

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

Form 10-K

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

For the fiscal year ended December 31, 2009

Commission file number 1-32375

Comstock Homebuilding Companies, Inc.

(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction of Incorporation or Organization)

20-1164345
(I.R.S. Employer Identification No.)

11465 Sunset Hills Road
4th Floor
Reston, Virginia 20190
(703) 883-1700
(Address, including zip code, and telephone number, including area code, of principal executive offices)

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

None

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

Class A common stock, par value \$.01 per share
(Title of Class)

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files. Yes No

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

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

Large Accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of The Act). Yes No

The aggregate market value of voting and non-voting common equity held by nonaffiliates of the registrant (11,741,553 shares) based on the last reported sale price of the registrant's common equity on the NASDAQ Global Market on June 30, 2009, which was the last business day of the registrant's most recently completed second fiscal quarter, was \$2,348,311. For purposes of this computation, all officers, directors, and 10% beneficial owners of the registrant are deemed to be affiliates. Such determination should not be deemed to be an admission that such officers, directors, or 10% beneficial owners are, in fact, affiliates of the registrant.

As of March 31, 2010, there were outstanding 15,875,100 shares of the registrant's Class A common stock, par value \$.01 per share, and 2,733,500 shares of the registrant's Class B common stock, par value \$.01 per share.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's definitive Proxy Statement for the 2010 Annual Meeting of Stockholders are incorporated by reference into Part III of this Form 10-K.

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COMSTOCK HOMEBUILDING COMPANIES, INC.

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For the Fiscal Year Ended December 31, 2009

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PART I

Item 1. Business

Overview

Comstock is a multi-faceted real estate development company engaged in the development of for-sale residential and mixed use products. Our substantial experience in building a diverse range of products including single-family homes, townhouses, mid-rise condominiums, high-rise multi-family condominiums and mixed-use (residential and commercial) developments has positioned Comstock as a prominent real estate developer and home builder in the Washington, D.C. market place. References in this Form 10-K to "Comstock," "Company", "we," "our" and "us" refer to Comstock Homebuilding Companies, Inc. together in each case with our subsidiaries and any predecessor entities unless the context suggests otherwise.

Our business was founded in 1985 as a residential land developer and home builder focused on the Northern Virginia suburbs of the Washington, D.C. area. In the 1990's we expanded our business to include home building operations in Maryland and North Carolina and a title insurance agency in Virginia. Prior to our December 2004 initial public offering, we operated our business through multiple holding companies each focused on a distinct geographic area or business operation. In connection with our initial public offering, these primary holding companies were consolidated and merged into Comstock Homebuilding Companies, Inc., which was incorporated in Delaware in May 2004. Subsequent to our initial public offering we conduct our operations through wholly owned subsidiaries. Comstock Homes is the brand name of our for sale home building operations. Comstock Communities is the brand name we use for our residential rental property operations. Since our founding in 1985, and as of December 31, 2009, we have built and delivered more than 5,200 homes generating total revenue in excess of \$1.3 billion.

Our core market of Washington, D.C. has experienced significant job and population growth over the past two decades, creating demand for a wide range of housing products. Our expertise in developing traditional and non-traditional housing products enables us to focus on a wide range of opportunities within our core market. We have built homes in suburban communities, where we focus on low density products such as single family detached homes, and in urban areas, where we focus on high density multi-family and mixed use products. We develop properties with the intent that they be sold either as fee-simple properties or condominiums to individual unit buyers or as investment properties sold to private or institutional investors. Currently we operate only in the Washington, D.C. market where we target first-time, early move-up, and secondary move-up buyers. We focus on products that we are able to offer for sale in the middle price points within the markets where we operate, avoiding the very low-end and high-end products. We believe our middle market strategy positions our products such that they are affordable to a significant segment of potential home buyers in our market. In 2007, 2008, and 2009 the average price of the homes we delivered was \$263,000, \$300,000, and \$289,000, respectively.

We seek to minimize risk associated with fluctuating market conditions by primarily building pre-sold units and limiting the number of spec units held in inventory. In each new community that we develop we build model homes to demonstrate our products and to house our on-site sales operations. We limit the building of spec units to locations where there is a demonstrated demand for immediate delivery homes or where the majority of the units within a multi-family building (such as townhouses or condominiums) have been pre-sold. We believe that by limiting the number of spec units held in inventory we reduce our exposure to cyclical fluctuations in market values and minimize costs associated with holding inventory, such as debt service. We believe that our strategy of limiting spec inventory and converting our standing condominium inventory to rental properties contributed to our ability to manage the current downturn in the housing market.

In certain communities we continue to offer units for sale and for rent. In the difficult market conditions that have persisted over the past few years this strategy has dramatically enhanced our ability to maintain adequate operating cashflow. It has also contributed to our ability to negotiate amicable arrangements with all of our lenders regarding necessary modifications to our borrowing facilities as we worked to align our portfolio with market realities. Additionally, by operating key properties as rental communities during the housing downturn, we have been able to position valuable assets for sale in improving market conditions.

In 2005 we began executing expansion plans with the goal of establishing operations in key markets throughout the Southeast where job growth and population growth created increased demand for new housing. During 2006, we expanded our Raleigh, North Carolina operation and we entered the Charlotte, North Carolina, Myrtle Beach, South Carolina, and Atlanta, Georgia markets, increasing revenues to approximately \$266.2 million in 2007. However, during 2007 it became clear that the unprecedented span of growth in the housing sector was ending. Changing economic conditions were negatively affecting demand for new housing. Drawing on the experience we gained in previous downturns, we curtailed our expansion plans and adopted a defensive strategy to ensure our ability to survive the housing downturn, should it prove to be protracted, which it has. We quickly sold certain assets where we believed market values would continue to erode and we began working with our lenders to renegotiate the terms of our project related and corporate borrowings, which peaked at approximately \$340.0 million as of September 30, 2006. Throughout 2007 and 2008, market conditions continued to deteriorate which made it necessary to significantly scale back operations while continuing efforts to renegotiate terms of our debt while seeking to retain certain properties in our portfolio.

With market conditions remaining difficult as 2009 began and liquidity becoming an increasing concern, we established our Strategic Realignment Plan. This Plan was designed to eliminate debt, further reduce expenses, enhance our balance sheet, conserve cash, and protect our key Washington, D.C. market assets. By the end of 2009 we successfully renegotiated all secured debt obligations and reduced total debt to approximately \$67.6 million as of December 31, 2009. As detailed in the Subsequent Events section of this Form 10-K, the final steps of our Strategic Realignment Plan were completed in early 2010, reducing our total debt by another \$4.5 million. By executing this plan we eliminated or reduced corporate and project related debt while also disposing of assets where market values had deteriorated and retained key assets in the Washington, D.C. market where values had begun to stabilize.

In keeping with our defensive strategy we did not purchase any land in 2008 or 2009 and we completed our exit from the Charlotte, North Carolina, Myrtle Beach, South Carolina, and Atlanta, Georgia markets and suspended our operations in the Raleigh, North Carolina market. We also eliminated all spec inventory (other than those units held as rental properties) and we disposed of properties where we believed market conditions did not warrant protecting the asset. We reduced total debt to approximately \$67.6 million (see details at Note 8 to the accompanying consolidated financial statements), we significantly reduced general and administrative expenses (from \$37.5 million in 2006 to \$8.1 million in 2009), we enhanced operating cashflow, and we protected key properties in the Washington, D.C. area around which we will seek to rebuild our business. As a result of our effort to realign our business with market conditions our unit deliveries declined in 2009 to 74 (down from the peak of 914 in 2006), generating total revenues of \$25.0 million (down from the peak of \$266.2 million in 2007).

We believe that our significant experience over the past 25 years, combined with our ability to navigate through two major housing downturns (early 1990's and late 2000's) have provided us the experience necessary to capitalize on attractive opportunities in our core market of Washington, D.C. and to

rebuild shareholder value. We are confident that our focus on the Washington, D.C. market, which has historically been characterized by economic conditions less volatile than many other major homebuilding markets, will provide opportunity to generate attractive returns on investment while also providing opportunity for growth. Further, as detailed in the Subsequent Events section of this Form 10-K, we believe the recent court decision resulting in our favor regarding litigation we brought against the general contractor on our Eclipse high-rise condominium project in Arlington, Virginia will ultimately enhance liquidity and reduce indebtedness, once any appeal of the award by the defendant concludes.

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The homebuilding industry continues to experience demand levels well below the record levels experienced in 2005. Although market conditions showed signs of improvement in 2009, as compared to 2008, demand continues to be well below the robust levels experienced earlier in this decade. The economic recession and the well documented turmoil in the financial markets continue to create challenging market conditions for most industries. Among the challenges facing the home building industry is availability of capital, availability of mortgage financing, increased levels of existing home inventory fueled by foreclosures, and reduced demand for new homes. Nonetheless, we believe that having achieved the major objectives of our Strategic Realignment Plan that Comstock is now well positioned to get back to work seeking to capitalize on opportunities that we believe are emerging in the stabilizing Washington, D.C. market. Comstock's ability to navigate the turmoil has been a result of the commitment to success and dedication of every member of the Comstock team, as well as the strong relationships we have built over the years with our lenders, suppliers, subcontractors, and customers.

For additional information and analysis of recent trends in our operations and financial condition, see "Management's Discussion and Analysis of Financial Condition and Results of Operations" in this Form 10-K. We file annual, quarterly and current reports, proxy statements and other information with the Securities and Exchange Commission (the "SEC"). These filings are available to the public over the Internet at the SEC's website at <http://www.sec.gov> or on our web site at www.comstockhomebuilding.com. The Investors Relations page on our website contains links to the reports we file with the SEC which you may access and download free of charge. Our website also includes a corporate governance section which contains our Corporate Governance Guidelines, Code of Conduct, Audit and Compensation Committee Charters, Code of Ethics and Whistleblower Policy. In addition, you may request a copy of the foregoing filings (excluding exhibits), charters, guidelines and codes, and any waivers or amendments to such codes which are applicable to our executive officers, at no cost by writing to us at our principal executive office address. Our principal executive office address is; 11465 Sunset Hills Road, 4th floor, Reston, Virginia 20190, and our telephone number is; (703) 883-1700.

Liquidity and Access to Capital

The duration and the depth of the current downturn in real estate markets and the general weakness in the economy have significantly impacted the balance sheets and the overall financial health of many banks and other financial institutions that have been the primary sources of capital for home builders. Banks that have been active in real estate lending have been forced to substantially tighten their lending requirements or withdraw from real estate lending altogether. This has created a liquidity crisis for real estate developers and home builders that rely on banks for project financing and has contributed to the erosion of real estate values and increasing default rates in real estate loan portfolios of banks. Federal banking regulators have required banks to devalue loan portfolio assets and many banks have struggled to meet federal capital reserve requirements. This in turn has created a severe liquidity crisis in the banking and real estate industries. The resulting liquidity crisis is creating a vicious cycle of bank asset devaluation and capital requirement failures among banks. The burden created by these circumstances is leading to the seizure by the F.D.I.C. of many banks. Some of these financial institutions are burdened with significant troubled real estate loan portfolios and real estate owned as a result of foreclosures. In past real estate market downturns these circumstances have been followed by a period of time where experienced investors and developers are able to acquire land and other assets from troubled financial institutions or from the F.D.I.C. on attractive terms.

This series of events, which last occurred in the United States in the early 1990's, is creating a challenging environment for financing real estate. However it is also creating opportunities to acquire properties at significant discounts to the market values experienced before the market downturn. Additionally, many costs associated with construction have been reduced as a result of waning demand for such products and services over the past few years. The combination of lower land costs and lower production costs leads to the ability to offer homes at prices that are well below the prices experienced at the peak of market demand. This allows home builders that are positioned to capitalize on this trend to be competitive in the market. Liquidity and access to capital are key factors in being able to capitalize on such opportunities. If we are unable to rely on our existing lender relationships or identify new capital sources we will have difficulty capitalizing on new attractive opportunities and margin growth will be difficult to achieve.

Our liquidity remains below desired levels and we continue to have limited access to new capital. However, the steps we have taken over the past two years to stabilize our business and reverse the trend of negative cashflow experienced in previous periods. We also believe that we are now positioned to potentially build upon the trend of restored profitability that began with the results we reported for the third and fourth quarters of 2009. We believe that as market conditions improve our ability to generate positive results will be enhanced which will in turn improve our access to capital. Further, as detailed in the Subsequent Events section of this Form 10-K, we believe the recent court decision in our favor regarding litigation we brought against the general contractor on our Eclipse high-rise condominium project in Arlington, Virginia, will improve our liquidity and reduce our indebtedness to KeyBank, once any appeal of the award by the defendant concludes.

Our Business Strategy

Our general business strategy is to focus on for-sale residential real estate development opportunities in the Mid-Atlantic United States that afford us the ability to produce products at price points where we believe there is significant long-term demand for new housing. To control risk we generally pursue finished building lots under option contracts. Option contracts afford us the opportunity to minimize land inventory while controlling a supply of building lots to meet current and future requirements. Option contract transactions also tend to require less capital and therefore the return on investment may be enhanced. Further, traditional capital sources, such as banks which we rely upon for project financing, view option contract transaction as less risky and therefore tend to be more willing to provide capital for option lot acquisitions at reasonable rates.

Although we have always pursued finished lot option transactions, the scale and financial strength of some of our competitors provides them with a distinct advantage with respect to their ability to acquire building lots on an option contract basis. In order to provide an adequate supply of finished lots that can be acquired on an option basis we seek to work with multiple land developers with respect to the land they control rather than relying on a single source. In addition, we also have land development capabilities. This enables us to acquire parcels of land that we then develop into finished building lots, sometimes selling a portion of the finished lots to other home builders. We believe that our land development capabilities provide several additional benefits, such as the ability to thoroughly analyze acquisition opportunities to identify risks associated with entitlements and/or site conditions, acquire properties in attractive locations that are not generally available as finished lots on an option basis, develop a wide array of housing products to capitalize on demand trends in the Washington, D.C. market and to acquire distressed assets (including partially developed properties) from financial institutions where we believe we can generate attractive returns on invested capital.

We seek to reduce risk through diversification of product offerings with a focus on select markets that have a demonstrated history of demand for new housing products. Recognizing the housing industry is cyclical in nature and that current challenging market conditions, although improving, will take time to fully stabilize, we believe that our focus on our core market of Washington, D.C. will provide significant opportunity for growth without the risk associated with maintaining operations in, or expanding operations to, multiple distant markets. We are proceeding with extreme caution as we begin to seek to capitalize on emerging opportunities. With regards to new acquisitions, we are currently focused primarily on distressed assets held by financial institutions. We believe that, although larger home builders that have significantly greater capital resources do present competition for land acquisitions, our

ability to navigate the significant turmoil in the housing sector over the past few years, while maintaining ongoing operations and reaching amicable arrangements with our lenders, will position us well to work with lenders currently burdened with distressed assets.

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A summary of the key elements of our operating strategy, as adapted to current market realities follows:

Maintain a focus on our core market-Washington, D.C. From 2005 through 2008 increases in unemployment rates, foreclosure rates, and re-sale market inventory had a negative effect on demand for new housing products in all markets. Although the presence of the federal government and the impact that federal spending has on the local economy has historically provided a level of protection to the Washington, D.C. area economy, the depth and duration of the economic recession and the resulting downturn in housing was felt throughout the region. However, recent demand trends in the Washington, D.C. area are indicative of a stabilizing environment. Accordingly, we have eliminated or suspended operations in all markets except the Washington, D.C. market and we will draw on our 25 year history in the Washington, D.C. market to capitalize on emerging attractive opportunities for long term growth in our core market. We are confident that our focus on the Washington, D.C. market, which has historically been characterized by economic conditions less volatile than many other major homebuilding markets, will provide opportunity to generate attractive returns on investment while also providing opportunity for growth.

Maintain our "Middle Market" approach. Historically we have focused on middle market products designed to be affordable to a broad segment of the home buying population. We believe that by focusing on products that are affordable to the largest segment of the prospective home buying population we reduce risk to cyclical market value fluctuations. As stabilizing market conditions warrant new development undertakings, we will continue our focus on projects with middle market orientation.

Continue to maximize the value of our current portfolio. As market conditions resulted in decreased demand for new homes we protected our key assets in the Washington, D.C. market. Where we had standing condominium inventory, we converted remaining units in the projects to rental properties. This strategy provided cashflow that enabled us to neutralize the impact of debt service requirements and to improve overall liquidity. Additionally, based on our experience with prior market cycles in the Washington, D.C. region, we believed that this approach would make it possible to reposition these key properties for sale at a time when market pressure on values began to ease. As traffic and interest in these properties began increasing in the second half of 2009, we began releasing portions of this inventory from our rental programs for sale. We will continue to manage these assets with a view towards maximizing values, enhancing cashflow and rebuilding value.

Regularly assess valuations of portfolio assets. The historic nature of the economic recession of the past few years has been well documented. The impact on the value of residential real estate has been dramatic. As a result we recorded significant impairments during 2006 through 2009. We continuously re-evaluate the real estate assets we own with the goal of reporting them at estimated fair value on our financial statements if impairment has occurred. We believe our depth of experience enables us to quickly identify and address changing market conditions and provides us opportunity to protect and enhance the value of the real estate assets we own and develop.

Protect liquidity and maximize capital availability. We remain highly focused on preserving liquidity and available capital. We believe that by taking steps to enhance liquidity we will be better positioned to take advantage of attractive opportunities as the market stabilizes and demand for new housing recovers. Recent trends in the Washington, D.C. area are indicative of improving market conditions.

Focus on opportunities for attractive returns on invested capital. By focusing on acquiring finished building lots and distressed assets held by financial institutions, we believe that we will be able to enhance the return on invested capital. Option contracts generally tend to require less capital and therefore the return on investment may be enhanced. Further, traditional capital sources, such as banks which we rely upon for project financing, view option contract transactions and the acquisition of distressed assets that are generally available at discounted prices, as less risky and therefore tend to be more willing to provide capital for such acquisitions at reasonable rates. We will seek to rebuild our pipeline of available building lots through a cautious and measured approach focused on the Washington, D.C. market.

Maintain rational overhead expenses. A key element of the defensive posture we adopted to enhance our ability to survive the current downturn was the significant reduction of operating expenses. We sought to retain only key people capable of contributing to our effort to restore our Company to profitability and we cut other operating expenses across the board. By doing so we significantly reduced general and administrative expenses, from \$37.5 million in 2006 to \$8.1 million in 2009 and enhanced operating cashflow. We will continue our effort to keep overhead expenses commensurate with our current level of business as we seek to rebuild margins and enhance shareholder value.

Capitalize on undervalued assets. The depth and duration of the cyclical downturn in housing has created an environment where many assets, borrowers and lenders are financially distressed. We will seek to capitalize on market opportunities to acquire assets at reduced costs where we believe improving market conditions provide opportunity for attractive returns. We believe that we are well positioned to identify such acquisition opportunities as a result of our strong relationships within the real estate and financial industries in our core market of Washington, D.C.

Create opportunities in areas overlooked by our competitors. Through our wide ranging development capabilities and expertise we will seek to capitalize on opportunities that our competitors may overlook. As current homebuilding industry and general economic conditions stabilize and improve, we believe there will be attractive market opportunities for well-designed, quality homes and condominiums in suburban areas as well as urban locations in close proximity to transportation facilities.

Build upon our vendor, customer and lender relationships. The turmoil that has engulfed the homebuilding industry over the past few years has had a profound negative impact on almost every home builder. As a result, many vendors, tradesmen and lenders have suffered significant losses. In many circumstances the effort to communicate with those impacted by the financial distress suffered by home builders has been lacking and relationships have suffered along with balance sheets. Throughout the market downturn we have worked diligently to communicate with those that we do business with and sought to reach amicable solutions. A key element of our Strategic Realignment Plan was developing amicable solutions with strategic creditors and addressing any customer concerns as well. We believe that our efforts in this regard will result in our Company having strengthened the critical relationships that we rely upon as we seek to rebuild our business and enhance shareholder value.

Our Operations

Our operations have been scaled back to align general and administrative expenses with market realities. In keeping with the defensive strategy adopted to enhance our ability to survive a prolonged downturn in housing demand we eliminated several operating divisions and refocused operations on the Washington, D.C. market where we believe our 25 years of market experience provides us the best opportunity to rebuild our business and enhance shareholder value. Our Washington area divisional operation currently shares office space with our corporate headquarters in Reston, Virginia where it receives support services such as marketing, accounting, legal, information technology, human resources, sales training, purchasing and land underwriting and financing. Although we have dramatically reduced the size of our staff we believe that we have maintained the critical capabilities we need to capitalize on emerging opportunities. We believe that we are properly staffed for the current market conditions and have the ability to manage growth as market

conditions warrant.

