately preceding 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. The Executive shall be deemed to have a "termination of employment" under this Agreement for purposes of entitling him to any "non-qualified deferred compensation" that is subject to the requirements of Section 409A of the Internal Revenue Code of 1986 (the "Code") only to the extent the Executive has a "separation from service" as that term is defined in Section 409A of the Code and the applicable Treasury regulations applying all of the default rules thereunder.

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; including the requirement that, if at the time of Termination, Executive is a "specified employee" within the meaning of Section 409A of the Code, 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. If the terms of any employment welfare benefit plan or employee pension benefit plan of the Company do not permit continued participation by the Executive, the Company will arrange to provide to the Executive a benefit substantially similar to, and no less favorable than, the benefit he was entitled to receive under such plan at the end of the period of coverage. Any such substitute benefit shall be provided at the same time as the benefit it replaces;

(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").

(v) Notwithstanding any provision to the contrary, in the event that any payments or benefits required to be provided by the Company under this Section 6(a) are deemed to constitute payments of "nonqualified deferred compensation" that is subject to the requirements of Section 409A of the Code and if the Executive is deemed on the Date of Termination to be a "specified employee" within the meaning of that term under Section 409A(a)(2)(B) of the Code, then with regard to any payment or the provisions of any benefit that is required to be delayed pursuant to Section 409A(a)(2)(B) of the Code, such payment or benefit shall not be made or provided prior to the earlier of (i) the expiration of the six (6) month period measured from the date of his "separation from service" (as such term is defined in the Treasury Regulations issued under Section 409A of the Code), or (ii) the date of his death (the "Delay Period"). Upon the expiration of the Delay Period, all payments and benefits delayed pursuant to this Section 6(a)(v) (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 sun, 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. Notwithstanding the foregoing, to the extent that the foregoing applies to the provision of any ongoing welfare benefits to the Executive that would not be required to be delayed if the premiums for such welfare benefits during the Delay Period and the Company shall pay the Executive an amount equal to the amount of such premiums paid by the Executive during the Delay Period promptly after its conclusion.

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 during the 120 day period immediately preceding 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 during the 120 day period immediately preceding 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. 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, including the requirement that, if at the time of Termination, Executive is a "specified employee" within the meaning of Section 409A of the Code, 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). 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 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. The Payments shall be eliminated or reduced consistent with the requirements of the preceding sentence by eliminating or reducing those Payments in a manner that produces the greatest economic advantage to the Executive and if elimination or reduction of two or more specific Payments produce the same economic advantage, they shall be adjusted or reduced pro rata.

(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 contemplated 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:

Kenneth F. Khoury
(Insert Address)

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.

14. Compliance with Section 409A of the Code. <u>It is intended that this Agreement will comply with Section 409A of the Code (and any regulations and any guidelines issued thereunder) to the extent the Agreement is subject thereto, and the Agreement shall be interpreted on a basis consistent with such intent. If it is determined that an amendment of this Agreement is necessary in order for it to comply with Section 409A of the Code, the parties agree to negotiate in good faith to amend this Agreement in a manner that preserves the original intent of the parties to the extent reasonably possible.</u>

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/ Kenneth F. Khoury
Kenneth F. Khoury

BEAZER HOMES USA, INC.

By /s/ Ian J. McCarthy
Ian J. McCarthy
President and CEO

Exhibit 10.3

SECOND AMENDMENT TO
AMENDED AND RESTATED EMPLOYMENT AGREEMENT

This Second Amendment to Amended and Restated Employment Agreement (this “Second Amendment” is made effective as of the 31st day of December, 2008 (the “Effective Date”) by and between BEAZER HOMES USA, INC., a Delaware corporation (the “Company”) and Ian J. McCarthy, an individual resident of the State of Georgia (the “Executive”).