Land Identification and Acquisition

We have operated in our core market of Washington, D.C. since 1985 and as a result have developed a deep knowledge base of the market. Over the past 25 years we have developed a wide variety of products, including most housing products, from low density single family detached products to high density multi-family attached and hi-rise products. We prefer to gain diversity and growth through multiple product offerings within the expanding Washington, D.C. market rather than seeking to expand into multiple distant markets. We believe this strategy minimizes the risks associated with entering new markets such as operating in distant locations with non-executive managers and relying on demand in second or third tier markets. Our core market of Washington, D.C. has experienced significant job and population growth over the past two decades, creating demand for a wide range of housing products. Our extensive experience developing a diverse range of housing products enables us to focus on a wide range of opportunities within our core market.

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The real estate development and home building industries are highly competitive. In addition to competing for home purchasers, home builders compete for construction financing, raw materials, skilled labor and prime development sites, especially those where developed building lots are available under option lot contracts from land developers. We compete with other local, regional and national home builders in all of these areas. Some of our competitors have significantly greater financial resources than we do, giving them a distinct advantage when we compete with them for prime building sites. Some of the national builders against which we compete for land acquisitions include Pulte Homes, DR Horton, Toll Brothers, Ryland Homes, NVR, Hovnanian and Lennar.

We believe that controlling a land inventory through option contracts as opposed to holding large inventories of raw land reduces risks associated with cyclical market fluctuations. This is because a typical option lot contract allows the home builder to acquire building lots on a “just in time basis” as it pre-sells homes and prepares for construction. Additionally, such contracts usually limit the home builder’s financial commitment to the project by providing a fixed price for each building lot and by limiting liability to the land seller to the amount of the contract deposit. We seek to manage our future growth in accordance with our business plan and long term objectives by focusing first on acquiring finished lots under option contracts whenever possible. In the past we have acquired land for our home building operations both as finished building lots and as raw land that we developed while over weighting option lots and avoiding raw land holdings if possible. Through the acquisition of Parker Chandler Homes (Atlanta) and Capitol Homes (Raleigh) in 2006 our inventory of raw land expanded significantly. Due to the focus that these acquired companies had on developing raw land, the amount of raw land in our inventory outweighed our option lot inventory. Although our goal was to transform the operations of the acquired companies into option lot buyers, market conditions deteriorated sooner than we anticipated. As market conditions deteriorated, we methodically sold or negotiated friendly foreclosure agreements to dispose of excess land holdings and the associated debt.

We continue to own a small amount of raw land in the Washington, D.C. market. The objectives achieved under our Strategic Realignment Plan has resulted in the disposal of all raw land and other inventory (and the associated debt) in the Atlanta and Raleigh markets and positioned us to begin a refocused approach of acquiring attractive building lots in our core market of Washington, D.C. Additionally, at December 31, 2009 the remaining raw land in our inventory is under contract to be sold. We expect the sale to be consummated in the first quarter of 2010.

Our asset management and land acquisition process is overseen by our executive management team. Executive management meets regularly to evaluate market opportunities, prospective land acquisitions, project financing options, new product development and other operational issues. During much of 2009, a major focus of the management team was evaluating each and every portfolio asset and determining the best strategy for dealing with each asset in keeping with the objectives of our Strategic Realignment Plan. A methodical approach was undertaken to ensure that the strategy implemented with respect to each portfolio asset was one that we believed would produce the best short term and long term results for the Company. Executive management also meets regularly to evaluate performance of portfolio assets and to determine strategy adjustments that may be warranted to contain or reduce risks associated with evolving market conditions, new competition, fluctuations in costs of production and other factors that may affect the results of each project and to review options for enhancing the return on capital invested in such assets. In 2010, a major focus of the management team will be identifying attractive opportunities in our core market of Washington, D.C., developing effective acquisition strategies and identifying new sources of capital. As detailed in the Subsequent Events footnote to our Consolidated Financial Statements contained in this Form 10-K, we believe the recent court decision in our favor regarding litigation we brought against the general contractor on our Eclipse high-rise condominium project in Arlington, Virginia, may ultimately enhance our liquidity and capital resources, once any appeal process initiated by the defendant is concluded. Given the uncertainty as to (i) whether and when we would receive payment from the contractor and (ii) the amount of the payment, it may be necessary to pursue additional sources of capital prior to our potential receipt of any payment from the general contractor.

Our acquisition underwriting and due diligence process includes a thorough examination of a variety of factors that can impact the success of a development project. The factors we routinely examine include but are not limited to the following: environmental conditions, soil conditions, utility availability, projected construction costs, labor and material availability, zoning restrictions, impact fee assessment, land title conditions and other factors. Additionally, we conduct a competitive marketing analysis to assess competitive projects in the area that may impact our ability to attract purchasers and generate sales. Our market studies include, but are not limited to, researching factors such as: existing and upcoming competitive projects, features and pricing offered by the competition, land costs of competitive projects, population and employment trends, impact of school districts, access to regional transportation facilities, availability of local and regional amenities, impact of commuter route options and pending transportation improvements, and assessment of other factors. We develop prospective buyer profiles and forecast sales for each project. On a regular basis we assess performance of each project and make adjustments to our marketing strategy as needed to promote adequate sales.

Land Entitlement and Development

Whether purchasing finished building lots or land for development we can rely on our extensive knowledge and experience in all aspects of site selection, land planning, entitlement and land development processes. We have significant experience in dealing with local governmental and regulatory authorities that govern the site development, entitlement and home building processes. Obtaining entitlements and development permits often requires significant negotiations with local governmental authorities, and various other parties, including local homeowner associations, environmental protection groups and federal governmental agencies. Our extensive experience and knowledge allow us to effectively negotiate with all concerned parties in an attempt to ensure the necessary permits can be obtained before acquisition of a particular building site.

Our experience and in-house capabilities also enable us to quickly assess the estimated costs associated with development of a particular property, and the potential development challenges. As a result, we can control the details of development, from the design of each community entryway to the placement of streets, utilities and amenities, in order to efficiently design a development that we believe will maximize the potential return on our investment in the property. Even when we are purchasing finished lots from a land developer, these in-house capabilities enable us to work with the land seller to ensure that the development is designed in a manner that is in keeping with our marketing objectives for the project and decisions made by the developer regarding land development issues do not negatively impact the costs we will incur when constructing homes on the property. Further, we believe that these capabilities position us well to work with financial institutions seeking to sell distressed land assets on which they have foreclosed. In certain circumstances we provide our services for a fee to property owners seeking to develop or sell their property, such as financial institutions or investors.

Sales and Marketing

We seek diversification and growth through multiple product offerings rather than seeking growth through expansion into multiple distant markets. We believe this strategy minimizes the risks associated with entering new markets such as operating in distant locations with non-executive managers and relying on demand in second or third tier markets. Our core market of Washington, D.C. has experienced significant job and population growth over the past two decades, creating demand for a wide range of housing products. Our significant experience in developing a diverse range of housing products enables us to focus on a wide range of opportunities within our core market. We have built homes in suburban communities, where we focus on low density products

such as single family detached homes, and in urban areas, where we focus on high density multi-family and mixed use products. We develop properties with the intent that they be sold either as fee-simple properties or condominiums to individual unit buyers or as investment properties sold to private or institutional investors. We focus on geographic areas where we believe there will be continuing demand for new housing and the potential for attractive returns.

Currently we operate only in the Washington, D.C. market where we target first-time, early move-up, and secondary move-up buyers. We focus on products that we are able to offer for sale in the middle price points within the markets where we operate, avoiding the very low-end and high-end products. We believe our middle market strategy positions our products such that they are affordable to a significant segment of potential home buyers in our market. We continually reevaluate and improve upon our existing product designs and develop new product offerings to keep up with changing consumer demands and emerging market trends.

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Comstock Homes is the brand name of our for sale home building operations. Comstock Communities is the brand name we use for our residential rental property operations. The single-family detached home products that we may offer at any particular time in the Washington, D.C. area range in size from approximately 1,400 square feet to over 6,000 square feet and are usually priced from the high \$100,000's to the \$500,000's. The townhouse products that we may offer at any particular time in the Washington, D.C. area range in size from approximately 1,200 square feet to over 4,500 square feet and are typically priced from the mid \$100,000's to the \$400,000's depending on the location. Our condominiums range in size from approximately 400 square feet to over 2,400 square feet and are generally priced from the mid \$100,000's to over \$900,000. Our average new order price over all products was \$291,000, \$285,000 and \$239,000 for the years ended December 31, 2009, 2008 and 2007, respectively.

In certain communities we offer units for sale and for rent. Our rental units range in size from approximately 400 square feet to over 1,500 square feet and are priced from under \$1,000 per month to over \$2,500 per month. Our average rental revenue over all unit types was approximately \$1,500 per month for the year ended December 31, 2009. In the difficult market conditions that have persisted over the past few years our rental property strategy has dramatically enhanced our ability to maintain adequate operating cashflow to service the debt associated with these projects and contributed to our ability to negotiate amicable arrangements with all of our lenders regarding the necessary modifications to our borrowing facilities as we worked to align our portfolio with market realities. Additionally, by operating key properties as rental communities during the housing downturn we have been able to position valuable assets for sale in improving market conditions.

We utilize a consistent marketing approach for all Comstock products. We believe that our marketing efforts have contributed to our reputation as a developer of quality communities and housing products. We place strict controls on our brands. Our corporate marketing directors work with our project sales and rental managers to develop marketing and sales strategies for specific projects. Our corporate marketing directors then work with in-house marketing and technology specialists to develop advertising and public relations programs for each project.

The specific sales and rental objectives, overall strategies, home pricing, and marketing budget decisions are developed by senior management with input from division managers and marketing directors. We typically build, decorate, furnish and landscape model homes for each product line and maintain onsite sales offices, which are generally open seven days a week. We believe model homes play a critical role in our marketing efforts. During 2009 we continued to lower marketing costs through the increased utilization of internet based marketing platforms in lieu of print advertisements. We believe that the home buying population will continue to increase its reliance on information available on the internet to help guide their home buying decision. Accordingly, our marketing efforts will continue to seek to leverage this trend in an effort to lower per sale marketing costs while maximizing potential sales.

We primarily compensate our sales staff with success based pay. Each sales manager is paid a modest base salary as well as a market rate sales commission. A portion of the sales commission is paid at the time that each purchaser is approved for a mortgage and all contingencies are removed from the purchase contract. The balance of the sales commission is paid after delivery of the unit to the purchaser. We employ our sales personnel on a long-term basis, rather than a project-by-project basis, which we believe results in a more committed and motivated sales force with better product knowledge. We believe this continuity has a positive impact on sales.

All personnel engaged in the sale of Comstock homes receive extensive training in the sales process from our executive and marketing managers. We strive to provide a high level of customer service during the sales process. Through multi-lingual home buying seminars, relationships with preferred mortgage lenders and utilization of a series of proprietary custom marketing programs, we are able to educate our prospective purchasers, prepare our first time home buyer customers for home ownership and help our home buyers obtain a mortgage tailored to their specific needs.

Our unique NextHome[™] programs are designed to assist our customers in many aspects of purchasing a Comstock home and to enhance our ability to attract purchasers to our communities in a competitive landscape. These programs include:

- **DownRight[™]** – Designed to help identify ways to meet the down payment requirements of a new home purchase;
- **Tailor Made[™]** – Designed to provide unique financing products based on agreements with major lenders that tailor a monthly payment in order to make home ownership affordable in any interest rate climate;
- **Get It Sold[™]** – Designed to help our customers sell their current home quickly and efficiently in order to facilitate their purchase of a new Comstock home;
- **All@Home[™]** – Designed to enable our customers to design technology solutions for their new Comstock home to meet their individual specifications;
- **Built Right[™]** – Our quality assurance program incorporating multiple quality assurance inspections throughout the construction process; and
- **Home Style[™]** – Our program of optional upgrades providing hundreds of options to choose from to customize a new Comstock home to suit the specific desires of our customers.

Production

We seek to minimize risk associated with fluctuating market conditions by primarily building pre-sold units and limiting the number of spec units held in inventory. We limit the building of spec units to locations where there is a demonstrated demand for immediate delivery homes, or where the majority of the units within a multi-family building (such as townhouses or condominiums) have been pre-sold. We believe that by limiting the number of spec units held in inventory we reduce our exposure to cyclical fluctuations in market values and minimize costs associated with holding inventory, such as debt service. We believe that our strategy of limiting spec inventory has contributed to our ability to manage the downturn in the housing market over the past couple years.

Our homes are typically sold before construction through sales contracts that are accompanied by a cash deposit. Production typically does not commence until the Purchaser has obtained approval of their mortgage application. Accordingly, we assist the purchaser in all aspects of selecting a mortgage program that is right for them. Through arrangements with preferred lenders we are able to closely monitor the loan application process. Cancellation rates are subject to a variety of factors beyond our control such as job market conditions, consumer confidence, adverse economic conditions, mortgage interest rate increases, and other factors that impact demand for consumer products. During 2006 through 2008 our cancellation rate increased as economic conditions caused a significant reduction in demand for new homes. However, as market conditions began to stabilize in 2009 our cancellation rate decreased.

We typically act as the general contractor in the construction of our wood frame single-family homes, townhouses and mid-rise condominium buildings. On projects where we offer these product lines our employees provide on-site management of land development and construction activities, quality control, permit inspections, and purchaser move-in coordination. Contract management, material purchasing and other supply side management processes are centralized and conducted through our corporate offices. Substantially all construction work on these types of projects is done by

subcontractors that contract directly with our home building subsidiaries and with whom we typically have an established relationship.

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On our high-rise and mixed-use projects where we typically build concrete structures, we engage a general contractor for the site preparation and construction management. This is important on projects that require long construction cycles because it provides us the ability to require a bonded and fixed price or a gross maximum price contract with the selected general contractor. In these instances, the majority of subcontractors that perform the on-site construction work are typically contracted directly by the general contractor that we select. On projects where we offer these product lines our employees provide construction management services, construction quality supervision and purchaser move-in coordination. In all instances, we follow generally accepted management procedures and construction techniques which are consistent with local market practices and applicable building codes.

We compensate our production staff with market based pay, including performance based pay. Each production manager is paid a base salary as well as a market rate production bonus based on meeting budgets and delivery deadlines and achieving a high level of customer satisfaction. The bonus portion of compensation is paid after delivery of the unit to the purchaser. We employ our production personnel on a long-term basis, rather than a project-by-project basis, which we believe results in a more committed and motivated production team with better product knowledge. We believe this continuity has a positive impact on quality and customer satisfaction.

Our Communities

At December 31, 2009 we held for development the following properties in the below states and counties (some of which will be transferred to the applicable lender during 2010 in keeping with the agreements reached with our lenders under our Strategic Realignment Plan):

<u>State</u>	<u>County</u>
Maryland	Frederick
Virginia	Arlington, Fairfax, Loudoun,

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The following lot table summarizes certain information for our current and planned communities at December 31, 2009:

As of December 31, 2009									
Project	State	Product Type (2)	Estimated Units at Completion	Units Settled	Backlog (3)	Foreclosed lots	Lots Owned Unsold	Lots under Option Agreement Unsold	Average New Order Revenue to Date
Status: Active (1)									
Allen Creek (6)	GA	SF	26	23	—	3	—	—	\$ 204,987
Arcanum (6)	GA	SF	34	24	—	10	—	—	\$ 376,173
Falling Water (6)	GA	SF	22	18	—	4	—	—	\$ 422,513
Glenn Ivey (6)	GA	SF	65	18	—	47	—	—	\$ 227,039
James Road	GA	SF	49	9	—	39	1	—	\$ 339,847
Post Road (6)	GA	SF	60	—	—	60	—	—	n/a
Wyngate (6)	GA	SF	28	3	—	25	—	—	\$ 416,990
Sub-Total / Weighted Average (4)			284	95	—	188	1	—	\$ 313,099
Emerald Farm	MD	SF	84	78	—	—	6	—	\$ 452,347
Sub-Total / Weighted Average (4)			84	78	—	—	6	—	\$ 452,347
Allyn's Landing (5)	NC	TH	109	83	—	—	26	—	\$ 234,820
Brookfield Station (5)	NC	SF	62	15	—	31	16	—	\$ 222,757
Haddon Hall (5)	NC	Condo	90	30	—	—	60	—	\$ 158,399
Holland Road (5)	NC	SF	81	18	1	—	62	—	\$ 440,239
Providence-SF (5)	NC	SF	35	25	—	—	10	—	\$ 189,791
Riverbrooke (5)	NC	SF	66	47	—	—	19	—	\$ 166,608
Wakefield Plantation (5)	NC	TH	77	49	—	—	28	—	\$ 483,042
Wheatleigh Preserve (5)	NC	SF	28	18	—	—	10	—	\$ 279,204
Sub-Total / Weighted Average (4)			548	285	1	31	231	—	\$ 269,993
Commons on Potomac Sq	VA	Condo	191	88	—	—	103	—	\$ 231,891
Commons on Williams Sq (5)	VA	Condo	180	150	—	—	30	—	\$ 333,049
Penderbrook	VA	Condo	424	327	—	—	97	—	\$ 253,047
River Club II	VA	Condo	112	9	—	103	—	—	\$ 257,464
The Eclipse on Center Park	VA	Condo	465	391	3	—	71	—	\$ 404,875
Sub-Total / Weighted Average (4)			1,372	965	3	103	301	—	\$ 325,360
Total Active			2,288	1,423	4	322	539	—	320,388
Status: Development (1)									
Shiloh Road (6)	GA	SF	60	—	—	60	—	—	n/a
Tribble Lakes (5)	GA	SF	167	—	—	—	167	—	n/a
Sub-Total / Weighted Average (4)			227	—	—	60	167	—	n/a
Massey Preserve (5)	NC	SF	187	—	—	—	187	—	n/a
Sub-Total / Weighted Average (4)			187	—	—	—	187	—	n/a
Station View	VA	TH	47	—	—	—	47	—	n/a
Sub-Total / Weighted Average (4)			47	—	—	—	47	—	n/a
Total Development			461	—	—	60	401	—	n/a
Total Active & Development			2,749	1,423	4	382	940	—	\$ 320,388

- (1) "Active" communities are open for sales. "Development" communities are in the development process and have not yet opened for sales.
- (2) "SF" means single family home, "TH" means townhouse and "Condo" means condominium.
- (3) "Backlog" means we have an executed order with a buyer but the settlement has not yet taken place.
- (4) "Weighted Average" means the weighted average new order sale price.
- (5) Remaining lots subject to foreclosure agreement with Wachovia executed in third quarter 2009.
- (6) Control of lots transferred to the U.S. Bankruptcy Court upon filing of Chapter 7 petition in fourth quarter 2009.

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Greater Washington DC Area Developments

Northern Virginia Market

The Commons on Potomac Square is a four building, 191-unit, mid-rise condominium complex in Loudoun County, Virginia. The project is positioned well for first-time homeowners in a market where the cost of single-family homes and townhouses are prohibitive for many first time home buyers. Sales began in late 2004 and settlements began in early 2006. In keeping with our Strategic Realignment Plan, when market conditions deteriorated we suspended construction activities at the project and focused on selling the then remaining inventory of spec units. Having sold all remaining inventory in 2009 we determined the best course of action for this asset was to hold the remaining building lots for future development. At December 31, 2009 there are 103 remaining finished building lots at this project. All permits are issued allowing construction to commence as soon as market conditions warrant and construction financing is available. In September 2009 we entered into a loan modification agreement with the project lender which provides us a loan extension through January 2011.

The Eclipse on Center Park is a 465-unit, high-rise condominium complex in Arlington, Virginia. The project is just minutes from downtown Washington D.C., the Pentagon and Reagan National Airport. The project is an upscale, urban-style, mixed-use complex with residential condominiums above an 83,000 square foot retail center, which includes a Harris Teeter grocery store and other convenience-oriented retailers. Condominium sales began in the second quarter of 2004 and settlements began in November 2006. In furtherance of our Strategic Realignment Plan, when market conditions deteriorated we temporarily suspended sales at the project and converted the majority of the remaining inventory to rental units. In October 2009 we entered into a loan modification agreement with the project lender which provides us with a portion of the cashflow generated from rental and sales operations at the project. As market conditions stabilized and began to improve in the later part of 2009, we re-focused on generating sales at the project. At December 31, 2009, 74 units remain in our inventory. Approximately 47 of these units were occupied by rental tenants, generating monthly gross rental revenue of approximately \$100,000.

Penderbrook Square is a 424-unit rental apartment complex in the Fair Oaks area of Fairfax County, Virginia that we purchased as a condominium conversion project. We acquired the property in 2005 and made significant improvements to common areas, building exteriors, and heating and air-conditioning systems within units and have completed the conversion and sale of a majority of the units to condominiums. Sales and settlements began in 2005. In furtherance of our Strategic Realignment Plan when market conditions deteriorated, we suspended sales at the project and continued operation of the remaining inventory as rental units. In September 2009 we entered into a loan modification agreement with the project lender which provides us with a portion of the cashflow generated from rental and sales operations at Penderbrook. As market conditions stabilized and began to improve in the later part of 2009 we re-opened for sales at Penderbrook. At December 31, 2009, 97 units remain in our inventory. Approximately 83 of these units were occupied by rental tenants, generating monthly gross rental revenue of approximately \$99,000.

Station View is a 47-unit townhouse development in Loudoun County, Virginia. In furtherance of our Strategic Realignment Plan it was determined that the best return on our investment in this property would be derived through the sale of the land to another home builder. We have entered into a contract to sell this project in its entirety. Settlement is expected to occur in the first quarter of 2010.

Maryland

Emerald Farm is an 84-unit development of single-family homes in Frederick, Maryland conveniently located near major transportation routes. A water moratorium imposed by the local jurisdiction has prevented the timely completion of the project. We believe the moratorium no longer applies to the lots we continue to own in this community. It is our intention to pursue construction financing for homes on the 6 remaining finished building lots in the near future and as market conditions warrant commence marketing and construction. If we are unable to secure construction financing, we may consider selling the finished lots in a bulk sale.

Greater Raleigh Market

Raleigh, North Carolina

In furtherance of our Strategic Realignment Plan we suspended operations in the Raleigh, North Carolina market. Based on the amicable arrangements we reached with the lenders involved in our Raleigh projects we sold most home inventory and entered foreclosure agreements which allowed us to be released from financial obligations associated with the applicable project loans and required the lender(s) to foreclose on the remaining land inventory. As indicated by footnote (5) in the lot table above, all of our projects in Raleigh, North Carolina are scheduled for foreclosure by Wachovia Bank in the near future.

Greater Atlanta Market

Atlanta, Georgia

The market for new homes in the Atlanta, Georgia market continues to be significantly distressed. In furtherance of our Strategic Realignment Plan we have wound down all operations in the Atlanta, Georgia market. Based on the amicable arrangements we reached with the lenders involved in our Atlanta projects we sold most home inventory and entered foreclosure agreements which allowed us to be released from financial obligations associated with the applicable project loans and required the lender(s) to foreclose on the remaining land inventory. As indicated by footnote (6) in the lot table above: On November 12, 2009, Buckhead Overlook, LLC, Post Preserve, LLC and Parker Chandler Homes, LLC (collectively, "Parker Chandler Homes"), filed bankruptcy petitions (the "Petitions") in the United States Bankruptcy Court, Northern District of Georgia. Parker Chandler Homes were all subsidiaries of Comstock Homebuilding Companies, Inc. (the "Company") and Parker Chandler Homes, LLC was formerly known as Comstock Homes of Atlanta, LLC. The Chapter 7 petitions were filed in furtherance of the Company's Strategic Realignment Plan that includes the liquidation of remaining Parker Chandler Homes assets and the winding down of all operations in the Atlanta market.

Warranty

We provide our single-family and townhouse home buyers with a one-year limited warranty covering workmanship and materials. The limited warranty is transferable to subsequent buyers not under direct contract with us and requires that all home buyers agree to the definitions and procedures set forth in the warranty. Typically, we provide our condominium home buyers a two-year warranty. In addition, we provide a five-year structural warranty on our homes and condominiums pursuant to applicable statutory requirements. From time to time, we assess the appropriateness of our warranty reserves and adjust accruals as necessary. When deemed appropriate by us, we will accrue additional warranty reserves. We require our general contractors and sub-contractors to warrant the work they perform and they are contractually obligated to correct defects in their work that arise during the applicable warranty period. We seek to minimize

our risk associated with warranty repairs through our quality assurance program and by selecting contractors with good reputations, sufficient resources and adequate insurance. It is typical that there is a gap in the warranty coverage provided by contractors and by home builders, which is self-insured by the home builder. It has been our experience that the warranty claims which we self insure have not been significant in nature.

Competition

The real estate development and home building industries are highly competitive. We compete with small private builders and large regional or national builders. In addition to competing for home buyers, home builders compete for construction financing, raw materials and skilled labor. Additionally, under normal market conditions competition exists within the industry for prime development sites, especially those where developed building lots are available under option lot contracts. We compete with other local, regional and national home builders in all of these areas. Many of our competitors have significantly greater financial, marketing, sales and other resources than we have. Some of the national builders against which we compete include Pulte Homes, DR Horton, Toll Brothers, Ryland Homes, NVR, Hovnanian and Lennar.

However, competition among home builders is often specific to product types being offered in a particular area. Often we do not find ourselves competing with the large national builders in the urban communities where we develop high-rise and mixed use products. This is primarily because most national builders tend to focus on a narrower range of products than what we offer. We believe this provides us a distinct advantage in terms of attracting potential home buyers in certain areas. We believe the factors that home buyers consider in deciding whether to purchase from us include the product type, location, value quality, and reputation of the home builder. We believe that our projects and product offerings compare favorably on these factors and we continually strive to maintain our reputation of building quality products.

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Additionally, we compete with the resale market of existing homes including foreclosures and short-sales. The dramatic increase of inventory of existing homes available for sale beginning in 2006 created significant competition among builders and home sellers for a shrinking number of prospective home buyers. This led to downward pressure on home prices in many areas. The nature of the real estate markets in general and the impact the economic recession has had on the housing market makes it impossible to predict future pricing trends. Accordingly, we will proceed with caution as we seek to rebuild our company in the Washington, D.C. market.

Regulation

Home builders are subject to various local, state and federal statutes, ordinances, rules and regulations concerning zoning, building design, construction and similar matters, including local regulation, which imposes restrictive zoning and density requirements in order to limit the number of homes that can ultimately be built within the boundaries of a particular project. We and our competitors may also be subject to periodic delays or may be precluded entirely from developing in certain communities due to building moratoriums or “slow-growth” or “no-growth” initiatives that could be implemented in the future in the states in which we operate. Local and state governments also have broad discretion regarding the imposition of development fees for projects in their jurisdiction.

We and our competitors are also subject to a variety of local, state and federal statutes, ordinances, rules and regulations concerning protection of the environment. Some of the laws to which we and our properties are subject may impose requirements concerning development in waters of the United States, including wetlands, the closure of water supply wells, management of asbestos-containing materials, exposure to radon and similar issues. The particular environmental laws that apply to any given community vary based on several factors including but not limited to the environmental conditions related to a particular property and the present and former uses of the property. These environmental laws may result in delays, may cause us and our competitors to incur substantial compliance related costs, and may prohibit or severely restrict development in certain environmentally sensitive areas. To date, environmental laws have not had a material adverse impact on our operations.

Technology

We are committed to the use of Internet-based technology for managing our business, communicating with our customers, and marketing our projects. For customer relationship management, we use Builder’s Co-Pilot™, a management information system that was custom developed in accordance with our needs and requirements. This system allows for online and collaborative efforts between our sales and marketing functions and integrates our sales, production and divisional office operations in tracking the progress of construction on each of our projects. We believe that real-time access to our construction progress information and our sales and marketing data and documents through our systems increases the effectiveness of our sales and marketing efforts as well as management’s ability to monitor our business.

We utilize our technology infrastructure to facilitate marketing of our projects as well. Through our web site, www.comstockhomebuilding.com, our customers and prospects receive automatic electronic communications from us on a regular basis. Our corporate marketing directors work with in-house marketing and technology specialists to develop advertising and public relations programs for each project that leverage our technology capabilities. During 2009 we continued to lower marketing costs through the increased utilization of internet based marketing platforms in lieu of print advertisements. We believe that the home buying population will continue to increase its reliance on information available on the internet to help guide their home buying decision. Accordingly, our marketing efforts will continue to seek to leverage this trend in an effort to lower per sale marketing costs while maximizing potential sales.

For accounting and purchasing management purposes we use the JD Edwards Enterprise One software system. This software system is well regarded in our industry and is highly scalable. We believe that since transitioning to this software program in early 2007 we have been better able to manage and monitor costs.

Employees

At December 31, 2009, we had 31 full-time and part-time employees. Our employees are not represented by any collective bargaining agreement and we have never experienced a work stoppage. We believe we have good relations with our employees.

Executive Officers

Our executive officers and other management employees and their respective ages and positions as of December 31, 2009 are as follows:

<u>Name</u>	<u>Age</u>	<u>Current Position</u>
Christopher Clemente*	49	Chairman and Chief Executive Officer
Gregory V. Benson*	55	President, Chief Operating Officer
Jeffrey R. Dauer*	47	Chief Financial Officer
Jubal R. Thompson*	40	General Counsel and Secretary

* Section 16 officers.

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Executive Officers and Key Employees

Christopher Clemente founded Comstock in 1985 and has been director since May 2004. Since 1992, Mr. Clemente has served as our Chairman and Chief Executive Officer. Mr. Clemente has over 25 years of experience in all aspects of real estate development and home building, and more than 30 years of experience as an entrepreneur.

Gregory V. Benson joined us in 1991 as President and Chief Operating Officer and has been director since May 2004. Mr. Benson is also a member of our board of directors. Mr. Benson has over 30 years of home building experience including over 13 years at national home builders, including NVHomes, Ryan Homes and Centex Homes.

Jeffrey R. Dauer has served as our Chief Financial Officer since May 2009, after serving as our Chief Accounting Officer since June 2007. Mr. Dauer was Director of Financial Reporting from March 2007 to June 2007. From October 2004 to March 2007, Mr. Dauer was retained to lead the Sarbanes-Oxley Section 404 implementation and assist in the Company's JD Edwards ERP system conversion.

Jubal R. Thompson has served as our General Counsel since October 1998 and our Secretary since December 2004. From April 2002 to April 2003, Mr. Thompson also served as our Vice President — Finance. From 1995 to 1998, Mr. Thompson was associated with Robert Weed & Associates, a law firm.

Other Information

We file annual, quarterly, and current reports, proxy statements, and other documents with the Securities and Exchange Commission ("SEC") under the Securities Exchange Act of 1934 (the "Exchange Act"). The public may read and copy any materials that we file with the SEC at the SEC's Public Reference Room at 100 F Street, NE, Washington, DC 20549. The public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. Also, the SEC maintains an Internet website that contains reports, proxy and information statements, and other information regarding issuers, including us, that file electronically with the SEC. The public can obtain any documents that we file with the SEC at <http://www.sec.gov>.

We also make available, free of charge, at our Internet website located at www.comstockhomebuilding.com, our annual reports on Form 10-K, our proxy statements, our quarterly reports on Form 10-Q, and our current reports on Form 8-K as well as Form 3, Form 4, and Form 5 Reports for our directors, officers and principal stockholders, together with amendments to those reports filed or furnished pursuant to Section 13(a), 15(d), or 16 under the Exchange Act. These reports are available as soon as reasonably practicable after their electronic filing with the Securities and Exchange Commission.

CAUTIONARY NOTES REGARDING FORWARD-LOOKING STATEMENTS

Some of the statements contained in this report include forward-looking statements. These forward-looking statements can be identified by the use of words such as "anticipate," "believe," "estimate," "may," "intend," "expect," "will," "should," "seeks" or other similar expressions. Forward-looking statements are based largely on our expectations and involve inherent risks and uncertainties including certain risks described in this report. When considering those forward-looking statements, you should keep in mind the risks, uncertainties and other cautionary statements made in this report. You should not place undue reliance on any forward-looking statement, which speaks only as of the date made. Some factors which may affect the accuracy of the forward-looking statements apply generally to the real estate industry, while other factors apply directly to us. Any number of important factors which could cause actual results to differ materially from those in the forward-looking statements include, without limitation: general economic and market conditions, including interest rate levels; our ability to service our debt; inherent risks in investment in real estate; our ability to compete in the markets in which we operate; regulatory actions; fluctuations in operating results; our anticipated growth strategies; shortages and increased costs of labor or building materials; the availability and cost of land in desirable areas; natural disasters; our ability to raise debt and equity capital and grow our operations on a profitable basis and our continuing relationships with affiliates.

Many of these factors are beyond our control. For a discussion of factors that could cause actual results to differ, please see the discussion in this report under the heading "Risk Factors" in Item 1A.

Item 1A. Risk Factors

Risks Relating to Our Business

Failure to meet the minimum unit settlement requirements in our modified credit facilities would adversely affect our liquidity.

In 2009 we negotiated modifications to the loans of two of our largest lenders. These modifications allow us increased cashflow from the settlement proceeds of each unit at the respective project provided that we settle on a prescribed minimum number of units each quarter. If we are unable to achieve the required number of settlements, the lenders have the rights to reduce the amount of cashflow to us from settlement proceeds. If that happened, it could severely compromise our liquidity and could jeopardize our ability to satisfy our capital and cash flow requirements in which case our ability to continue operating would be seriously compromised.

Our operations require significant capital, which may not continue to be available.

The real estate development industry is capital intensive and requires significant expenditures for operations, land purchases, land development and construction as well as potential acquisitions of other homebuilders. In order to maintain our operations, we will need to obtain additional financing. These funds can be generated through public or private debt or

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equity financings, operating cash flow, additional bank borrowings or from strategic alliances or joint ventures. In light of the current economic climate we may not be successful in obtaining additional funds in a timely manner, on favorable terms or at all. Moreover, certain of our bank financing agreements contain provisions that limit the type and amount of debt we may incur in the future without our lenders' consent. In addition, the availability of borrowed funds, especially for land acquisition and construction financing, has been greatly reduced, and lenders may require us to invest increased amounts of equity in a project in connection with both new loans and the extension of existing loans. If we do not have access to additional capital, we may be required to delay, scale back or abandon some or all of our operating strategies or reduce capital expenditures and the size of our operations. As a result, such an inability to access additional capital would likely cause us to experience a material adverse affect on our business, results of operations and financial condition.

Our continuing operations and future growth depends on the availability of construction, acquisition and development loans.

To finance projects, we have historically utilized construction, acquisition and development loans. These credit facilities tend to be project-oriented and generally have variable rates and require significant management time to administer them. If financial institutions decide to discontinue providing these facilities to us we would lose our primary source of financing our operations or the cost of retaining or replacing these credit facilities could increase dramatically. Further, this type of financing is typically characterized by short-term loans which are subject to call. If our primary source of financing becomes unavailable or accelerated repayment is demanded, we may not be able to meet our obligations and our ability to continue operating would be seriously compromised. This may force us into bankruptcy or liquidation.

We engage in construction and real estate activities which are speculative and involve a high degree of risk.

The home building industry is speculative and demand for new homes is significantly affected by changes in economic and other conditions, such as:

- employment levels;
- availability of home buyer mortgage financing;
- interest rates; and
- consumer confidence.

These factors can negatively affect the demand for and pricing of our homes and our margin on sale. We are also subject to a number of risks, many of which are beyond our control, including:

- delays in construction schedules;
- cost overruns;
- changes in governmental regulations (such as slow- or no-growth initiatives);
- increases in real estate taxes and other local government fees;
- labor strikes;
- transportation costs for delivery of materials; and
- increases and/or shortages in raw materials and labor costs.

Our ability to sell homes and, accordingly, our results of operations, will be affected by the availability of mortgage financing to potential home buyers.

Most home buyers finance their purchase of a new home through third-party mortgage financing. As a result, residential real estate demand is adversely affected by:

- increases in interest rates and/or related fees;
- increases in real estate transaction closing costs;
- decreases in the availability of consumer mortgage financing;
- increasing housing costs;
- unemployment; and
- changes in federally sponsored financing programs;
- increases in foreclosure inventory and reduction in market comparables resulting from foreclosures and short sales.

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Increases in interest rates and decreases in the availability of consumer mortgage financing have depressed the market for new homes because of the increased monthly mortgage costs and the unavailability of financing to potential home buyers. For instance, recent initiatives to tighten underwriting standards have made mortgage financing more difficult to obtain for some of our entry-level home buyers, which has led to decreased demand from these buyers. Even if potential home buyers do not experience difficulty securing mortgage financing for their purchase of a new home, increases in interest rates and decreased mortgage availability could make it harder for them to sell their existing homes. This could continue to adversely affect our operating results and financial condition.

Fluctuations in market conditions may affect our ability to sell our land and home inventories at expected prices, if at all, which could adversely affect our revenues, earnings and cash flows.

We are subject to the potential for significant fluctuations in the market value of our land and home inventories. We must constantly locate and acquire new tracts of undeveloped and developed land if we are to support growth in our home building operations. There is a lag between the time we acquire control of undeveloped land or developed home sites and the time that we can bring the communities built on that land to market and deliver our homes. This lag time varies from site to site as it is impossible to predict with any certainty the length of time it will take to obtain governmental approvals and building permits. The risk of owning undeveloped land, developed land and homes can be substantial. The market value of undeveloped land, buildable lots and housing inventories can fluctuate significantly as a result of changing economic and market conditions. Inventory carrying costs can be significant and can result in losses in a poorly performing development or market. Material write-downs of the estimated value of our land and home inventories could occur if market conditions deteriorate or if we purchase land or build home inventories at higher prices during stronger economic periods and the value of those land or home inventories subsequently declines during weaker economic periods. We could also be forced to sell homes, land or lots for prices that generate lower profit than we anticipate, or at a loss, and may not be able to dispose of an investment in a timely manner when we find dispositions advantageous or necessary. Furthermore, a continued decline in the market value of our land or home inventories may give rise to additional impairments of our inventory and write-offs of contract deposits and feasibility cost, which may result in a breach of financial covenants contained in one or more of our credit facilities, which could cause a default under those credit facilities. Defaults in these credit facilities are often times the responsibility of the Company as the Company is the guarantor of most of its subsidiary's debts.

Deteriorating market conditions, turmoil in the credit markets and increased price competition continued to negatively impact the Company in 2009 resulting in reduced sales prices, increased customer concessions, reduced gross margins and extended estimates for project completion dates. As a result, the Company evaluated all of its projects to determine if recorded carrying amounts were recoverable. This evaluation resulted in an aggregate 2009 impairment charge of \$22.9 million, with \$15.3 million in the Washington D.C. region, \$1.2 million in the Atlanta, Georgia region and \$6.4 million in the Raleigh, N.C. region. Impairment charges are recorded as a reduction in our capitalized land and/or house costs. The impairment charge was calculated using a discounted cash flow analysis model, which is dependent upon several subjective

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factors, including the selection of an appropriate discount rate, estimated average sales prices and estimated sales rates. In performing its impairment modeling the Company must select what it believes is an appropriate discount rate based on current market cost of capital and returns expectations. The Company has used its best judgment in determining an appropriate discount rate based on anecdotal information it has received from marketing its deals for sale in recent months. The Company has elected to use a rate of 17% in its discounted cash flow model. While the selection of a 17% discount rate was subjective in nature, the Company believes it is an appropriate rate in the current market. The estimates used by the Company are based on the best information available at the time the estimates are made. If market conditions continue to deteriorate additional adverse changes to these estimates in future periods could result in further material impairment amounts to be recorded.

The Company's ability to use its NOLs and, in certain circumstances, future built-in losses and depreciation deductions can be negatively affected if there is an "ownership change" as defined under Section 382 of the Internal Revenue Code.

In general, an ownership change occurs whenever there is a shift in ownership by more than 50 percentage points by one or more 5% shareholders over a specified time period (generally three years). Given Section 382's broad definition, an ownership change could be the unintended consequence of otherwise normal market trading in the Company's stock that is outside of the Company's control.

The Company currently has approximately \$70.0 million in Federal and State NOLs with a potential value of up to \$27.0 million in tax savings. If unused, these NOLs will begin expiring in 2028. Under Internal Revenue Code Section 382 rules, if a change of ownership is triggered, the Company's NOL asset and possibly certain other deferred tax assets may be impaired. We estimate that as of December 31, 2009, the cumulative shift in the Company's stock was at approximately 28% compared with the 50% level that would trigger an inability to utilize some of our NOL asset.

Home prices and sales activities in the Washington, D.C. geographic market have a large impact on our results of operations because we conduct substantially all of our business in this market.