WITNESSETH:

WHEREAS, the Company and Executive have heretofore entered into an Amended and Restated Employment Agreement made effective as of February 3, 2006 (the “Existing Agreement”); and

WHEREAS, the Company and Executive desire to amend certain provisions of 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. A new Section 11 is hereby added to the Existing Agreement. New Section 11 shall read:

11. **Special Provision Regarding Section 409A of the Internal Revenue Code.** It is intended that this Agreement shall comply with Section 409A of the Code (and any regulations and any guidelines issued thereunder) to the extent the Agreement is subject thereto, and the Agreement shall be interpreted on a basis consistent with such intent. If it is determined that an amendment of this Agreement is necessary in order for it to comply with Section 409A, the parties agree to negotiate in good faith to amend this Agreement in a manner that preserves the original intent of the parties to the extent reasonably possible. Notwithstanding any provision to the contrary in this Agreement, in the event that any payments or benefits required to be provided by the Company hereunder are deemed to constitute payments of “nonqualified deferred compensation” that is subject to the requirements of Section 409A and if the Executive is deemed on the Date of Termination to be a “specified employee” within the meaning of that term under Section 409A(a)(2)(B) of the Code, then with regard to any payment or the provisions of any benefit that is required to be delayed pursuant to Section 409A(a)(2)(B) of the Code, such payment or benefit shall not be made or provided prior to the earlier of (i) the expiration of the six (6)-month period measured from the date of his “separation from service” (As such term is defined in Treasury Regulations issued under Section 409A) or (ii) the date of his

death (the "Delay Period"). Upon the expiration of the Delay Period, all payments and benefits delayed pursuant to this Section 11 (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. Notwithstanding the foregoing, to the extent that the foregoing applies to the provision of any ongoing welfare benefits to the Executive that would not be required to be delayed if the premiums therefore were paid by the Executive, the Executive shall pay the full costs of premiums for such welfare benefits during the Delay Period and the Company shall pay the Executive an amount equal to the amount of such premiums paid by the Executive during the Delay Period promptly after its conclusion. 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.

2. Except as and to the extent amended hereby, the Existing Agreement is hereby ratified and confirmed in all respects and remains in full force and effect in accordance with the terms thereof. By signing below, the Company and Executive hereby (i) consent to all of the terms of this Second Amendment, (ii) ratify and confirm their respective obligations under the Existing Agreement, and (iii) agree that said obligations are and shall remain in full force and effect, as amended by this Second Amendment.

IN WITNESS WHEREOF, the parties hereto have executed this **SECOND AMENDMENT TO AMENDED AND RESTATED EMPLOYMENT** effective as of the date first written above.

BEAZER HOMES USA, INC.

By: **/s/ Brian C. Beazer**
Name: **Brian C. Beazer**
Title: **Chairman of the Board**

EXECUTIVE

/s/ Ian J. McCarthy
Ian J. McCarthy

Exhibit 10.4

SECOND AMENDMENT TO
AMENDED AND RESTATED EMPLOYMENT AGREEMENT

This Second Amendment to Amended and Restated Employment Agreement (this “Second Amendment” is made effective as of the 31st day of December, 2008 (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 (the “Executive”).

WITNESSETH:

WHEREAS, the Company and Executive have heretofore entered into an Amended and Restated Employment Agreement made effective as of February 6, 2006 (the “Existing Agreement”); and

WHEREAS, the Company and Executive desire to amend certain provisions of 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. A new Section 11 is hereby added to the Existing Agreement. New Section 11 shall read:

11. **Special Provision Regarding Section 409A of the Internal Revenue Code.** It is intended that this Agreement shall comply with Section 409A of the Code (and any regulations and any guidelines issued thereunder) to the extent the Agreement is subject thereto, and the Agreement shall be interpreted on a basis consistent with such intent. If it is determined that an amendment of this Agreement is necessary in order for it to comply with Section 409A, the parties agree to negotiate in good faith to amend this Agreement in a manner that preserves the original intent of the parties to the extent reasonably possible. Notwithstanding any provision to the contrary in this Agreement, in the event that any payments or benefits required to be provided by the Company hereunder are deemed to constitute payments of “nonqualified deferred compensation” that is subject to the requirements of Section 409A and if the Executive is deemed on the Date of Termination to be a “specified employee” within the meaning of that term under Section 409A(a)(2)(B) of the Code, then with regard to any payment or the provisions of any benefit that is required to be delayed pursuant to Section 409A(a)(2)(B) of the Code, such payment or benefit shall not be made or provided prior to the earlier of (i) the expiration of the six (6)-month period measured from the date of his “separation from service” (As such term is defined in Treasury Regulations issued under Section 409A) or (ii) the date of his