Home prices and sales activities in the Washington, D.C. geographic market have a large impact on our results of operations because we conduct substantially all of our business in this market. Although demand in this area historically has been strong, the current slowdown in residential real estate demand and reduced availability of consumer mortgage financing have reduced the likelihood of consumers seeking to purchase new homes which has had and will likely continue to have a negative impact on the pace at which we receive orders for our new homes. As a result of the foregoing and general economic conditions, potential customers may be less willing or able to buy our homes, or we may take longer or incur more costs to build them. We may not be able to recapture increased costs by raising prices in many cases because of market conditions or because we fix our prices in advance of delivery by signing home sales contracts. We may be unable to change the mix of our homes or our offerings or the affordability of our homes to maintain our margins or satisfactorily address changing market conditions in other ways. This has and could continue to adversely affect our results of operations and cash flows.

Because our business depends on the acquisition of new land, the potential limitations on the supply of land could reduce our revenues or negatively impact our results of operations and financial condition.

Even in the current depressed housing market, we experience competition for available land and developed home sites in the Washington, D.C. market. We have experienced competition for home sites from other, better capitalized, home builders. Our ability to continue our home building activities over the long term depends upon our ability to locate and acquire suitable parcels of land or developed home sites to support our home building operations. If competition for land increases, the cost of acquiring it may rise, and the availability of suitable parcels at acceptable prices may decline. Any need for increased pricing could increase the rate at which consumer demand for our homes declines and, consequently, reduce the number of homes we sell and lead to a decrease in our revenues, earnings and cash flows.

Our business is subject to governmental regulations that may delay, increase the cost of, prohibit or severely restrict our development and home building projects and reduce our revenues and cash flows.

We are subject to extensive and complex laws and regulations that affect the land development and home building process, including laws and regulations related to zoning, permitted land uses, levels of density (number of dwelling units per acre), building design, access to water and other utilities, water and waste disposal and use of open spaces. In addition, we and our subcontractors are subject to laws and regulations relating to worker health and safety. We also are subject to a variety of local, state and federal laws and regulations concerning the protection of health and the environment. In some of our markets, we are required to pay environmental impact fees, use energy saving construction materials and give commitments to provide certain infrastructure such as roads and sewage systems. We must also obtain permits and approvals from local authorities to complete

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residential development or home construction. The laws and regulations under which we and our subcontractors operate, and our and their obligations to comply with them, may result in delays in construction and development, cause us to incur substantial compliance and other increased costs, and prohibit or severely restrict development and home building activity in certain areas in which we operate. If we are unable to continue to develop communities and build and deliver homes as a result of these restrictions or if our compliance costs increase substantially, our revenues, earnings and cash flows may be reduced.

Cities and counties in which we operate have adopted, or may adopt, slow or no-growth initiatives that would reduce our ability to build and sell homes in these areas and could adversely affect our revenues, earnings and cash flows.

From time to time, certain cities and counties in which we operate have approved, and others in which we operate may approve, various “slow-growth” or “no-growth” initiatives and other similar ballot measures. Such initiatives restrict development within localities by, for example, limiting the number of building permits available in a given year. Approval of slow- or no-growth measures could reduce our ability to acquire land, obtain building permits and build and sell homes in the affected markets and could create additional costs and administration requirements, which in turn could have an adverse effect on our revenues, earnings and cash flows.

Increased regulation in the housing industry increases the time required to obtain the necessary approvals to begin construction and has prolonged the time between the initial acquisition of land or land options and the commencement and completion of construction. These delays increase our costs, decrease our profitability and increase the risks associated with the land inventories we maintain.

Municipalities may restrict or place moratoriums on the availability of utilities, such as water and sewer taps. If municipalities in which we operate take actions like these, it could have an adverse effect on our business by causing delays, increasing our costs or limiting our ability to build in those municipalities. This, in turn, could reduce the number of homes we sell and decrease our revenues, earnings and cash flows.

The competitive conditions in the home building industry could increase our costs, reduce our revenues and earnings and otherwise adversely affect our results of operations and cash flows.

The home building industry is highly competitive and fragmented. We compete with a number of national, regional and local builders for customers, undeveloped land and home sites, raw materials and labor. For example, in the Washington, D.C. market, we compete against multiple publicly-traded national home builders, and many privately-owned regional and local home builders. We do not compete against all of the builders in all of our product types or submarkets, as some builders focus on particular types of projects within those markets, such as large estate homes, that are not in competition with our projects.

We compete primarily on the basis of price, location, design, quality, service and reputation. Some of our competitors have greater financial resources, more established market positions and better opportunities for land and home site acquisitions than we do and have greater amounts of unrestricted cash resources on hand, lower costs of capital, labor and material than us. The competitive conditions in the home building industry could, among other things:

- make it difficult for us to acquire suitable land or home sites in desirable locations at acceptable prices and terms, which could adversely affect our ability to build homes;
- require us to increase selling commissions and other incentives, which could reduce our profit margins;

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- result in delays in construction if we experience delays in procuring materials or hiring trades people or laborers;
- result in lower sales volume and revenues; and
- increase our costs and reduce our earnings

We also compete with sales of existing homes and condominiums, foreclosure sales of existing homes and condominiums and available rental housing. A continued oversupply of competitively priced resale, foreclosure or rental homes in our markets could adversely affect our ability to sell homes profitably.

Our business is concentrated in a single geographic area which increases our exposure to localized risks.

We currently develop and sell homes principally in the Washington, D.C. market. Our limited geographic diversity means that adverse general economic, weather or other conditions in this market could adversely affect our results of operations and cash flows or our ability to grow our business.

We are dependent on the services of certain key employees and the loss of their services could harm our business.

Our success largely depends on the continuing services of certain key employees, including Christopher Clemente, our Chairman and Chief Executive Officer; Gregory Benson, our Chief Operating Officer; Jubal Thompson, our General Counsel and Secretary; and Jeffrey Dauer, our Chief Financial Officer. Our continued success also depends on our ability to attract and retain qualified personnel. We believe that Messrs. Clemente, Benson, Thompson and Dauer each possess valuable industry knowledge, experience and leadership abilities that would be difficult in the short term to replicate. The loss of these or other key employees could harm our operations, business plans and cash flows.

A significant portion of our business plan involves and may continue to involve mixed-use developments and high-rise projects with which we have less experience.

We are actively involved in the construction and development of mixed-use and high-rise residential projects. Our experience is largely based on smaller wood-framed structures that are less complex than high-rise construction or the development of mixed-use projects. A mixed-use project is one that integrates residential and non-residential uses in the same structure or in close proximity to each other, on the same land. As we continue to expand into these new product types, we expect to encounter operating, marketing, customer service, warranty and management challenges with which we have less familiarity. We have expanded our management team to include individuals with significant experience in this type of real estate development but have been forced to furlough some of them as we've downsized our operation. If we are unable to successfully manage the challenges of this portion of our business, we may incur additional costs and our results of operations and cash flows could be adversely affected.

If we experience shortages of labor or supplies or other circumstances beyond our control, there could be delays or increased costs in developing our projects, which would adversely affect our operating results and cash flows.

We and the home building industry, from time to time, may be affected by circumstances beyond our control, including:

- work stoppages, labor disputes and shortages of qualified trades people, such as carpenters, roofers, electricians and plumbers;

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- lack of availability of adequate utility infrastructure and services;
- transportation cost increases;
- our need to rely on local subcontractors who may not be adequately capitalized or insured; and
- shortages or fluctuations in prices of building materials.

These difficulties have caused and likely will cause unexpected construction delays and short-term increases in construction costs. In an attempt to protect the margins on our projects, we often purchase certain building materials with commitments that lock in the prices of these materials for 90 to 120 days or more. However, once the supply of building materials subject to these commitments is exhausted, we are again subject to market fluctuations and shortages. We may not be able to recover unexpected increases in construction or materials costs by raising our home prices because, typically, the price of each home is established at the time a customer executes a home sale contract. Furthermore, sustained increases in construction costs may, over time, erode our profit margins and may adversely affect our results of operations and cash flows.

We depend on the availability and skill of subcontractors and their willingness to work with us.

Substantially all of our construction work is done by subcontractors with us acting as the general contractor or by subcontractors working for a general contractor we select for a particular project. Accordingly, the timing and quality of our construction depends on the availability and skill of those subcontractors. We do not have long-term contractual commitments with subcontractors or suppliers. Although we believe that our relationships with our suppliers and subcontractors are good, we cannot assure that skilled subcontractors will continue to be available at reasonable rates and in the areas in which we conduct our operations. The inability to contract with skilled subcontractors or general contractors at reasonable costs on a timely basis could limit our ability to build and deliver homes and could erode our profit margins and adversely affect our results of operations and cash flows. Recent cash flow and credit facility limitations have forced us to negotiate settlements with our vendors at less than the entire amounts owed. This may result in vendor hesitation to work with us on future projects.

Product liability litigation and claims that arise in the ordinary course of business may be costly or negatively impact sales, which could adversely affect our results of operations and cash flows.

Our home building business is subject to construction defect and product liability claims arising in the ordinary course of business. These claims are common in the home building industry and can be costly. Among the claims for which developers and builders have financial exposure are property damage, environmental claims and bodily injury claims. Damages awarded under these suits may include the costs of remediation, loss of property and health-related bodily injury. In response to increased litigation, insurance underwriters have attempted to limit their risk by excluding coverage for certain claims associated with environmental conditions, pollution and product and workmanship defects. As a developer and a home builder, we may be at risk of loss for mold-related property, bodily injury and other claims in amounts that exceed available limits on our comprehensive general liability policies. In addition, the costs of insuring against construction defect and product liability claims are high and the amount of coverage offered by insurance companies is limited. Uninsured product liability and similar claims, claims in excess of the limits under our insurance policies and the costs of obtaining insurance to cover such claims could have a material adverse effect on our revenues, earnings and cash flows.

Increased insurance risk could negatively affect our business, results of operations and cash flows.

Insurance and surety companies have reassessed many aspects of their business and, as a result, may take actions that could negatively affect our business. These actions could include increasing insurance premiums,

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requiring higher self-insured retentions and deductibles, requiring additional collateral on surety bonds, reducing limits, restricting coverages, imposing exclusions, and refusing to underwrite certain risks and classes of business. Any of these actions may adversely affect our ability to obtain appropriate insurance coverage at reasonable costs, which could have a material adverse effect on our business. Additionally, coverage for certain types of claims, such as claims relating to mold, is generally unavailable. Further, we rely on surety bonds, typically provided by insurance companies, as a means of limiting the amount of capital utilized in connection with the public improvement sureties that we are required to post with governmental authorities in connection with land development and construction activities. The cost of obtaining these surety bonds is, from time to time, unpredictable and on occasion these surety bonds are unavailable. These factors can delay commencement of development projects and adversely affect revenue, earnings and cash flows.

We are subject to warranty claims arising in the ordinary course of business that could be costly.

We provide service warranties on our homes for a period of one year or more post closing and a structural warranty for five years post closing. We self-insure all of our warranties and reserve an amount we believe will be sufficient to satisfy any warranty claims on homes we sell. We also attempt to pass much of the risk associated with potential defects in materials and workmanship on to the subcontractors performing the work and the suppliers and manufacturers of the materials. In such cases, we still may incur unanticipated costs if a subcontractor, supplier or manufacturer fails to honor its obligations regarding the work or materials it supplies to our projects. If the amount of actual claims materially exceeds our aggregate warranty reserves and/or the amounts we can recover from our subcontractors and suppliers, our operating results and cash flows would be adversely affected.

Our business, results of operations and financial condition may be adversely affected by adverse weather conditions or natural disasters.

Adverse weather conditions, such as extended periods of rain, snow or cold temperatures, and natural disasters, such as hurricanes, tornadoes, floods and fires, can delay completion and sale of homes, damage partially complete or other unsold homes in our inventory and/or decrease the demand for homes or increase the cost of building homes. To the extent that natural disasters or adverse weather events occur, our business and results may be adversely affected. To the extent our insurance is not adequate to cover business interruption losses or repair costs resulting from these events, our results of operations and financial conditions may be adversely affected.

We are subject to certain environmental laws and the cost of compliance could adversely affect our business, results of operations and cash flows.

As a current or previous owner or operator of real property, we may be liable under federal, state, and local environmental laws, ordinances and regulations for the costs of removal or remediation of hazardous or toxic substances on, under or in the properties or in the proximity of the properties we develop. These laws often impose liability whether or not we knew of, or were responsible for, the presence of such hazardous or toxic substances. The cost of investigating, remediating or removing such hazardous or toxic substances may be substantial. The presence of any such substance, or the failure promptly to remediate any such substance, may adversely affect our ability to sell the property, to use the property for our intended purpose, or to borrow funds using the property as collateral. In addition, the construction process involves the use of hazardous and toxic materials. We could be held liable under environmental laws for the costs of removal or remediation of such materials. In addition, our existing credit facilities also restrict our access to the loan proceeds if the properties that are used to collateralize the loans are contaminated by hazardous substances and require us to indemnify the bank against losses resulting from such occurrence for significant periods of time, even after the loan is fully repaid.

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Our Eclipse project is part of a larger development located at Potomac Yard in Northern Virginia. Potomac Yard was formerly part of a railroad switching yard contaminated by rail-related activities. Remediation of the property was conducted under supervision of the U.S. Environmental Protection Agency, or EPA, in coordination with state and local authorities. In 1998, federal, state and local government agencies authorized redevelopment of the property. Our plans for development of our portion of the project are consistent with those authorizations. Although concentrations of contaminants remain on the property under the EPA-approved remediation work plan, the EPA has determined that they do not present an unacceptable risk to human health or the environment. However, it is possible that we could incur some costs to defend against any claims that might be brought in the future relating to any such contaminants.

If we are not able to develop our communities successfully, results of operations and financial condition could be diminished.

Before a community generates any revenues, material expenditures are required to acquire land, to obtain development approvals and to construct significant portions of project infrastructure, amenities, model homes and sales facilities. It can take a year or more for a community development to achieve cumulative positive cash flow. Our inability to develop and market our communities successfully and to generate positive cash flows from these operations in a timely manner would have a material adverse effect on our ability to service our debt and to meet our working capital requirements.

Our operating results may vary.

We expect to experience variability in our revenues and net income. Factors expected to contribute to this variability include, among other things:

- the uncertain timing of real estate closings;
- our ability to continue to acquire additional land or options thereon on acceptable terms and the timing of all necessary regulatory approvals required for development;
- the condition of the real estate market and the general economy in the markets in which we operate;
- the cyclical nature of the home building industry;
- the changing regulatory environment concerning real estate development and home building;
- changes in prevailing interest rates and the availability of mortgage financing; and
- costs of material and labor and delays in construction schedules.

The volume of sales contracts and closings typically varies from month to month and from quarter to quarter depending on several factors, including the stages of development of our projects, weather and other factors beyond our control. In the early stages of a project's development, we incur significant start-up costs associated with, among other things, project design, land acquisition and development, construction and marketing expenses. Since revenues from sales of properties are generally recognized only upon the transfer of title at the closing of a sale, no revenue is recognized during the early stages of a project unless land parcels or residential home sites are sold to other developers. Periodic sales of properties may be insufficient to fund operating expenses. Further, if sales and other revenues are not adequate to cover operating expenses, we will be required to seek sources of additional operating funds. Accordingly, our financial results will vary from community to community and from time to time.

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Acts of war or terrorism may seriously harm our business.

Acts of war, any outbreak or escalation of hostilities between the United States and any foreign power or acts of terrorism, may cause disruption to the U.S. economy, or the local economies of the markets in which we operate, cause shortages of building materials, increase costs associated with obtaining building materials, result in building code changes that could increase costs of construction, affect job growth and consumer confidence, or cause economic changes that we cannot anticipate, all of which could reduce demand for our homes and adversely impact our revenues, earnings and cash flows.

We do not own the Comstock brand or trademark, but use the brand and trademark pursuant to the terms of a perpetual license granted by Christopher Clemente, our Chief Executive Officer and Chairman of the Board.

Our Chief Executive Officer and Chairman of the Board, Christopher Clemente, has licensed the “Comstock” brand and trademark to us in perpetuity and free of charge. We do not own the brand or the trademark and may be unable to protect it against infringement from third parties. However, Mr. Clemente retains the right to continue using the “Comstock” brand and trademark individually and through affiliates, including real estate development projects in our current or future markets. We will be unable to control the quality of projects undertaken by Mr. Clemente or others using the “Comstock” brand and trademark and therefore will be unable to prevent any damage to its goodwill that may occur. We will further be unable to preclude Mr. Clemente from licensing or transferring the ownership of the “Comstock” trademark to third parties, some of whom may compete against us. Consequently, we are at risk that our brand could be damaged which could have a material adverse effect on our business, operations and cash flows.

Risks Related to our Common Stock and the Securities Markets

Volatility of our stock price could adversely affect stockholders.

The market price of our Class A common stock could fluctuate significantly as a result of:

- quarterly variations in our operating results;
- general conditions in the home building industry;
- interest rate changes;
- changes in the market’s expectations about our operating results;
- our operating results failing to meet the expectation of securities analysts or investors in a particular period;
- changes in financial estimates and recommendations by securities analysts concerning our Company of the home building industry in general;
- operating and stock price performance of other companies that investors deem comparable to us;
- news reports relating to trends in our markets;
- changes in laws and regulations affecting our business;
- material announcements by us or our competitors.

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- material announcements by our construction lenders or the manufacturers and suppliers we use;
- sales of substantial amounts of Class A common stock by our directors, executive officers or significant stockholders or the perception that such sales could occur; and
- general economic and political conditions such as recessions and acts of war or terrorism.

Investors may not be able to resell their shares of our Class A common stock following periods of volatility because of the market's adverse reaction to that volatility. Our Class A common stock may not trade at the same levels as the stock of other homebuilders, and the market in general may not sustain its current prices.

Investors in our Class A common stock may experience dilution with the future exercise of stock options and warrants, the grant of restricted stock and issuance of stock in connection with our acquisitions of other homebuilders.

From time to time, we have issued and we will continue to issue stock options or restricted stock grants to employees and non-employee directors pursuant to our equity incentive plan. We expect that these options or restricted stock grants will generally vest commencing one year from the date of grant and continue vesting over a four-year period. Investors may experience dilution as the options vest and are exercised by their holders and the restrictions lapse on the restricted stock grants. In addition, we may issue stock in connection with acquisitions of other homebuilders, or warrants in connection with the settlement of obligations and or indebtedness with vendors and suppliers, which may result in investors experiencing dilution.

Substantial sales of our Class A common stock, or the perception that such sales might occur, could depress the market price of our Class A common stock.

A substantial amount of the shares of our Class A common stock are eligible for immediate resale in the public market. Any sales of substantial amounts of our Class A common stock in the public market, or the perception that such sales might occur, could depress the market price of our Class A common stock.

Possibility of Delisting of our Common Stock from NASDAQ Global Marketplace.

On November 16, 2009, the Company received notice that NASDAQ had granted the Company's request to transfer the listing of its common stock from the NASDAQ Global Market to the NASDAQ Capital Market. On November 13, 2009, the Company received notice from NASDAQ that it does not satisfy the \$1.00 minimum bid price requirement for continued listing on NASDAQ. The Company has until May 11, 2010 to regain compliance with the \$1.00 minimum bid price requirement. Regaining compliance would require a closing bid price of \$1.00 or more for a minimum of ten consecutive trading days on or before May 11, 2010. If that does not occur, we would request a hearing before a NASDAQ panel to request an additional 180 days to regain compliance. There is no assurance that a NASDAQ panel would grant the Company any additional time after May 11, 2010 to regain compliance. If a NASDAQ panel did grant the Company additional time, there are no assurances that the Company would regain compliance. The Company is currently in compliance with the \$5.0 million minimum market value of publicly held shares and the \$2.5 million minimum shareholder equity continued listing requirements of the NASDAQ Capital Market.

The holders of our Class B common stocks exert control over us and thus limit the ability of other stockholders to influence corporate matters.

Messrs. Clemente and Benson own 100% of our outstanding Class B common stock, which, together with their shares of Class A common stock, represent approximately 78.1% of the combined voting power of all classes of our voting stock. As a result, Messrs. Clemente and Benson, acting together, have control over us, the election of our board of directors and our management and policies. Messrs. Clemente and Benson, acting together, also have control over all matters requiring stockholder approval, including the amendment of certain provisions of our certificate of incorporation and bylaws, the approval of any equity-based employee compensation plans and the approval of fundamental corporate transactions, including mergers. In light of this control, other companies could be discouraged from initiating a potential merger, takeover or any other transaction resulting in a change of control. Such a transaction potentially could be beneficial to our business or to our stockholders. This may in turn reduce the price that investors are willing to pay in the future for shares of our Class A common stock.

The limited voting rights of our Class A common stock could impact its attractiveness to investors and its liquidity and, as a result, its market value.

The holders of our Class A and Class B common stock generally have identical rights, except that holders of our Class A common stock are entitled to one vote per share and holders of our Class B common stock are entitled to 15 votes per share on all matters to be voted on by stockholders. The difference in the voting rights of the Class A and Class B common stock could diminish the value of the Class A common stock to the extent that investors or any potential future purchasers of our Class A common stock ascribe value to the superior voting rights of the Class B common stock.

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It may be difficult for a third party to acquire us, which could inhibit stockholders from realizing a premium on their stock price.

We are subject to the Delaware anti-takeover laws regulating corporate takeovers. These anti-takeover laws prevent Delaware corporations from engaging in business combinations with any stockholder, including all affiliates and employees of the stockholder, who owns 15% or more of the corporation's outstanding voting stock, for three years following the date that the stockholder acquired 15% or more of the corporation's voting stock unless specified conditions are met.

Our amended and restated certificate of incorporation and bylaws contain provisions that have the effect of delaying, deferring or preventing a change in control of us that stockholders may consider favorable or beneficial. These provisions could discourage proxy contests and make it more difficult for stockholders to elect directors and take other corporate actions. These provisions could also limit the price that investors might be willing to pay in the future for shares of our common stock. These provisions include:

- a staggered board of directors, so that it would take three successive annual meetings to replace all directors;
- a prohibition of stockholder action by written consent; and
- advance notice requirements for the submission by stockholders of nominations for election to the board of directors and for proposing matters that can be acted upon by stockholders at a meeting.

Our issuance of shares of preferred stock could delay or prevent a change of control of us.

Our Board of Directors has the authority to cause us to issue, without any further vote or action by the stockholders, up to 20,000,000 shares of preferred stock, par value \$.01 per share, in one or more series, to designate the number of shares constituting any series, and to fix the rights, preferences, privileges and restrictions thereof, including dividend rights, voting rights, rights and terms of redemption, redemption price or prices and liquidation preferences of such series. The issuance of shares of preferred stock may have the effect of delaying, deferring or preventing a change in control of us without further action by the stockholders, even where stockholders are offered a premium for their shares. The issuance of shares of preferred stock with voting and conversion rights may adversely affect the voting power of the holders of Class A common stock, including the loss of voting control. We have no present plans to issue any shares of preferred stock.

Item 1B. *Unresolved Staff Comments*

None.

Item 2. *Properties*

Our principal administrative, sales and marketing facilities are located at our headquarters in Reston, Virginia. At December 31, 2009 we leased approximately 9,100 square feet of office space in the Reston facility from Comstock Asset Management, L.C., an affiliate wholly-owned by Christopher Clemente. Pursuant to this three-year headquarters lease which we entered into on December 31, 2009, we will pay annual rent of approximately \$223,000, subject to a 4% annual increase through the lease termination.

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We have exited all office space in Raleigh, North Carolina and in 2009 reached a lease termination agreement with the landlord. We have no further obligation related to the Raleigh office lease.

Item 3. *Legal Proceedings*

On or about June 10, 2009 a judgment of \$1.5 million was entered against Parker Chandler Homes, LLC (formerly known as Comstock Homes of Atlanta, LLC), a subsidiary of the Company, as a result of an uncontested breach of contract claim related to a discontinued development project in the Atlanta area. A liability for this judgment was recorded as of June 30, 2009. On November 12, 2009, Parker Chandler Homes, LLC, filed a Chapter 7 bankruptcy petition in the United States Bankruptcy Court, Northern District of Georgia, effectively eliminating any ongoing liability associated with the judgment.

On July 29, 2008 Balfour Beatty Construction, LLC, successor in interest to Centex Construction (“Balfour”), the general contractor for a subsidiary of the Company, filed liens totaling approximately \$552,000 at The Eclipse on Center Park Condominium project (“Project”) in connection with its claim for amounts allegedly owed under the Project contract documents. In September 2008 the Company’s subsidiary filed suit against Balfour to invalidate the liens and for its actual and liquidated damages in the approximate amount of \$17.1 million due to construction delays and additional costs incurred by the Company’s subsidiary with respect to the Project. In October 2008 Balfour filed counterclaims in the approximate amount of \$2.8 million. Subsequent to an expedited hearing filed by the Company’s subsidiary to determine the validity of the liens that was ultimately heard in February 2009, we received an order of the court in April 2009 invalidating the liens. The trial began on September 8, 2009 and closed on September 16, 2009. On February 23, 2010, the Company’s subsidiary received a judgment against Balfour in an amount of \$11.7 million plus attorney’s fees to be determined at a later date. On March 3, 2010, the Company’s subsidiary received notice of Balfour’s intention to appeal the judgment and post a supersedeas bond in the amount of \$12.5 million. If the judgment amount is upheld on appeal, a significant portion is required to be applied towards principal curtailment under the Company’s loan agreement with KeyBank.

On December 30, 2009, Lawyers Title Insurance Corporation filed an indemnification claim against a Company subsidiary in an amount of \$126, seeking reimbursement of fees and costs allegedly incurred as a result of mechanic’s liens improperly filed by Balfour Beatty at The Eclipse on Center Park Condominium project. The Company subsidiary disputes the allegations and intends to vigorously defend the claim.

Other than the foregoing, we are not subject to any material legal proceedings. From time to time, however, we are named as a defendant in legal actions arising from our normal business activities. Although we cannot accurately predict the amount of our liability, if any, that could arise with respect to legal actions pending against us, we do not expect that any such liability will have a material adverse effect on our financial position, operating results or cash flows. We believe that we have obtained adequate insurance coverage, rights to indemnification, or where appropriate, have established reserves in connection with these legal proceedings.

Item 4. *Reserved*

PART II

Item 5. Market for the Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

Market for Common Stock

Our Class A common stock has been traded on the NASDAQ Global Market under the symbol “CHCI” since our initial public offering on December 14, 2004. The following table sets forth the high and low sale prices of our Class A common stock, as reported on NASDAQ, for the periods indicated:

	<u>High</u>	<u>Low</u>
Fiscal Year Ended 2007		
Fourth quarter	\$2.00	\$0.50
Fiscal Year Ended 2008		
First quarter	\$1.37	\$0.50
Second quarter	\$0.83	\$0.31
Third quarter	\$1.05	\$0.06
Fourth quarter	\$0.80	\$0.16
Fiscal Year Ended 2009		
First quarter	\$.34	\$.12
Second quarter	\$.38	\$.11
Third quarter	\$1.34	\$.18
Fourth quarter	\$1.19	\$.49

On March 31, 2010, there were approximately 27 record holders and as of our last proxy record date at November 13, 2009, there were approximately 3,763 beneficial owners of our Class A common stock. On March 31, 2010 there were two holders of our Class B common stock.

Dividends

We have never paid any cash dividends on our common stock. From time to time, our board of directors evaluates the desirability of paying cash dividends. The future payment and amount of cash dividends will depend upon our financial condition and results of operations, applicable loan covenants and other factors deemed relevant by our board of directors.

Issuer Purchases of Equity Securities

Our board of directors has previously authorized the repurchase of up to 1.0 million shares of our Class A common stock in one or more open market or privately negotiated transactions.

During the twelve months ended December 31, 2009, we did not repurchase any of our outstanding Class A common stock. We have no immediate plans to resume stock repurchases under this authorization.

Item 6. Selected Financial Data

The following table contains selected consolidated financial information and is supplemented by the more detailed financial statements and notes thereto included elsewhere in this report. We derived the selected historical financial data shown below for 2009, 2008, 2007, 2006 and 2005 from our audited financial statements. You should read the following financial information in conjunction with “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” “Business” and our consolidated financial statements and the related notes, included elsewhere in this report.

FIVE YEAR COMPARISON OF SELECTED FINANCIAL DATA

Dollars in thousands (except per share data)

	Year ended December 31,				
	2009	2008	2007	2006	2005
Revenues	\$ 25,066	\$ 46,662	\$ 266,159	\$ 245,881	\$ 224,305
Expenses cost of sales	21,729	39,274	245,309	216,657	156,490
Impairments and write-offs (1)	22,938	18,022	78,264	57,426	1,216
Selling, general and administrative	8,073	16,400	34,671	37,500	24,190
Interest, real estate taxes and indirect costs related to inactive projects	4,138	5,685	—	—	—
Operating (loss) income	(31,812)	(32,719)	(92,085)	(65,702)	42,409
Gain on troubled debt restructuring	3,403	12,851	—	—	—
Gain on deconsolidation of subsidiaries	1,965	—	—	—	—
Other income (expense), net	(1,237)	2,850	1,886	1,487	1,450
(Loss) income before noncontrolling interest and equity in earnings of real estate partnerships	(27,681)	(17,018)	(90,199)	(64,215)	43,859
Noncontrolling interest	—	(8)	(137)	15	30
(Loss) income before equity in (loss) earnings of real estate partnerships	(27,681)	(17,010)	(90,062)	(64,230)	43,829
Equity in (loss) earnings of real estate partnerships	—	—	—	(135)	99
Total pre-tax (loss) income	(27,681)	(17,010)	(90,062)	(64,365)	43,928
Income tax (benefit) provision	(929)	48	(2,552)	(24,520)	16,366
Net (loss) income	\$(26,752)	\$(17,058)	\$(87,510)	\$(39,845)	\$ 27,562
Basic (loss) earnings per share	\$ (1.51)	\$ (0.98)	\$ (5.42)	\$ (2.63)	\$ 2.14
Basic weighted average shares outstanding (2)	17,670	17,462	16,140	15,148	12,870
Dilutive (loss) earnings per share	\$ (1.51)	\$ (0.98)	\$ (5.42)	\$ (2.63)	\$ 2.12
Dilutive weighted average shares outstanding (2)	17,670	17,462	16,140	15,148	13,022

	December 31,				
	2009	2008	2007	2006	2005
Balance Sheet Data					
Cash and cash equivalents	\$ 1,085	\$ 5,977	\$ 6,822	\$ 21,263	\$ 42,167
Real estate held for development and sale (1)(2)	70,890	129,542	203,860	405,144	263,802
Total assets	77,331	160,859	258,976	517,429	431,319
Notes payable	67,619	102,879	171,214	295,403	143,657
Total liabilities	73,198	130,111	212,226	393,173	285,843
Noncontrolling interest	—	223	231	371	400

(1) During the years ended December 31, 2009, 2008, 2007 and 2006, the Company recorded gains from troubled debt restructuring, impairment charges and write-offs of option deposits and related feasibility costs. The inclusion of these items makes year to year comparisons difficult and should be considered when evaluating results of operations in relation to earlier years.

(2) During 2006 the Company acquired Parker Chandler Homes, Inc. in Atlanta, GA and Capitol Homes, Inc. in Raleigh, NC.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with "Selected Financial and Other Data" and our consolidated and combined financial statements and related notes appearing elsewhere in this report. This discussion and analysis contains forward-looking statements that involve risks and uncertainties. Please see "Cautionary Notes Regarding Forward-looking Statements" for more information. Our actual results could differ materially from those anticipated in these forward-looking statements as a result of various factors including, but not limited to, those discussed below and elsewhere in this report, particularly under the headings "Risk Factors" and "Cautionary Notes Regarding Forward-looking Statements."

Overview

Comstock is a multi-faceted real estate development company engaged in the development of for-sale residential and mixed use products. Our substantial experience in building a diverse range of products including single-family homes, townhouses, mid-rise condominiums, high-rise multi-family condominiums and mixed-use (residential and commercial) developments has positioned Comstock as a prominent real estate developer and home builder in the Washington, D.C. market place. References in this Form 10-K to "Comstock," "Company," "we," "our" and "us" refer to Comstock Homebuilding Companies, Inc. together in each case with our subsidiaries and any predecessor entities unless the context suggests otherwise.

Our business was founded in 1985 as a residential land developer and home builder focused on the Northern Virginia suburbs of the Washington, D.C. area. In the 1990's we expanded our business to include home building operations in Maryland and North Carolina and a title insurance agency in Virginia. Prior to our initial public offering in December 2004, we operated our business through multiple holding companies each focused on a distinct geographic area or business operation. In connection with our initial public offering, these primary holding companies were consolidated and merged into Comstock Homebuilding Companies, Inc., which was incorporated in Delaware in May 2004. Subsequent to our initial public offering, we conduct our operations through wholly owned subsidiaries. Comstock Homes is the brand name of our for sale home building operations. Comstock Communities is the brand name we use for our residential rental property operations. Since our founding in 1985, and as of December 31, 2009, we have built and delivered more than 5,200 homes generating total revenue in excess of \$1.3 billion.

Our core market of Washington, D.C. has experienced significant job and population growth over the past two decades, creating demand for a wide range of housing products. Our expertise in developing traditional and non-traditional housing products enables us to focus on a wide range of opportunities within our core market. We have built homes in suburban communities, where we focus on low density products such as single family detached homes, and in urban areas, where we focus on high density multi-family and mixed use products. We develop properties with the intent that they be sold either as fee-simple properties or condominiums to individual unit buyers or as investment properties sold to private or institutional investors. Currently we operate only in the Washington, D.C. market where we target first-time, early move-up, and secondary move-up buyers. We focus on products that we are able to offer for sale in the middle price points within the markets where we operate, avoiding the very low-end and high-end products. We believe our middle market strategy positions our products such that they are affordable to a significant segment of potential home buyers in our market. In 2007, 2008, and 2009 the average price of the homes we delivered was \$263,000, \$300,000, and \$289,000, respectively.

We seek to minimize risk associated with fluctuating market conditions by primarily building pre-sold units and limiting the number of spec units held in inventory. In each new community that we develop we build model homes to demonstrate our products and to house our on-site sales operations. We limit the building of spec units to locations where there is a demonstrated demand for immediate delivery homes or where the majority of the units within a multi-family building (such as townhouses or condominiums) have been pre-sold. We believe that by limiting the number of spec units held in inventory we reduce our exposure to cyclical fluctuations in market values and minimize costs associated with holding inventory, such as debt service. We believe that our strategy of limiting spec inventory and converting our standing condominium inventory to rental properties contributed to our ability to manage the current downturn in the housing market.

In certain communities we continue to offer units for sale and for rent. In the difficult market conditions that have persisted over the past few years, this strategy has dramatically enhanced our ability to maintain adequate operating cashflow. It has also contributed to our ability to negotiate amicable arrangements with all of our lenders regarding necessary modifications to our borrowing facilities as we worked to align our portfolio with market realities. Additionally, by operating key properties as rental communities during the housing downturn, we have been able to position valuable assets for sale in improving market conditions.

In 2005 we began executing expansion plans with the goal of establishing operations in key markets throughout the Southeast where job growth and population growth created increased demand for new housing. During 2006, we expanded our Raleigh, North Carolina operation and we entered the Charlotte, North Carolina, Myrtle Beach, South Carolina, and Atlanta, Georgia markets, increasing revenues to approximately \$266.2 million in 2007. However, during 2007 it became clear that the unprecedented span of growth in the housing sector was ending. Changing economic conditions were negatively affecting demand for new housing. Drawing on the experience we gained in previous downturns, we curtailed our expansion plans and adopted a defensive strategy to ensure our ability to survive the housing downturn, should it prove to be protracted, which it has. We quickly sold certain assets where we believed market values would continue to erode, and we began working with our lenders to renegotiate the terms of our project related and corporate borrowings, which peaked at approximately \$340.0 million as of September 30, 2006. Throughout 2007 and 2008, market conditions continued to deteriorate which made it necessary to significantly scale back operations while continuing efforts to renegotiate terms of our debt while seeking to retain certain properties in our portfolio.

With market conditions remaining difficult as 2009 began and liquidity becoming an increasing concern, we established our Strategic Realignment Plan. This Plan was designed to eliminate debt, further reduce expenses, enhance our balance sheet, conserve cash, and protect our key Washington, D.C. market assets. By the end of 2009 we successfully renegotiated all secured debt obligations and reduced total debt to \$67.6 million as of December 31, 2009. As detailed in the Subsequent Events subsection of Item 7 of this Form 10-K, the final steps of our Strategic Realignment Plan were completed in early 2010, reducing our total debt by another \$4.5 million. By executing this plan we eliminated or reduced corporate and project related debts while also disposing of assets where market values had deteriorated and retained key assets in the Washington, D.C. market where values had begun to stabilize.

In keeping with our defensive strategy we did not purchase any land in 2008 or 2009, and we completed our exit from the Charlotte, North Carolina, Myrtle Beach, South Carolina, and Atlanta, Georgia markets and suspended our operations in the Raleigh, North Carolina market. We also eliminated all spec inventory (other than those units held as rental properties), and we disposed of properties where we believed market conditions did not warrant protecting the asset. We reduced total debt to approximately \$67.6 million (see details at Note 8 to the accompanying consolidated financial statements), we significantly reduced general and administrative expenses (from \$37.5 million in 2006 to \$8.1 million in 2009), enhanced operating cashflow, and protected key

properties in the Washington, D.C. area around which we will seek to rebuild our business. As a result of our effort to realign our business with market conditions our unit deliveries declined in 2009 to 74 (down from the peak of 914 in 2006), generating total revenues of \$21.4 million (down from the peak of \$266.2 million in 2007).

We believe that our significant experience over the past 25 years, combined with our ability to navigate through two major housing downturns (early 1990's and late 2000's) have provided us the experience necessary to capitalize on attractive opportunities in our core market of Washington, D.C. and to rebuild shareholder value. We are confident that our focus on the Washington, D.C. market, which has historically been characterized by economic conditions less volatile than many other major homebuilding markets, will provide opportunity to generate attractive returns on investment while also providing opportunity for growth.

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Further, as detailed in the Subsequent Events subsection of Item 7 of this Form 10-K, we believe the recent court decision resulting in our favor regarding litigation we brought against the general contractor on our Eclipse high-rise condominium project in Arlington, Virginia will ultimately enhance liquidity and reduce indebtedness to KeyBank, once any appeal of the award by the defendant concludes.

The homebuilding industry continues to experience demand levels well below the record levels experienced in 2005. Although market conditions showed signs of improvement in 2009, as compared to 2008, demand continues to be well below the robust levels experienced earlier in this decade. The economic recession and the well documented turmoil in the financial markets continue to create challenging market conditions for most industries. Among the challenges facing the home building industry is availability of capital, availability of mortgage financing, increased levels of existing home inventory fueled by foreclosures, and reduced demand for new homes. Nonetheless, we believe that having achieved the major objectives of our Strategic Realignment Plan that Comstock is now well positioned to get back to work seeking to capitalize on opportunities that we believe are emerging in the stabilizing Washington, D.C. market. Comstock's ability to navigate the turmoil has been a result of the commitment to success and dedication of every member of the Comstock team, as well as the strong relationships we have built over the years with our lenders, suppliers, subcontractors, and customers.

In today's real estate market our general operating business strategy has the following key elements:

- protect liquidity and maximize capital availability;
- maximize the realized value of our real estate owned;
- restructure our debt obligations;
- rationalize overhead expenses;
- scale operations back to the Washington, D.C. market;
- focus on our current land inventory in the Washington, D.C. market;
- focus on a broad segment of the home buying market, aka the "middle market";
- seek opportunities to rebuild our business; and
- aggressively prosecute existing litigation to recover costs and damages caused by others.