death (the “Delay Period”). Upon the expiration of the Delay Period, all payments and benefits delayed pursuant to this Section 11 (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. Notwithstanding the foregoing, to the extent that the foregoing applies to the provision of any ongoing welfare benefits to the Executive that would not be required to be delayed if the premiums therefore were paid by the Executive, the Executive shall pay the full costs of premiums for such welfare benefits during the Delay Period and the Company shall pay the Executive an amount equal to the amount of such premiums paid by the Executive during the Delay Period promptly after its conclusion. 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.

2. Except as and to the extent amended hereby, the Existing Agreement is hereby ratified and confirmed in all respects and remains in full force and effect in accordance with the terms thereof. By signing below, the Company and Executive hereby (i) consent to all of the terms of this Second Amendment, (ii) ratify and confirm their respective obligations under the Existing Agreement, and (iii) agree that said obligations are and shall remain in full force and effect, as amended by this Second Amendment.

IN WITNESS WHEREOF, the parties hereto have executed this **SECOND AMENDMENT TO AMENDED AND RESTATED EMPLOYMENT** effective as of the date first written above.

BEAZER HOMES USA, INC.

By: **/s/ Ian J. McCarthy**
Name: **Ian J. McCarthy**
Title: **President and CEO**

EXECUTIVE

/s/ Michael H. Furlow
Michael H. Furlow

Exhibit 10.5

FIRST AMENDMENT TO EMPLOYMENT AGREEMENT

This First Amendment to Employment Agreement (this “First Amendment” is made effective as of the 31st day of December, 2008 (the “Effective Date”) by and between BEAZER HOMES USA, INC., a Delaware corporation (the “Company”) and ALLAN P. MERRILL , an individual resident of the State of Georgia (the “Executive”).

WITNESSETH:

WHEREAS, the Company and Executive have heretofore entered into an Employment Agreement made effective as of May 1, 2007 (the “Existing Agreement”); and

WHEREAS, the Company and Executive desire to amend certain provisions of 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. Section 11 is hereby amended by adding the following sentence at the end of the Section:

> 11. **Special Provision Regarding Section 409A of the Internal Revenue 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.

2. Except as and to the extent amended hereby, the Existing Agreement is hereby ratified and confirmed in all respects and remains in full force and effect in accordance with the terms thereof. By signing below, the Company and Executive hereby (i) consent to all of the terms of this First Amendment, (ii) ratify and confirm their respective obligations under the Existing Agreement, and (iii) agree that said obligations are and shall remain in full force and effect, as amended by this First Amendment.

IN WITNESS WHEREOF, the parties hereto have executed this **FIRST AMENDMENT TO EMPLOYMENT** effective as of the date first written above.

BEAZER HOMES USA, INC.

By: /s/ Ian J. McCarthy
Name: Ian J. McCarthy
Title: President and CEO

EXECUTIVE

/s/ Allan P. Merrill
Allan P. Merrill

<u>FIRST AMENDMENT TO</u>
<u>AMENDED AND RESTATED EMPLOYMENT AGREEMENT</u>

This First Amendment to AMENDED AND RESTATED EMPLOYMENT AGREEMENT (this “First Amendment” is made effective as of December 31, 2008 (the “Effective Date”) by and between BEAZER HOMES USA, INC., a Delaware corporation (the “Company”) and Ian J. McCarthy, an individual resident of the State of Georgia (the “Executive”).

WITNESSETH:

WHEREAS, the Company and Executive have heretofore entered into an AMENDED AND RESTATED EMPLOYMENT AGREEMENT made effective as of February 3, 2006 (the “Existing Agreement”); and

WHEREAS, the Company and Executive desire to amend certain provisions of 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. Section 2 of the Existing Agreement is hereby amended by adding the following sentence at the end of the Section:

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”).

2. Section 5(e) of the Existing Agreement is hereby amended by adding the underlined sentence at the end of the Section:

5(e) <u>Date of Termination.</u> “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. <u>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</u>

of Section 409A of the Code only to the extent the Executive has a “separation from service,” as that term is defined in Section 409A of the Code and the applicable Treasury regulations applying all of the default rules thereunder.