Net of the pending Wachovia foreclosure (see details at Note 4 to the consolidated financial statements), we either owned or controlled approximately 322 building lots at December 31, 2009. The following tables summarize certain information related to new orders, settlements, and backlog for the twelve month periods ended December 31, 2009, 2008, and 2007:

(dollars in 000s except units)	Twelve months ended December 31, 2009			
	Washington Metro Area	North Carolina	Georgia	Total
Gross new orders	73	16	—	89
Cancellations	7	13	1	21
Net new orders	66	3	(1)	68
Gross new order revenue	\$ 23,150	\$2,713	\$ —	\$25,863
Cancellation revenue	\$ 2,128	\$2,859	\$ 386	\$ 5,373
Net new order revenue	\$ 21,022	\$ (146)	\$ (386)	\$20,490
Average gross new order price	\$ 317	\$ 170	\$ —	\$ 291
Settlements	66	8	—	74
Settlement revenue — homebuilding	\$ 20,226	\$1,175	\$ —	\$21,401
Average settlement price	\$ 306	\$ 147	\$ —	\$ 289
Backlog units (1)	3	1	—	4
Backlog revenue (1)	\$ 1,519	\$ 431	\$ —	\$ 1,950
Average backlog price (1)	\$ 506	\$ 431	\$ —	\$ 488

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(dollars in 000s except units)	Twelve months ended December 31, 2008			
	Washington Metro Area	North Carolina	Georgia	Total
Gross new orders	69	54	17	140
Cancellations	17	23	13	53
Net new orders	52	31	4	87
Gross new order revenue	\$ 23,052	\$ 11,532	\$ 5,260	\$ 39,844
Cancellation revenue	\$ 4,701	\$ 6,879	\$ 4,023	\$ 15,603
Net new order revenue	\$ 18,351	\$ 4,653	\$ 1,237	\$ 24,241
Average gross new order price	\$ 334	\$ 214	\$ 309	\$ 285
Settlements	62	63	22	147
Settlement revenue — homebuilding	\$ 21,367	\$ 15,633	\$ 7,097	\$ 44,097
Average settlement price	\$ 345	\$ 248	\$ 323	\$ 300
Backlog units (1)	3	7	1	11
Backlog revenue (1)	\$ 739	\$ 1,977	\$ 386	\$ 3,102
Average backlog price (1)	\$ 246	\$ 282	\$ 386	\$ 282

(dollars in 000s except units)	Twelve months ended December 31, 2007			
	Washington Metro Area	North Carolina	Georgia	Total
Gross new orders	559	152	116	827
Cancellations	162	28	24	214
Net new orders	397	124	92	613
Gross new order revenue	\$ 123,909	\$ 38,017	\$ 35,936	\$ 197,862
Cancellation revenue	\$ 69,974	\$ 8,476	\$ 7,594	\$ 86,044
Net new order revenue	\$ 53,935	\$ 29,541	\$ 28,342	\$ 111,818
Average gross new order price	\$ 222	\$ 250	\$ 310	\$ 239
Settlements	669	131	86	886
Settlement revenue — homebuilding	\$ 174,584	\$ 31,644	\$ 26,577	\$ 232,805
Average settlement price	\$ 261	\$ 242	\$ 309	\$ 263
Backlog units (1)	13	39	18	70
Backlog revenue (1)	\$ 4,112	\$ 12,684	\$ 6,051	\$ 22,847
Average backlog price (1)	\$ 316	\$ 325	\$ 336	\$ 326

(1) Backlog data as of 12/31 for each year.

Recent accounting pronouncements

Effective January 1, 2009, the Company adopted SFAS No. 157, “Fair Value Measurements” (codified in “ASC 820”), for its non-financial assets and liabilities and for its financial assets and liabilities measured at fair value on a non-recurring basis. ASC 820 provides a framework for measuring fair value in generally accepted accounting principles, expands disclosures about fair value measurements, and establishes a fair value hierarchy that requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. The adoption of ASC 820 for the Company’s non-financial assets and liabilities did not have a material impact on the Company’s consolidated financial statements, though it may in the future. In April 2009, the FASB issued FSP FAS 157-4, “Determining Fair Value When the Volume and Level of Activity for the Asset or Liability Have Significantly Decreased and Identifying Transactions That Are Not Orderly,” FSP No. FAS 115-2 and FAS 124-2, “Recognition and Presentation of Other-Than-Temporary Impairments,” and FSP FAS 107-1 and APB 28-1, “Interim Disclosures about Fair Value of Financial Instruments” (all codified in ASC 820). The Company adopted the FSPs as of January 2009, which did not have a material impact on the Company’s consolidated financial statements.

In December 2007, the FASB also issued SFAS No. 160, “Noncontrolling Interests in Consolidated Financial Statements” (codified in “ASC 810”). ASC 810 requires all entities to report noncontrolling (i.e. minority) interests in subsidiaries as equity in the consolidated financial statements and to account for transactions between an entity and noncontrolling owners as equity transactions if the parent retains its controlling financial interest in the subsidiary. ASC 810 also requires expanded disclosure that distinguishes between the interests of the controlling owners and the interests of the noncontrolling owners of a subsidiary. ASC 810 was effective for the Company beginning on January 1, 2009. The adoption of ASC 810-10 did not have a material impact on the Company’s consolidated financial statements.

In May 2009, the FASB issued SFAS No. 165, “Subsequent Events,” (codified in “ASC 855”). ASC 855 establishes general standards of accounting for and disclosure of events that occur after the balance sheet date but before financial statements are issued or are available to be issued. ASC 855 was effective for the Company for the period ending June 30, 2009. The adoption did not have a material impact on the Company’s consolidated financial statements.

In June 2009, the FASB issued SFAS No. 166, “Accounting for Transfers of Financial Assets an amendment of FASB Statement No. 140,” (codified in “ASC 860”). ASC 860 requires enhanced disclosures regarding transfers of financial assets and continuing exposure to the related risks. ASC 860 also eliminates the concept of a qualifying special-purpose entity and changes the requirements for derecognizing financial assets. ASC 860 will be effective for the Company’s fiscal year beginning January 1, 2010. The adoption of ASC 860 is not expected to have a material impact on the Company’s consolidated financial statements.

In June 2009, the FASB issued SFAS No. 167, “Amendments to FASB Interpretation No. 46(R),” (codified in “ASC 810”). ASC 810 amends existing consolidation guidance for variable interest entities, requires ongoing reassessment to determine whether a variable interest entity must be consolidated, and requires additional disclosures regarding involvement with variable interest entities and any significant changes in risk exposure due to that involvement. ASC 810 will be effective for the Company’s fiscal year beginning January 1, 2010. The Company is currently evaluating the effects of ASC 810 on its consolidated financial statements.

In June 2009, the FASB issued SFAS No. 168, “The FASB Accounting Standards Codification™ and the Hierarchy of Generally Accepted Accounting Principles,” (codified in “ASC 105”), which created a single source of authoritative nongovernmental U.S. GAAP. The Codification was effective for the Company’s interim and annual periods ending after September 15, 2009. Upon adoption, all existing non-SEC accounting and reporting standards were superseded. All other non-SEC accounting literature not included in the Codification are considered non-authoritative. The required disclosures have been

incorporated into and did not have a material impact on the Company's consolidated financial statements.

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In August 2009, the FASB issued Accounting Standards Update No. 2009-05, “Measuring Liabilities at Fair Value” (“ASU 2009-05”), amending ASC 820 to provide additional guidance to clarify the measurement of liabilities at fair value. ASU 2009-05 was effective for the Company’s quarter ended December 31, 2009 and did not have a material impact on the Company’s consolidated financial statements.

In January 2010, the FASB issued Accounting Standards Update No. 2010-06, “Improving Disclosures about Fair Value Measurements” (“ASU 2010-06”), amending ASC 820 to increase disclosure requirements regarding recurring and nonrecurring fair value measurements. ASU 2010-06 will be effective for the Company’s fiscal year beginning January 1, 2010, except for the disclosures about activity in Level 3 fair value measurements which will be effective for the Company’s fiscal year beginning January 1, 2011. ASC 820 is not expected to have a material impact on the Company’s consolidated financial statements.

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Critical Accounting Policies and Estimates

Our consolidated financial statements are prepared in accordance with generally accepted accounting principles, which require us to make certain estimates and judgments that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting periods. On an ongoing basis, we evaluate our estimates, including those related to the consolidation of variable interest entities, revenue recognition, impairment of real estate held for development and sale, warranty reserve and our environmental liability exposure. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances. Actual results may differ materially from these estimates.

A summary of significant accounting policies is provided in Note 2 to our audited consolidated financial statements. The following section is a summary of certain aspects of those accounting policies that require our most difficult, subjective or complex judgments and estimates.

Consolidation of Variable Interest Entities

ASC 810-10 requires the primary beneficiary of a variable interest entity to consolidate that entity. A variable interest entity is created when (i) the equity investment at risk is not sufficient to permit the entity from financing its activities without additional subordinated financial support from other parties or (ii) equity holders either (a) lack direct or indirect ability to make decisions about the entity, (b) are not obligated to absorb expected losses of the entity or (c) do not have the right to receive expected residual returns of the entity if they occur. The primary beneficiary of a variable interest entity is the party that absorbs a majority of the variable interest entity's expected losses, receives a majority of the entity's expected residual returns, or both, as a result of ownership, contractual or other financial interests in the entity. Expected losses are the expected negative variability of an entity's net assets exclusive of its variable interests, and expected residual returns are the expected positive variability in the fair value of an entity's assets, exclusive of variable interests. Prior to the issuance of the principals related to variable interest accounting, an enterprise generally consolidated an entity when the enterprise had a controlling financial interest in the entity through ownership of a majority voting interest.

In December 2003, the FASB issued a revision to the variable interest accounting guidance which we adopted. Based on the revisions, we have concluded that whenever we option land or lots from an entity and pay a significant nonrefundable deposit, a variable interest entity is created. This is because we have been deemed to have provided subordinated financial support, which refers to variable interests that will absorb some or all of an entity's expected theoretical losses if they occur. Therefore, for each variable interest entity created, we compute the expected losses and residual returns based on the probability of future cash flows to determine if we are deemed to be the primary beneficiary of the variable interest entity.

The methodology used to evaluate our primary beneficiary status requires substantial management judgment and estimation. These judgments and estimates involve assigning probabilities to various estimated cash flow possibilities relative to the selling entity's expected profits and losses and the cash flows associated with changes in the fair value of the land under contract. Because we do not have any ownership interests in the entities with which we contract to buy land (such as LLCs), we may not have the ability to compel these entities to provide financial or other data to assist us in the performance of the primary beneficiary evaluation. This lack of direct information from the contracting entities may result in our evaluation being conducted solely based on the aforementioned management judgments and estimates. Further, where we deem ourselves to be the primary beneficiary of such an entity and that entity refuses to provide financial statements, we utilize estimation techniques to perform the consolidation. While management believes that our estimation techniques provide a reasonable basis for determining the financial condition of an entity that refuses to provide financial statements, the actual financial condition of the entity could differ from that reported. In addition, although management believes that our accounting policy is designed to properly assess our primary beneficiary status relative to our involvement with the entities from which we acquire land, changes to the probabilities and the cash flow possibilities used in our evaluation could produce different conclusions regarding our primary beneficiary status.

Revenue Recognition

We primarily derive our earned revenues from the sale of residential property. We recognize residential revenue and all related costs and expenses when full payment has been received, title and possession of the property has been conveyed and risks and rewards of ownership transfer to the buyer and other sale and profit recognition criteria are satisfied. Management estimates of future costs to be incurred after the completion of each sale are included in cost of sales. A change in circumstances that causes these estimates of future costs to increase or revenues to decrease could significantly affect the profit recognized on these sales.

Impairment of Real Estate Held for Development and Sale

Real estate held for development and sale includes land, land development costs, interest and other construction costs and is stated at cost or, when circumstances or events indicate that the real estate held for development or sale is impaired, at estimated fair value. Circumstances or events we consider important which could trigger an impairment review include the following:

- significant negative industry or economic trends;
- a significant underperformance relative to historical or projected future operating results;
- a significant change in the manner in which an asset is used; and
- an accumulation of costs significantly in excess of the amount originally expected to construct an asset.

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Real estate is stated at the lower of cost or estimated fair value using the methodology described as follows. A write-down to estimated fair value is recorded when we determine that the net book value exceeds the estimated undiscounted future cash flows. These evaluations are made on a property-by-property basis. When we determine that the net book value of an asset may not be recoverable based upon the estimated undiscounted cash flow, an impairment write-down is recorded. The evaluation of future cash flows and fair value of individual properties requires significant judgment and assumptions, including estimates regarding expected sales prices, development absorption and remaining development costs. Significant adverse changes in circumstances affecting these judgments and assumptions in future periods could cause a significant impairment adjustment to be recorded. As discussed in Note 4 to the accompanying financial statements, we recorded impairment charges of zero in the first quarter of 2009, \$22.9 million in the second quarter of 2009 and zero in the third and fourth quarters of 2009.

Warranty Reserve

Warranty reserves for houses sold are established to cover potential costs for materials and labor with regard to warranty-type claims expected to arise during the one-year warranty period provided by us or within the five-year statutorily mandated structural warranty period. Since we generally subcontract our home building work, subcontractors are required to provide us with an indemnity and a certificate of insurance prior to receiving payments for their work. Claims relating to workmanship and materials are generally the primary responsibility of the subcontractors and product manufacturers. The warranty reserve is established at the time of closing, and is calculated based upon historical warranty cost experience and current business factors. Variables used in the calculation of the reserve, as well as the adequacy of the reserve based on the number of homes still under warranty, are reviewed on a periodic basis. Although management considers the warranty reserve to be adequate, there can be no assurance that this reserve will prove to be adequate over time to cover losses due to increased costs for material and labor, the inability or refusal of manufacturers or subcontractors to financially participate in corrective action, unanticipated adverse legal settlements, or other unanticipated changes to the assumptions used to estimate the warranty reserve.

Environmental Liability Exposure

Development and sale of real property creates a potential for environmental liability on our part as owner and developer, for our own acts as well as the acts of prior owners of the subject property or owners or past owners of adjacent parcels. If hazardous substances are discovered on or emanating from any of our properties, we and prior owners may be held liable for costs and liabilities relating to those hazardous substances. We generally undertake environmental studies in connection with our property acquisitions, when warranted. If we incur environmental remediation costs in connection with properties we previously sold, including clean up costs, consulting fees for environmental studies and investigations, monitoring costs, and legal costs relating to clean up, litigation defense and the pursuit of responsible third parties, they are expensed. We capitalize costs relating to land under development and undeveloped land as part of development costs. Costs incurred for properties to be sold are deferred and charged to cost of sales when the properties are sold. Should a previously undetected, substantial environmental hazard be found on our properties, significant liquidity could be consumed by the resulting clean up requirements and a material expense may be recorded. Further, governmental regulation on environmental matters affecting residential development could impose substantial additional expense on us, which could adversely affect our results of operations or the value of properties owned under contract, or purchased by us. For additional information regarding risks associated with environmental hazards and environmental regulation, see "Business — Risk Factors — We are Subject to Certain Environmental Laws and the Cost of Compliance Could Adversely Affect our Business."

Results of Operations

Year ended December 31, 2009 compared to year ended December 31, 2008

Orders, backlog and cancellations

Gross new order revenue for the year ended December 31, 2009 decreased \$13.9 million, or 34.9%, to \$25.9 million on 89 homes as compared to \$39.8 million on 140 homes for the year ended December 31, 2008. Net new order revenue for the year ended December 31, 2009 decreased \$3.7 million, or 15.3%, to \$20.5 million on 68 homes as compared to \$24.2 million on 87 homes for the year ended December 31, 2008. The average gross new order revenue per unit for the year ended December 31, 2009 increased by \$6,000 to \$291,000 as compared to \$285,000 for the year ended December 31, 2008. This increase is due to the sale of 49 units in Raleigh, N.C. during 2008 at an average gross new order revenue per unit of \$214,000 which pulled down the average for that period. Our backlog at December 31, 2009 decreased \$1.1 million, or 35.5%, to \$2.0 million on 4 homes as compared to our backlog at December 31, 2008 of \$3.1 million on 11 homes.

As a result of winding down our divisions in the Atlanta, GA and Raleigh, N.C. markets we are left with two projects at December 31, 2009 where we have units available for sale and settlement, Penderbrook and Eclipse at Potomac Yard. Our remaining three projects, net of projects scheduled for foreclosure, are land positions in varying states of readiness. Therefore, we were only able to generate orders and backlog at two projects for much of 2009. The decrease in gross new orders, net new orders and backlog at these two projects is attributable to current market conditions in the homebuilding industry which are characterized by a general excess supply of homes available for sale, reduced buyer confidence and elevated levels of unemployment.

Revenue – homebuilding

The number of homes delivered for the year ended December 31, 2009 decreased by 49.7%, or 73 homes, to 74 as compared to 147 homes for the year ended December 31, 2008. The decrease in units settled was the result of zero settlements in our Atlanta division in 2009 versus 22 in 2008; 8 settlements in our Raleigh division in 2009 versus 63 in 2008. These decreases were offset by an increase of 23 settlements at our Penderbrook project where we settled 26 units in 2009 versus 3 in 2008. Average revenue per home delivered decreased by \$11,000 to \$289,000 for the year ended December 31, 2009 as compared to \$300,000 for the year ended December 31, 2008. This is due to a decrease in the average price per home settled at all of our projects in 2009 compared to 2008. For example, in 2009 we settled 27 units at our Eclipse project at an average revenue per settlement of \$443,000. In 2008 there were also 27 settlements at the Eclipse but at an average revenue per settlement of \$486,000.

Homebuilding revenues decreased by \$22.7 million, or 51.5%, to \$21.4 million for the year ended December 31, 2009 as compared to \$44.1 million for the year ended December 31, 2008. This reduction in revenue from homebuilding is primarily attributable to a lower volume of units settled in 2009 versus 2008. As a result of our exit from the Atlanta, GA market, we settled 22 units in the Atlanta division in 2008 versus zero settlements in 2009. As we wind down our operation in Raleigh, N.C., the volume decreased from 63 settlements in 2008 to 8 settlements in 2009. In our Washington, D.C. market, we settled 62 units in 2008 versus 66 units in 2009.

Revenue – other

Other revenue for the year ended December 31, 2009 increased by \$1.1 million, or 42.3% to \$3.7 million, as compared to \$2.6 million for the year

ended December 31, 2008. Other revenue includes \$2.7 million and \$2.5 million of revenue generated by our rental communities during the twelve months ended December 31, 2009 and the twelve months ended December 31, 2008, respectively. Other revenue for the twelve months ended December 30, 2009 also includes \$721,000 from the July 2009 sale of 33 single-family lots at our Providence project in Raleigh, N.C. We consider revenue to be from homebuilding when there is a structure built or being built on the lot when delivered. Sales of lots occur, and are included in other revenues, when we sell raw land or finished home sites in advance of any home construction.

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Cost of sales – homebuilding

Cost of sales homebuilding for the year ended December 31, 2009 decreased \$19.6 million, or 50.0%, to \$19.6 million, or 91.6% of homebuilding revenue, as compared to \$39.2 million, or 88.9% of revenue, for the year ended December 31, 2008. The increase in cost of sales as a percentage of homebuilding revenue for the year ended December 31, 2009 is the result of lower average revenue per settlement and increased sales concessions such as the payment of certain buyer closing costs at settlement that do not affect the revenue per sale but do increase the cost of a settled home.

Cost of sales – other

Cost of sales – other is principally comprised of operating expenses incurred in generating rental revenue at our rental communities but for the twelve months ended December 31, 2009 it also included \$708,000 from the July 30, 2009 sale of 33 single-family lots at our Providence project in Raleigh, N.C.

Impairments and write-offs

Real estate held for development and sale includes land, land development costs, interest and other construction costs. Land held for development is stated at cost, or when circumstances or events indicate that the land is impaired, at estimated fair value. Real estate held for sale is carried at the lower of cost or market less selling costs. Land, land development and indirect land development costs are accumulated by specific project and allocated to various lots or housing units within that project using specific identification and allocation based upon the relative sales value, unit or area methods. Direct construction costs are assigned to housing units based on specific identification. Construction costs primarily include direct construction costs and capitalized field overhead. Other costs are comprised of prepaid local government fees and capitalized interest and real estate taxes. Selling costs are expensed as incurred.

Estimated fair value is based on comparable sales of real estate in the normal course of business under existing and anticipated market conditions. The evaluation takes into consideration the current status of the property, various restrictions, carrying costs, costs of disposition and any other circumstances, which may affect fair value including management's plans for the property. Due to the large acreage of certain land holdings, disposition in the normal course of business is expected to extend over a number of years. A write-down to estimated fair value is recorded when the net carrying value of the property exceeds its estimated undiscounted future cash flows. These evaluations are made on a property-by-property basis as seen fit by management whenever events or changes in circumstances indicate that the net book value may not be recoverable.

During the third quarter of 2009, the Company executed a foreclosure agreement with Wachovia Bank that will result in cancellation of indebtedness (see Note 8) in exchange for the Company's agreement to cooperate in the bank's foreclosure process on assets that secure the debt. Wachovia Bank had not foreclosed on the real estate assets as of December 31, 2009. The following summary of the carrying value of real estate held for development and sale reflects the Wachovia assets scheduled for foreclosure, net of the Wachovia projects that were deconsolidated due to loss of financial control in the fourth quarter of 2009 (See Note 20).