3. A new Section 6(a)(v) is hereby added to the Existing Agreement. New Section 6(a)(v) shall read:

6(a)(v) Notwithstanding any provision to the contrary, in the event that any payments or benefits required to be provided by the Company under this Section 6(a) are deemed to constitute payments of “nonqualified deferred compensation” that is subject to the requirements of Section 409A of the Code and if the Executive is deemed on the Date of Termination to be a “specified employee” within the meaning of that term under Section 409A(a)(2)(B) of the Code, then with regard to any payment or the provision of any benefit that is required to be delayed pursuant to Section 409A(a)(2)(B) of the Code, such payment or benefit shall not be made or provided prior to the earlier of (i) the expiration of the six (6)-month period measured from the date of his “separation from service” (as such term is defined in Treasury Regulations issued under Section 409A of the Code), or (ii) the date of his death (the “Delay Period”). Upon the expiration of the Delay period, all payments and benefits delayed pursuant to this Section 6(a)(v) (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. Notwithstanding the foregoing, to the extent that the foregoing applies to the provision of any ongoing welfare benefits to the Executive that would not be required to be delayed if the premiums therefore were paid by the Executive, the Executive shall pay the full costs of premiums for such welfare benefits during the Delay Period and the Company shall pay the Executive an amount equal to the amount of such premiums paid by the Executive during the Delay Period promptly after its conclusion.

4. Section 6(d) of the Existing Agreement is hereby amended by adding the underlined sentence to the Section:

6(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. 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, including the requirement that, if at the time of Termination, the Executive is a “specified employee” within the meaning of Section 409A of the Code, then payment 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). 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.

5. Section 9(a) of the Existing Agreement is hereby amended by adding the underlined sentence to the Section:

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 if 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. The Payments shall be eliminated or reduced consistent with the requirements of the preceding sentence by eliminating or reducing those Payments in a manner that produces the greatest economic advantage to the Executive and if

elimination of reduction of two or more specific Payments produce the same economic advantage, they shall be adjusted or reduced pro rata.

6. A new Section 9(e) is hereby added to the Existing Agreement. New Section 9(e) shall read:

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.

7. A new Section 14 is hereby added to the Existing Agreement. New Section 14 shall read:

14. **Compliance with Section 409A of the Code.** It is intended that this Agreement shall comply with Section 409A of the Code (and any regulations and any guidelines issued thereunder) to the extent the Agreement is subject thereto, and the Agreement shall be interpreted on a basis consistent with such intent. If it is determined that an amendment of this Agreement is necessary in order for it to comply with Section 409A, the parties agree to negotiate in good faith to amend this Agreement in a manner that preserves the original intent of the parties to the extent reasonably possible.

8. Except as and to the extent amended hereby, the Existing Agreement is hereby ratified and confirmed in all respects and remains in full force and effect in accordance with the terms thereof. By signing below, the Company and Executive hereby (i) consent to all of the terms of this First Amendment, (ii) ratify and confirm their respective obligations under the Existing Agreement, and (iii) agree that said obligations are and shall remain in full force and effect, as amended by this First Amendment.

IN WITNESS WHEREOF, the parties hereto have executed this **FIRST AMENDMENT TO AMENDED AND RESTATED EMPLOYMENT AGREEMENT** effective as of the date first written above.

BEAZER HOMES USA, INC.

By: /s/ Kenneth F. Khoury
Name: **Kenneth F. Khoury**
Title: **Executive Vice President and General Counsel**

EXECUTIVE

/s/ Ian J. McCarthy
Ian J. McCarthy

FIRST AMENDMENT TO
AMENDED AND RESTATED EMPLOYMENT AGREEMENT

This First Amendment to AMENDED AND RESTATED EMPLOYMENT AGREEMENT (this "First Amendment" is made effective as of December 31, 2008 (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 (the "Executive").

WITNESSETH:

WHEREAS, the Company and Executive have heretofore entered into an AMENDED AND RESTATED EMPLOYMENT AGREEMENT made effective as of February 3, 2006 (the "Existing Agreement"); and

WHEREAS, the Company and Executive desire to amend certain provisions of 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. Section 2 of the Existing Agreement is hereby amended by adding the following sentence at the end of the Section:

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").

2. Section 5(e) of the Existing Agreement is hereby amended by adding the underlined sentence at the end of the Section:

5(e) <u>Date of Termination.</u> "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. <u>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</u>

of Section 409A of the Code only to the extent the Executive has a "separation from service," as that term is defined in Section 409A of the Code and the applicable Treasury regulations applying all of the default rules thereunder.

3. A new Section 6(a)(v) is hereby added to the Existing Agreement. New Section 6(a)(v) shall read:

6(a)(v) Notwithstanding any provision to the contrary, in the event that any payments or benefits required to be provided by the Company under this Section 6(a) are deemed to constitute payments of "nonqualified deferred compensation" that is subject to the requirements of Section 409A of the Code and if the Executive is deemed on the Date of Termination to be a "specified employee" within the meaning of that term under Section 409A(a)(2)(B) of the Code, then with regard to any payment or the provision of any benefit that is required to be delayed pursuant to Section 409A(a)(2)(B) of the Code, such payment or benefit shall not be made or provided prior to the earlier of (i) the expiration of the six (6)-month period measured from the date of his "separation from service" (as such term is defined in Treasury Regulations issued under Section 409A of the Code), or (ii) the date of his death (the "Delay Period"). Upon the expiration of the Delay period, all payments and benefits delayed pursuant to this Section 6(a)(v) (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. Notwithstanding the foregoing, to the extent that the foregoing applies to the provision of any ongoing welfare benefits to the Executive that would not be required to be delayed if the premiums therefore were paid by the Executive, the Executive shall pay the full costs of premiums for such welfare benefits during the Delay Period and the Company shall pay the Executive an amount equal to the amount of such premiums paid by the Executive during the Delay Period promptly after its conclusion.

4. Section 6(d) of the Existing Agreement is hereby amended by adding the underlined sentence to the Section:

6(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. 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, including the requirement that, if at the time of Termination, the Executive is a “specified employee” within the meaning of Section 409A of the Code, then payment 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). 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.

5. Section 9(a) of the Existing Agreement is hereby amended by adding the underlined sentence to the Section:

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 if 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. The Payments shall be eliminated or reduced consistent with the requirements of the preceding sentence by eliminating or reducing those Payments in a manner that produces the greatest economic advantage to the Executive and if

elimination of reduction of two or more specific Payments produce the same economic advantage, they shall be adjusted or reduced pro rata.

6. A new Section 9(e) is hereby added to the Existing Agreement. New Section 9(e) shall read:

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.

7. A new Section 14 is hereby added to the Existing Agreement. New Section 14 shall read:

14. **Compliance with Section 409A of the Code.** It is intended that this Agreement shall comply with Section 409A of the Code (and any regulations and any guidelines issued thereunder) to the extent the Agreement is subject thereto, and the Agreement shall be interpreted on a basis consistent with such intent. If it is determined that an amendment of this Agreement is necessary in order for it to comply with Section 409A, the parties agree to negotiate in good faith to amend this Agreement in a manner that preserves the original intent of the parties to the extent reasonably possible.

8. Except as and to the extent amended hereby, the Existing Agreement is hereby ratified and confirmed in all respects and remains in full force and effect in accordance with the terms thereof. By signing below, the Company and Executive hereby (i) consent to all of the terms of this First Amendment, (ii) ratify and confirm their respective obligations under the Existing Agreement, and (iii) agree that said obligations are and shall remain in full force and effect, as amended by this First Amendment.

IN WITNESS WHEREOF, the parties hereto have executed this **FIRST AMENDMENT TO 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 CEO

EXECUTIVE

/s/ Michael H. Furlow
Michael H. Furlow

Exhibit 10.8

FIRST AMENDMENT TO
CHANGE OF CONTROL EMPLOYMENT AGREEMENT

This First Amendment to CHANGE OF CONTROL EMPLOYMENT AGREEMENT (this “First Amendment” is made effective as of December 31, 2008 (the “Effective Date”) by and between BEAZER HOMES USA, INC., a Delaware corporation (the “Company”) and Allan P. Merrill, an individual resident of the State of Georgia (the “Executive”).