	Number of projects	December 31, 2009 \$000s
Real estate held for development and sale	16	\$ 70,890
Real estate projects awaiting foreclosure related to the Wachovia foreclosure agreement:	(11)	(15,407)
Real estate held for development and sale, net of assets awaiting foreclosure	5	\$ 55,483

Deteriorating market conditions, turmoil in the credit markets and increased price competition have continued to negatively impact the Company during 2009 resulting in reduced sales prices, increased customer concessions, reduced gross margins and extended estimates for project completion dates. The Company evaluates its projects on a quarterly basis to determine if recorded carrying amounts are recoverable. For the three months ended December 31, 2009, the Company evaluated all 16 of its projects for impairment and the evaluation resulted in no impairment charges. Impairment charges of \$3.4 million were recorded for the three months ended December 31, 2008. As a result of this analysis, the Company believes that book value approximates fair value for all of its projects except for one project where the fair value exceeds the carrying value of \$34.5 million.

For projects where the Company expects to continue sales, these impairment evaluations are based on discounted cash flow models. Discounted cash flow models are dependent upon several subjective factors, primarily estimated average sales prices, estimated sales pace, and the selection of an appropriate discount rate. While current market conditions make the selection of a timeframe for sales in a community challenging, the Company has generally assumed sales prices equal to or less than current prices and the remaining lives of the communities were estimated to be one to two years. These assumptions are often interrelated as price reductions can generally be assumed to increase the sales pace. In addition, the Company must select what it believes is an appropriate discount rate based on current market cost of capital and returns expectations. The Company has used its best judgment in determining an appropriate discount rate based on anecdotal information it has received from marketing its deals for sale in recent months. The Company has elected to use a rate of 17% in its discounted cash flow model, which is consistent with the discount rate used in prior periods as the Company's cost of capital has not changed significantly. While the selection of a 17% discount rate was subjective in nature, the Company believes it is an appropriate rate in the current market. The estimates of sales prices, sales pace, and discount rates used by the Company are based on the best information available at the time the estimates were made. In recent months, market conditions affecting the Company's Washington, D.C. area projects have improved, however, if market conditions deteriorate again, additional adverse changes to these estimates in future periods could result in further material impairment amounts to be recorded.

For projects where the Company expects to sell the remaining lots in bulk or convey the remaining lots to a lender where the loans have matured, the fair value is determined based on offers received from third parties, comparable sales transactions, and/or cash flow valuation techniques.

If the project meets the GAAP accounting criteria of held for sale, the project is valued at the lower of cost or fair value less estimated selling costs. At December 31, 2009, the Company had one project with a carrying value of \$34.5 million that met these criteria.

At May 31, 2009 Mathis Partners, LLC, a wholly owned subsidiary of the Company had approximately \$5.1 million of principal, accrued interest and fees outstanding to Comerstone Bank ("Comerstone") relating to the Company's Gates at Luberon project ("Gates"). In June 2009, Comerstone foreclosed on Gates lots carried in real estate held for development and sale with an estimated fair value of \$3.3 million. Upon this foreclosure the Company had been relieved of a portion of the outstanding debt balance and recorded this as an extinguishment of debt paid for by the foreclosed lots, in accordance with ASC 405.20.40-1. As a result, \$1.8 million of Comerstone debt remained at June 30, 2009 as the Company reduced its assets for the lots that were legally transferred to Comerstone and recorded a corresponding reduction in the related debt as a result of the transfer of assets in partial satisfaction of the debt. On September 22, 2009, the Company

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entered into a settlement agreement and mutual release with Comerstone relating to litigation between the Company and Comerstone. In connection with the settlement, Comerstone released the Company, and its subsidiary Mathis Partners, LLC, from their respective obligations and guarantees relating to \$5.1 million of debt. As a result of completing the negotiations in September, the Company wrote off the remaining carrying value of the Gates inventory on which Comerstone foreclosed and reduced the recorded value of the debt to the final settlement amount. See Note 12 for the calculation of gain on troubled debt restructuring related to the Comerstone settlement agreement.

If market conditions continue to deteriorate, additional adverse changes to these estimates in future periods could result in further material impairment amounts to be recorded. The following table summarizes impairment charges and write-offs for the twelve months ended by metropolitan area (\$000):

	Twelve Months Ended December 31,		
	2009	2008	2007
Washington DC Metropolitan Area	\$ 15,351	\$ 6,141	\$ 35,005
Raleigh, North Carolina	1,218	499	10,190
Atlanta, Georgia	6,369	11,382	33,069
	<u>\$ 22,938</u>	<u>\$ 18,022</u>	<u>\$ 78,264</u>

As of December 31, 2009, the Company has only an immaterial amount of real estate in Atlanta, GA. The remaining real estate in Raleigh, N.C. is scheduled for foreclosure by Wachovia Bank in 2010.

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Selling, general and administrative expenses

Selling, general and administrative costs for the year ended December 31, 2009 decreased \$7.0 million, or 46.4%, to \$8.1 million, as compared to \$15.1 million for the year ended December 31, 2008. The reduction is attributable to decreased salary, bonus and other personnel related expenses in conjunction with a continuing effort to make strategic reductions in personnel and related costs. We had 31 employees at December 31, 2009 versus 67 at December 31, 2008. Cost reduction initiatives have also resulted in decreases in office rent, legal, accounting and consulting expenses.

Interest, real estate taxes and indirect costs related to inactive projects

Interest and real estate taxes incurred relating to the development of lots and parcels are capitalized to real estate held for development and sale during the active development period, which generally commences when borrowings are used to acquire real estate assets and ends when the properties are substantially complete or the property becomes inactive which means that development and construction activities have been suspended indefinitely. Interest is capitalized based on the interest rate applicable to specific borrowings or the weighted average of the rates applicable to other borrowings during the period. Interest and real estate taxes capitalized to real estate held for development and sale are expensed as a component of cost of sales as related units are sold.

When a project becomes inactive, its interest, real estate taxes and indirect production overhead costs are no longer capitalized but rather expensed in the period in which they are incurred. During the twelve months ended December 31, 2009, all of the Company's projects were determined to be inactive for accounting purposes. Following is a breakdown of the interest, real estate taxes and indirect costs related to inactive projects reported on the statement of operations related to the inactivation of certain real estate projects held for development and sale (\$000s):

	Years ended December 31,		
	2009	2008	2007
Total interest incurred and expensed for inactive projects	\$2,626	\$3,993	\$—
Total real estate taxes incurred and expensed for inactive projects	845	1,022	—
Total production overhead incurred and expensed for inactive projects	667	670	—
	<u>\$4,138</u>	<u>\$5,685</u>	<u>—</u>

Year ended December 31, 2008 compared to year ended December 31, 2007

Orders, backlog and cancellations

Gross new order revenue for the year ended December 31, 2008 decreased \$158.0 million, or 79.9%, to \$39.8 million on 140 homes as compared to \$197.9 million on 827 homes for the year ended December 31, 2007. Net new orders for the year ended December 31, 2008 decreased \$87.6 million, or 78.3%, to \$24.2 million on 87 homes as compared to \$111.8 million on 613 homes for the year ended December 31, 2007. The 526 unit decrease in net new orders was experienced across all of our markets and projects and is attributable to the real estate industry downturn and the contraction of the national economy. General erosion of consumer confidence and increasing unemployment along with increasing difficulty in obtaining mortgage financing reduced demand in 2008. The reduction in 2008 was most dramatically impacted, however, by the 2007 bulk sale of the Bellemeade project. The balance of the reduction was contributed to reduced new orders and increased cancellations.

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The average gross new order revenue per unit for the year ended December 31, 2008 increased by \$46,000 to \$285,000 as compared to \$239,000 for the year ended December 31, 2007. The increase in average sales price per new order is attributable to an increase in average new order revenue at our Eclipse project in 2008. Despite receiving 44 fewer gross new orders at the Eclipse in 2008 versus 2007, the average gross new order price increased to \$488,000 in 2008 from \$416,000 in 2007. An additional cause of the increase in 2008 was that average gross new order was depressed by the effect of the discounted bulk sales of condominium conversion units at Bellemeade. Our backlog at December 31, 2008 decreased \$19.7 million, in 2007 or 86.4%, to \$3.1 million on 11 homes as compared to our backlog at December 31, 2007 of \$22.8 million on 70 homes. The decrease in backlog is consistent with real estate industry slowdown, the global credit crisis and national economic recession currently taking place.

Our cancellation rate for the year ended December 31, 2008 was 37.9% on 140 gross new orders compared to a cancellation rate of 25.9% on 827 gross new orders for the comparable period in 2007. In the Washington, DC market we experienced 17 cancellations on 69 gross new orders, or 24.6%. In the Raleigh market our cancellation rate was 42.6%, or 23 cancellations on 54 gross new orders, and in the Atlanta market our cancellation rate was 76.5%, or 13 cancellations on 17 gross new orders. We believe that the high rate of cancellations in our Atlanta and Raleigh markets was due in part to the first-time buyer orientation of our products, our inability to initiate construction due to lack of available construction financing and a slowing of the resale market for our move-up buyers.

Revenues

The number of homes delivered for the year ended December 31, 2008 decreased by 83.4%, or 739 homes, to 147 as compared to 886 homes for the year ended December 31, 2007. Average revenue per home delivered increased by \$37,000 to \$300,000 for the year ended December 31, 2008 as compared to \$263,000 for the year ended December 31, 2007. The decrease in units settled was the result of 203 settlements at the Eclipse valued at \$86.8 million in 2007 versus 27 settlements valued at \$13.1 million in 2008, and the 2007 bulk sale of our 316-unit Bellemeade condominium conversion project.

Homebuilding revenues decreased by \$188.7 million, or 81.1%, to \$44.1 million for the year ended December 31, 2008 as compared to \$232.8 million for the year ended December 31, 2007. The decrease in homebuilding revenue is primarily attributable to weaker market conditions, reduced availability or mortgage financing in the second half of the year and reduced pricing of our homes in an effort to sell speculative inventory.

Other Revenues

Other revenue for the year ended December 31, 2008 decreased by \$30.8 million, or 92.2% to \$2.6 million, as compared to \$33.4 million for the year ended December 31, 2007. Other revenue from lot sales for the year ended December 31, 2008 was \$0.02 million, as compared to \$31.8 million for the year ended December 31, 2007. For the twelve months ended December 31, 2007 other revenue included finished lot sales at our Massey Preserve project (\$7.2 million), raw lot sales at our Blake Culpepper project (\$3.6 million), raw lot sale of our East Capital Street project (\$6.0 million) and the sale of our Potomac Yard Retail complex (\$14.5 million). We consider revenue to be from homebuilding when there is a structure built or being built on the lot when delivered. Sales of lots occur, and are included in other revenues, when we sell raw land or finished home sites in advance of any home construction. Other revenue includes \$2.5 million and \$0.8 million of revenue generated by our rental communities during the twelve months ended December 31, 2008 and the twelve months ended December 31, 2007, respectively. Other revenue for the year ended December 31, 2008 and 2007 includes \$0.07 million and \$0.4 million respectively of revenue associated with the Company's Settlement Title Services division.

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Cost of sales and cost of sales other

Cost of sales for the year ended December 31, 2008 decreased \$171.9 million, or 81.4%, to \$39.2 million, or 88.9% of homebuilding revenue, as compared to \$211.1 million, or 90.7% of revenue, for the year ended December 31, 2007. The 1.8 point decrease in cost of sales as a percentage of homebuilding revenue for the year ended December 31, 2008 is attributable primarily to prior period impairment charges and reclassification of direct costs for inactive projects. Impairment charges result in increased margins because they reduce inventory costs remaining to be released and charged to cost of sales when future units are settled. Projects are classified as inactive when they are either substantially complete or construction activities have been indefinitely suspended. When a project becomes inactive for accounting purposes, interest, real estate tax and overhead costs are no longer capitalized into inventory but are expensed in the period incurred. This in turn increases future margin in the same way as impairments.

Cost of sales other for the year ended December 31, 2008 was \$1.3 million, as compared to \$34.8 million for the year ended December 31, 2007. Cost of sales other for the year ended December 2008 and 2007 includes expenses associated with lot and bulk project sales made to third parties, rental community operations and expenses associated with the management of the Company's Settlement Title Services division. The reduction in cost of sales other is the result of lower land sale revenue in 2008 as compared to 2007.

Impairments and write-offs

For the twelve months ended December 31, 2008 we recorded impairment and write-off charges of \$18.0 million including an impairment charge of \$3.4 million at our Tribble Road project in Atlanta, \$7.9 million over fourteen other projects in our Atlanta division, \$6.2 million over two projects in our Washington, D.C. division and \$0.5 million over two projects in our Raleigh, N.C. division. For the twelve months ended December 31, 2007 we recorded \$78.4 million of impairments and write-offs, with approximately \$35.0 million, \$10.2 million and \$33.1 million in the Washington metro area, North Carolina and Georgia, respectively.

Selling, general and administrative expenses

Selling, general and administrative costs for the year ended December 31, 2008 decreased \$19.1 million, or 55.8%, to \$15.1 million, as compared to \$34.2 million for the year ended December 31, 2007. Selling, general and administrative expenses represented 32.3% of total revenue for the year ended December 31, 2008, as compared to 12.8% for the year ended December 31, 2007.

The bulk of the decrease in selling, general and administrative costs was the result of staffing reductions and decreases in related compensation cost reductions of \$7.0 million. Non-compensation related selling expenses decreased by \$3.2 million to \$1.6 million for the year ended December 31, 2008 as compared to \$4.8 million for the year ended December 31, 2007. General and administrative costs for the year ended December 31, 2007 included a one-time charge of \$3.9 million relating to non-cash stock compensation in December 2007 resulting from the acceleration of certain unvested stock grants. Rent expense incurred for office and model home leases decreased by \$1.2 million to \$1.0 million in the year ended December 31, 2008 from \$2.2 million in the year ended December 31, 2007. Consulting fees decreased by \$1.3 million and accounting related fees decreased by \$0.8 million from 2007 to 2008.

Interest, real estate taxes and indirect costs related to inactive projects

Due to the severity of the real estate market downturn, various projects were classified as inactive during 2008. A project becomes inactive for accounting purposes when either the project is substantially complete or construction or development efforts are suspended indefinitely. When a project becomes inactive, its interest, real estate taxes and indirect production overhead costs are no longer capitalized but rather expensed in the period in which they are incurred. For the twelve months ended December 31, 2008 the Company recorded \$5.7 million of expense relating to inactive projects including \$4.0 million of interest, \$1.0 million of real estate taxes and \$0.7 million of production overhead costs. For the twelve months ended December 31, 2007 no projects had been classified as inactive and therefore all interest, real estate tax and production overhead costs were capitalized as incurred.

Year ended December 31, 2007 compared to year ended December 31, 2006

Orders, backlog and cancellations

Gross new order revenue for the year ended December 31, 2007 decreased \$50.0 million, or 20.2%, to \$197.9 million on 827 homes as compared to \$247.9 million on 965 homes for the year ended December 31, 2006. Net new orders for the year ended December 31, 2007 decreased \$82.9 million, or 42.6%, to \$111.8 million on 613 homes as compared to \$194.7 million on 794 homes for the year ended December 31, 2006. The 181 unit decrease in net new orders was primarily attributable to increased cancellations of 214 units for the twelve months ended December 31, 2007 as compared to 171 units for the twelve months ended December 31, 2006, and decreases in sales at our Eclipse project which was substantially pre-sold in 2005 and 2006. In addition, the Company's 2006 acquisitions of Parker Chandler Homes Inc., and Capitol Homes Inc., in the Georgia and North Carolina markets, contributed approximately 122 and 91 new order units, respectively in 2006. Our customers experienced increasing difficulty in 2007 obtaining mortgage financing, a factor which also contributed to reduced new orders and increased cancellations.

The average gross new order revenue per unit for the year ended December 31, 2007 decreased by \$18,000 to \$239,000 as compared to \$257,000 for the year ended December 31, 2006. The decrease in average sales price per new order is attributable to lower priced product offerings in our North Carolina and Georgia markets, increased sales of lower priced condominiums, discounted bulk sales of condominium conversion units at Bellemeade, and price decreases throughout our markets in response to slower demand as compared to 2006. This decrease was offset by higher per unit new orders at the Company's Eclipse on Center Park at Potomac Yard project as a result of more sales in the East Tower. Our backlog at December 31, 2007 decreased \$118.4 million, or 83.8%, to \$22.8 million on 70 homes as compared to our backlog at December 31, 2006 of \$141.3 million on 345 homes. The decrease in backlog is primarily the result of 203 deliveries valued at \$86.8 million at the Eclipse during the twelve months ended December 31, 2007.

Our average cancellation rate for the year ended December 31, 2007 was approximately 25.9% on 827 gross new orders compared to cancellation rate of 17.7% on 965 gross new orders for the comparable period in 2006. Cancellations were most prevalent in the greater Washington, DC market where we experienced 162 cancellations on 559 gross new orders or 29.0%. At the Eclipse project we experienced 123 cancellations on 72 new orders although most of the cancellations were related to contracts entered into prior to 2007. In the Raleigh market our cancellation rate was 18.4%, or 28 cancellations on 152 gross new orders, and in the Atlanta market our cancellation rate was 20.7%, or 24 cancellations on 116 gross new orders. We believe that the high rate of cancellations in our Atlanta and Raleigh markets was due in part to the first-time buyer orientation of our products as well as a slowing of the resale market for our move-up buyers.

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Revenues

The number of homes delivered for the year ended December 31, 2007 decreased by 3.1%, or 28 homes, to 886 as compared to 914 homes for the year ended December 31, 2006. Average revenue per home delivered was unchanged at \$263,000 for the year ended December 31, 2007 as compared to \$263,000 for the year ended December 31, 2006. The decrease in units settled was the result of higher cancellations and reduced new orders which were offset by 203 settlements at the Eclipse valued at \$86.8 million and the bulk sale of our Bellemeade condominium conversion project.

Homebuilding revenues decreased by \$7.3 million, or 3.0%, to \$232.8 million for the year ended December 31, 2007 as compared to \$240.1 million for the year ended December 31, 2006. The decrease in homebuilding revenue is primarily attributable to weaker market conditions, reduced availability or mortgage financing in the second half of the year and reduced pricing of our homes in an effort to sell speculative inventory.

Other Revenues

Other revenue for the year ended December 31, 2007 increased by \$27.6 million, or 475.9% to \$33.4 million, as compared to \$5.8 million for the year ended December 31, 2006. Other revenue for the year ended December 31, 2007 and 2006 includes lot sales made to third parties, revenue associated with the Company's Settlement Title Services division, management fees received from Comstock Asset Management Inc. and revenue received from a marketing services alliance. The increase is attributable to increased lot sales and bulk project sales during 2007 as compared to 2006. The Company considers a sale to be from homebuilding when there is a structure built on the lot when it is sold. Sales of lots occur, and are included in other revenues, when the Company sells raw or finished home sites in advance of any substantial home construction. Projects where other revenue was generated include: Massey Preserve finished lot sales (\$7.2 million), Blake Culpepper raw lot sales (\$3.6 million), East Capital Street raw lot sales (\$6.0 million) and the Potomac Yard Retail complex sale (\$14.5 million).

Cost of sales and cost of sales other

Cost of sales for the year ended December 31, 2007 decreased \$0.3 million, or 0.1%, to \$211.1 million, or 90.7% of homebuilding revenue, as compared to \$211.4 million, or 88.1% of revenue, for the year ended December 31, 2006. The 2.6 percentage point increase in cost of sales as a percentage of homebuilding revenue for the year ended December 31, 2007 is attributable to several factors. Due to weakening market conditions, we extended the sales cycle of many of our projects, which in turn increased direct costs per unit by increasing the amount of real estate tax, interest and overhead capitalized to the project. In many cases, since we relieve our capitalized costs pro-rata to the individual lots, fewer remaining lots must absorb the increased costs. As a result, per unit costs go up. In addition, we have experienced pricing concessions and increases in seller closing cost contributions. This percentage point increase in cost of sales was partially offset by the classification of a portion of the cost of sales as impairments and write-offs during the first three quarters of 2007. Cost of sales other for the year ended December 31, 2007 increased by \$29.0 million, or 557.7% to \$34.2 million, as compared to \$5.2 million for the year ended December 31, 2006. Cost of sales other for the year ended December 2007 and 2006 includes expenses associated with lot and bulk project sales made to third parties and expenses associated with the management of the Company's Settlement Title Services division. Cost of sales other as a percentage of other revenue was 102.7% and 90.7% for the year ended December 31, 2007 and 2006 respectively. The 12.0 percentage point increase in cost of sales other as a percentage of other revenue is due to the Company selling lots at book value to exit underperforming projects as compared to sales of lots for a gain in 2006. This percentage point increase in cost of sales other was partially offset by the classification of a portion of the cost of sales other as impairments and write-offs during the first three quarters of 2007.