WITNESSETH:

WHEREAS, the Company and Executive have heretofore entered into an CHANGE OF CONTROL EMPLOYMENT AGREEMENT made effective as of May 1, 2007 (the “Existing Agreement”); and

WHEREAS, the Company and Executive desire to amend certain provisions of 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. Section 2 of the Existing Agreement is hereby amended by adding the following sentence at the end of the Section:

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”).

2. Section 5(e) of the Existing Agreement is hereby amended by adding the underlined sentence at the end of the Section:

5(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. 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 of the Code only to the extent the Executive has a "separation from service," as that term is defined in Section 409A of the Code and the applicable Treasury regulations applying all of the default rules thereunder.

3. A new Section 6(a)(v) is hereby added to the Existing Agreement. New Section 6(a)(v) shall read:

6(a)(v) Notwithstanding any provision to the contrary, in the event that any payments or benefits required to be provided by the Company under this Section 6(a) are deemed to constitute payments of "nonqualified deferred compensation" that is subject to the requirements of Section 409A of the Code and if the Executive is deemed on the Date of Termination to be a "specified employee" within the meaning of that term under Section 409A(a)(2)(B) of the Code, then with regard to any payment or the provision of any benefit that is required to be delayed pursuant to Section 409A(a)(2)(B) of the Code, such payment or benefit shall not be made or provided prior to the earlier of (i) the expiration of the six (6)-month period measured from the date of his "separation from service" (as such term is defined in Treasury Regulations issued under Section 409A of the Code), or (ii) the date of his death (the "Delay Period"). Upon the expiration of the Delay period, all payments and benefits delayed pursuant to this Section 6(a)(v) (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. Notwithstanding the foregoing, to the extent that the foregoing applies to the provision of any ongoing welfare benefits to the Executive that would not be required to be delayed if the premiums therefore were paid by the Executive, the Executive shall pay the full costs of premiums for such welfare benefits during the Delay Period and the Company shall pay the Executive an amount equal to the amount of such premiums paid by the Executive during the Delay Period promptly after its conclusion.

4. Section 6(d) of the Existing Agreement is hereby amended by adding the underlined sentence to the Section:

6(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. 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, including the requirement that, if at the time of Termination, the Executive is a "specified employee" within the meaning of Section 409A of the Code, then payment 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). 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.

5. Section 9(a) of the Existing Agreement is hereby amended by adding the underlined sentence to the Section:

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 if 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. The Payments shall be eliminated or reduced consistent with the requirements of the preceding sentence by eliminating or reducing those Payments in a manner that produces the greatest economic advantage to the Executive and if

elimination of reduction of two or more specific Payments produce the same economic advantage, they shall be adjusted or reduced pro rata.

6. A new Section 9(e) is hereby added to the Existing Agreement. New Section 9(e) shall read:

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.

7. A new Section 14 is hereby added to the Existing Agreement. New Section 14 shall read:

14. **Compliance with Section 409A of the Code.** It is intended that this Agreement shall comply with Section 409A of the Code (and any regulations and any guidelines issued thereunder) to the extent the Agreement is subject thereto, and the Agreement shall be interpreted on a basis consistent with such intent. If it is determined that an amendment of this Agreement is necessary in order for it to comply with Section 409A, the parties agree to negotiate in good faith to amend this Agreement in a manner that preserves the original intent of the parties to the extent reasonably possible.

8. Except as and to the extent amended hereby, the Existing Agreement is hereby ratified and confirmed in all respects and remains in full force and effect in accordance with the terms thereof. By signing below, the Company and Executive hereby (i) consent to all of the terms of this First Amendment, (ii) ratify and confirm their respective obligations under the Existing Agreement, and (iii) agree that said obligations are and shall remain in full force and effect, as amended by this First Amendment.

IN WITNESS WHEREOF, the parties hereto have executed this **FIRST AMENDMENT TO CHANGE OF CONTROL 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 CEO

EXECUTIVE

/s/ Allan P. Merrill
Allan P. Merrill

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 first 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: February 9, 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 first 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: February 9, 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 December 31, 2008, 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: February 9, 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 December 31, 2008, 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: February 9, 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.