Impairments and write-offs

As discussed in Note 5 in the accompanying notes to the consolidated financial statements, the Company, for the year ended December 31, 2007 and 2006, recorded impairment charges of \$68.8 and \$51.2 million, respectively. For the year ended December 31, 2007 the Company wrote-off \$9.5 million related to deposits on forfeited option contracts, value assigned to forfeited option contracts and related feasibility costs as compared to \$6.2 million for the year ended December 31 2006. Impairments and write-offs were recorded in all of our geographic regions. The majority of the Company's impairments, \$61.4 million, were recorded at September 30, 2007 based on the continuing need for price concession the weakening of pricing power and increasing inventory costs resulting from the capitalization of interest, overheads and real estate taxes. At December 31, 2007, the Company had approximately \$0.2 million related to non-refundable option deposits to purchase real estate.

Selling, general and administrative expenses

Selling, general and administrative costs for the year ended December 31, 2007 decreased \$2.8 million or 7.5% to \$34.7 million, as compared to \$37.5 million for the year ended December 31, 2006. Selling, general and administrative expenses represented 13.0% of total revenue for the year ended December 31, 2007, as compared to 15.3% for the year ended December 31, 2006.

This decrease in selling, general and administrative costs was principally the result of staffing reductions and related compensation costs of \$4.4 million. Selling expenses represented \$11.5 million of total selling, general and administrative costs for the year ended December 31, 2007 as compared to \$12.7 million for the year ended December 31, 2006. Reductions in recurring general and administrative costs were offset by the recognition of a one-time charge of \$3.9 million non-cash stock compensation in December 2007 resulting from the acceleration of certain unvested stock grants. General and administrative expenses also included other non-cash charges including depreciation and amortization of \$0.9 million.

Income taxes

Income tax benefit for the year ended December 31, 2007 was \$2.6 million compared to \$24.5 million for the year ended December 31, 2006. Our combined effective tax rate including both current and deferred provisions for the year ended December 31, 2007 was 2.8% as compared to 38.1% for the year ended December 31, 2006. The decrease is primarily a result of our establishment of a full \$29.2 million valuation allowance against our net deferred tax assets based on the uncertainty regarding the future realization through future taxable income or carryback opportunities. If in the future the Company believes that it is more likely than not that these deferred tax benefits will be realized, the valuation allowance will be reversed.

Liquidity and Capital Resources

We require capital to operate, to post deposits on new deals, to purchase and develop land, to construct homes, to fund related carrying costs and overhead and to fund various advertising and marketing programs to generate sales. These expenditures include payroll, community engineering, entitlement, architecture, advertising, utilities and interest as well as the construction costs of our homes and rent, insurance amenities. Our sources of capital include, and will continue to include, funds derived from various secured and unsecured borrowings, cash flow from operations, which includes the sale and delivery of constructed homes and finished and raw building lots, and the sale of equity and debt securities.

In production home building, it is common for builders such as ourselves to employ revolving credit facilities under which the maximum funding available under the facility exceeds the maximum outstanding balance allowed at any given time. This revolving debt will typically provide for funding of an amount up to a pre-determined percentage of the cost of each asset funded. The balance of the funding for that asset is provided by us as equity. The efficiency of revolving debt in production home building allows us to operate with less overall debt capital availability than would be required if we built each project with long-term amortizing debt.

In an effort to stabilize the Company, management has spent much of 2009 focused on negotiating with lenders to eliminate and restructure debt which has temporarily limited our ability to pursue new business opportunities. Early in 2009, management formulated a Strategic Realignment Plan (the "Plan") which identified real estate projects to be retained by the Company. The Company then worked to restructure the debt related to those core projects. The restructuring was completed in 2009 and has resulted in improved operating cash flow as the lenders have agreed to provide the Company with increased cash from proceeds as units are settled. This improved cash flow from settlements is contingent upon the Company settling a minimum of 10 units per quarter at Penderbrook and 9 units per quarter at Eclipse, on a cumulative basis. If the Company fails to maintain the minimum settlement requirements, while that would not be deemed an event of loan default, it would give the lenders the right to apply substantially all of the unit settlement proceeds to principal reduction. At December 31, 2009, the Company was in compliance with the minimum settlement requirements.

The Plan also identified real estate projects which it deemed to be non-essential to future growth. The strategic approach to debt secured by non-essential real estate projects was to pursue foreclosure agreements with the related lenders with the goal of transferring the real estate to the lender in return for a release from the related debt obligation. As detailed herein, the Company has made significant progress in that regard. As of December 31, 2009 the Company had successfully negotiated settlements with all of its secured lenders regarding the loans guaranteed by the Company and had reduced the outstanding balance of debt from \$102.8 million at December 31, 2008 to \$51.7 million (\$67.6 million of total debt less \$15.9 million of Wachovia debt for which extinguishment will occur once real estate assets are foreclosed in 2010) at December 31, 2009. In most cases the Company has been released from the obligations under the loan in return for its agreement to cooperate in the bank's foreclosure on the real estate assets securing the loan. In a limited number of cases, the Company provided the lenders with non-interest bearing deficiency notes with three year maturities in an amount equal to a fraction of the original debt. The balance of the deficiency notes at December 31, 2009 was \$1.1 million. Due to the time required to complete the requisite foreclosures on certain real estate assets, the foreclosure actions were not all complete at December 31, 2009 and will occur in future periods.

Following is a summary of liquidity events that have already occurred or are anticipated in 2010:

- As a result of the restructuring effort, the only debt service required in 2010 will be covered by, assuming we are able to maintain sales quotas, settlements of units or land parcels.
- Due to a tax law change resulting from the passage of the Unemployment Insurance Extension Act of 2009, the Company received a tax refund of \$861,000 in February 2010.
- On July 29, 2008 Balfour Beatty Construction, LLC, successor in interest to Centex Construction ("Balfour"), the general contractor for a subsidiary of the Company, filed liens totaling approximately \$552,000 at The Eclipse on Center Park Condominium project ("Project") in connection with its claim for amounts allegedly owed under the Project contract documents. In September 2008 the Company's subsidiary filed suit against Balfour to invalidate the liens and for its actual and liquidated damages in the approximate amount of \$17.1 million due to construction delays and additional costs incurred by the Company's subsidiary with respect to the Project. In October 2008 Balfour filed counterclaims in the approximate amount of \$2.8 million. Subsequent to an expedited hearing filed by the Company's subsidiary to determine the validity of the liens that was ultimately heard in February 2009, we received an order of the court in April 2009 invalidating the liens. The trial began on September 8, 2009 and closed on September 16, 2009. On February 23, 2010, the Company's subsidiary received a judgment against Balfour in an amount of \$11.7 million plus attorney's fees to be determined at a later date. On March 3, 2010, the Company's subsidiary received notice of Balfour's intention to appeal the judgment and post a supersedeas bond in the amount of \$12.5 million. If the judgment amount is upheld on appeal, a significant portion is required to be applied toward principal curtailment under the Company's loan agreement with KeyBank.

Based on the debt restructuring effort completed to date, we are anticipating that the combination of additional cash from settlement proceeds, the cash generated by our rental operations, the cash generated by sales of land parcels and the cash received from the tax refund will be sufficient to sustain our operations through 2010. However, this outcome is primarily dependent upon our ability to meet the minimum settlement requirements specified by our lenders. If we are unable to meet these quotas, substantially all of the proceeds from any settlements will be retained by the lenders. We were in compliance with these settlement requirements at March 31, 2010. At December 31, 2009, we had \$1.1 million in unrestricted cash and \$3.2 million in restricted cash. Included in our restricted cash balance, to which we have no access currently, is a \$3.0 million deposit with an insurance provider as security for future claims. Our access to external working capital is very limited and we have few other sources of cash as commercial banks and other unregulated lenders have experienced a liquidity crisis which has made funding for real estate investment extremely difficult to secure. This tightening of the credit markets presents substantial risk to our ability to secure financing for our operations, including any future construction and land development efforts.

If we are unable to maintain compliance with the cumulative minimum settlement requirements for an extended period of time, it would be necessary to seek waivers or additional loan modifications from the project lenders. If we were unable to secure such waivers or modifications, this would substantially reduce the amount of cash generated through unit settlements and make it necessary for us to attempt to generate alternative sources of revenue to meet our operating cashflow requirements. To do so, we may have to seek to leverage the judgment award which we obtained against Balfour Beatty, sell our remaining parcels of land, seek to raise additional capital or seek to obtain additional financing to meet our operating cashflow requirements. If, in the absence of cashflow being generated from unit settlements, we were unable to generate additional capital through any of these alternative sources, we could deplete our cash reserves and be forced to seek protections afforded under the bankruptcy code. There can be no assurance that in the event we were forced to seek bankruptcy protection that we would be able to reorganize, and in such event we could be forced to liquidate our assets.

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Credit Facilities

The Company has outstanding borrowings with various financial institutions and other lenders that have been used to finance the acquisition, development and construction of real estate property.

As of December 31, 2009, maturities and/or curtailment obligations of all of our borrowings are as follows (\$000s):

Year ending December 31,	
Debt to be extinguished when foreclosure process is complete (1)	\$15,895
Past due(2)	263
2010	15,223
2011	18,577
2012	1,101
2013	12,743
2014 and thereafter	3,817
Total	<u>\$67,619</u>

- (1) Debt related to Wachovia foreclosure agreement executed during the third quarter of 2009. This debt will be extinguished after the bank forecloses on the real estate assets that secure the debt, which is pending but had not occurred at December 31, 2009. There will be no further cash outlay on this debt by the Company.
- (2) Lender is BB&T.

The majority of the Company's debt is variable rate, based on LIBOR or the prime rate plus a specified number of basis points, typically ranging from 220 to 600 basis points over the LIBOR rate and from 25 to 200 basis points over the prime rate. As a result, we are exposed to market risk in the event of interest rate increases. At December 31, 2009, the one-month LIBOR and prime rates of interest were 0.23% and 3.25%, respectively, and the interest rates in effect under the existing secured revolving development and construction credit facilities ranged from 3.50% to 15.19%. During 2009 these rates have been relatively stable. Based on current operations, as of December 31, 2009, an increase/decrease in interest rates of 100 basis points on our variable rate debt would result in a corresponding increase/decrease in interest actually incurred by us of approximately \$0.5 million in a fiscal year. Since all projects are currently inactive by accounting standards, any change in interest would be expensed in the period incurred.

In the past the Company has generally financed its development and construction activities on a single or multiple project basis so it is not uncommon for each project or collection of projects the Company develops and builds to have a separate credit facility. Accordingly, the Company typically has had numerous credit facilities and lenders. As described below in more detail, the Company made significant progress during 2009 in its efforts to restructure or amend its loan facilities to improve its liquidity outlook for 2010.

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As described in more detail below, at December 31, 2009 our outstanding debt by lender was as follows (\$000s):

<u>Bank</u>	<u>Balance as of 12/31/09</u>	<u>Recourse</u>
KeyBank	\$ 22,269	Secured
Wachovia (1)	15,895	Secured
Wachovia	205	Unsecured
Guggenheim Capital Partners	10,492	Secured
M&T Bank - Cascades	1,016	Secured
M&T Bank	495	Secured
Cornerstone (Haven Trust)	400	Unsecured
Bank of America	3,716	Unsecured
Fifth Third	25	Unsecured
Branch Banking & Trust	263	Secured
Seller - Emerald Farm	100	Secured
	54,876	
Due to affiliates - Stonehenge Funding	12,743	Unsecured
Total	\$ 67,619	

- (1) Debt related to Wachovia foreclosure agreement executed during the third quarter of 2009. This debt will be extinguished after the banks foreclose on the real estate assets that secure the debt, which had not occurred at December 31, 2009. There will be no further cash outlay on this debt by the Company.

At December 31, 2009 the Company had \$22.3 million outstanding to KeyBank under a credit facility secured by the Company's Eclipse and Station View projects. Under the terms of the note there is an interest reserve which represents the amount by which we can avoid cash payments of future monthly interest obligations by adding them to the principal balance. At December 31, 2009 the available balance in the interest reserve was approximately \$1.6 million. While there are no financial covenants associated with the loan, there are a series of curtailment requirements commencing March 31, 2009. On October 30, 2009 the Company executed a loan modification with KeyBank with respect to \$22.8 million of principal outstanding under the Company's secured Potomac Yard and

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Station View project loan (the "Loan"). The key terms of the loan modification adjust the interest rate to the higher of LIBOR plus 5.0% or the prime rate plus 2.0% subject to a LIBOR floor of 2.0%. In exchange, KeyBank has agreed to increase the cash flow available to the Company from settlements at the Potomac Yard project by providing the Company with accelerated releases equal to fifteen percent of the net sales price. However, these accelerated releases are subject to meeting a cumulative minimum sales requirement of nine (9) units per quarter (the "Modification Covenants"). Failure to meet the Modification Covenants will not result in an event of default but may result in a reversion of the unit release provisions whereby KeyBank will retain the entire net sales price of sold units. The Modification also adjusted the release provisions for the Station View project allowing for additional monies from the net sales price of the bulk sale of the Station View project, under contract on a contingent basis, to be made available to the Company for the repayment of certain indebtedness. The Modification also provided that any unsecured deficiency notes issued by the Company in satisfaction of foreclosure deficiencies from other lenders are fully subordinate to the Loan.

On August 17, 2009 the Company entered into a foreclosure agreement ("Agreement") with Wachovia Bank with respect to approximately \$17.8 million of secured debt, accrued interest and fees. Under the terms of the Agreement, the Company has agreed to cooperate with Wachovia with respect to its foreclosure on certain of the Company's real estate assets. In return, Wachovia agreed to release the Company from their obligations and guarantees relating to the \$17.8 million of indebtedness contemporaneous with the execution by the Company of a non-interest bearing, unsecured deficiency note payable to Wachovia in the amount of approximately \$1.8 million. The deficiency note was reduced by the principal payments related to certain homes sold by the Company prior to September 30, 2009. As of December 31, 2009 the deficiency note balance was \$205 and the debt from which the Company will be released upon foreclosure of the assets was \$15.9 million. The related assets are stated at the lower of cost or fair value.

The assets scheduled for foreclosure by Wachovia include: Massey Preserve, raw land located in Raleigh, North Carolina; Haddon Hall, finished pads for a condominium project in Raleigh, North Carolina; Holland Farm, a single-family project in Raleigh, North Carolina; Wakefield Plantation, a single-family project in Raleigh, North Carolina; Riverbrooke, a single-family project in Raleigh, North Carolina; Wheatleigh Preserve, a single-family project in Raleigh, North Carolina; Brookfield Station, a single-family project in Raleigh, North Carolina; Providence, a single-family project in Raleigh, North Carolina; Allyn's Landing, a townhome development project in Raleigh, North Carolina; Allen Creek, a single-family project in Atlanta, Georgia; Arcanum Estates, a single-family project in Atlanta, Georgia; Falling Water, a single-family project in Atlanta, Georgia; James Road, a single-family development project in Atlanta, Georgia; Tribble Lakes, a development project in Atlanta, Georgia; and Summerland, finished pads for a condominium project in Woodbridge, Virginia. None of these assets had been foreclosed upon at December 31, 2009. Due to the large volume of assets upon which Wachovia will foreclose, it is likely that the foreclosure process will extend well into 2010.

At December 31, 2009 the Company had approximately \$10.5 million outstanding to Guggenheim Corporate Funding ("Guggenheim") relating to the Company's Penderbrook Condominium project. On August 20, 2008 Guggenheim issued a notice of default to the Company regarding a purported default. The Company subsequently entered into a loan modification and forbearance agreement whereby Guggenheim agreed to forgo any remedies it may have had with respect to the alleged default. On September 16, 2009 the Company entered into a third amendment to the loan agreement with Guggenheim in which Guggenheim agreed to forebear from exercising its rights related to the defaults and make certain other modifications to the loan agreement. Other than a minimum number of sales per month and sales per quarter requirement, the Guggenheim loan agreement and the three loan amendments contain no significant financial covenants. The key financial terms of the third amendment increase the cash flow available to the Company through reduced principal payments to Guggenheim as units are settled. Specifically, the third amendment will provide the Company with cash equal to 25% of the net sales price provided the Company meets the cumulative minimum sales requirements of three (3) units per month and ten (10) units per quarter. However, if the Company is unable to meet the minimum sales requirements, it will not constitute an event of default but may result in a reversion to the unit release provisions to ten percent (10%) of the net sales price of sold units in accordance with the loan agreement and first two amendments. The Company has met the minimum sales requirement as of December 31, 2009 and based on the pace of Q1 2010 sales, settlements and backlog believes it will meet the minimum sales requirement as of March 31, 2010.

As of December 31, 2009, \$12.7 million was outstanding to JP Morgan Ventures ("JPMV"), which includes its principal amount of \$9.0 million plus the total estimated future interest payments of \$3.7 million. On May 4, 2006 the Company closed on a \$30.0 million junior subordinated note offering. The term of the note was thirty years and it could be retired after five years with no penalty. The rate was fixed at 9.72% the first five years and LIBOR plus 420 basis points the remaining twenty-five years. In March 2007 the Company retired the junior subordinated note without penalty and entered into a new 10-year, \$30.0 million senior unsecured note with the same lender at the same interest rate. During the third quarter of 2007, the lender's rights were assumed by JPMV. On March 14, 2008, the Company executed an option to restructure the \$30.0 million unsecured note. In connection therewith, the Company made a \$6.0 million principal payment to JPMV and executed an amended and restated indenture with a new principal balance of \$9.0 million, loosened financial covenants (summarized below) and a revised term of 5 years. The Company also issued JPMV a seven-year warrant to purchase 1.5 million shares of Class A common stock at \$0.70 per share. In exchange JPMV agreed to cancel \$15.0 million of the outstanding principal balance. This transaction was accounted for as a troubled debt restructuring and the amended and restated indenture was recorded at \$13.4 million on March 31, 2008 which includes its principal amount of \$9.0 million plus the total estimated future interest payments of \$4.4 million. At March 31, 2009 the Company elected not to make a scheduled interest payment in the amount of \$0.2 million. On April 27, 2009, the Company received a notice of payment default from the lender. The notice of payment default indicated that the failure of the Company to make its quarterly interest payment within 30 days of March 30, 2009 would constitute an Event of Default under the Indenture. The Company has not cured the default. The Company did not make scheduled interest payments at June 30, 2009, September 30, 2009 or December 31, 2009.

On December 23, 2009, Stonehenge Funding, LC ("Stonehenge"), an entity wholly-owned by Christopher Clemente, the Chairman and Chief Executive Officer of the Company, completed the purchase of the senior unsecured note from JPMV in the current outstanding amount of approximately \$9.0 million, plus accrued and unpaid interest. The purchase of the JPMV note also resulted in the transfer to Stonehenge of the warrant previously issued to JPMV for the purchase of 1.5 million shares of the Company's Class A Common Stock. In connection with Stonehenge's purchase of the JP Morgan debt from JPMV, Stonehenge and the Company entered into two separate subordination and standstill agreements for the benefit of the Company and its secured lenders, KeyBank and Guggenheim. The subordination agreements allow for Stonehenge and the Company to negotiate permanent modifications to the terms of the JP Morgan Debt and provide KeyBank and Guggenheim with assurances that the Company will not make any cash interest or principal payments to Stonehenge prior to the full repayment of loans to them in connection with the Company's Eclipse and Penderbrook projects. See a related subsequent event disclosure at Note 18.

At December 31, 2009 the Company had \$1.0 million outstanding to M&T Bank. On September 28, 2009 the Company entered into a series of agreements with M&T with respect to the \$7.6 million of outstanding debt plus accrued interest and late fees. As a result of the agreements, the Belmont Bay loan, with a principal balance of \$6.1 million plus \$0.5 million of accrued interest and fees, was released in its entirety and the Cascades Loan, with a principal balance of \$1.0 million, was extended through January 31, 2011. Under the terms of the agreements, M&T Bank agreed to release the Company from its obligations and guarantees relating to the Belmont Loan and the Company agreed to cooperate with M&T Bank with respect to its foreclosure on the

remaining portion of the Belmont Bay Project which includes 19 partially completed condominium units and 84 condominium building lots. M&T Bank's foreclosure on these assets was completed in December 2009. The Company also entered into a non-interest bearing subordinated promissory note in connection with the Belmont Loan in the amount of \$0.5 million with a three-year maturity secured by the Cascades Project. Under the terms of the agreements, M&T Bank agreed to extend the maturity date of the Cascades Loan by forbearing on enforcing its rights with respect to collection of the debt until January 31, 2011. The Company also agreed to commence current payment of interest due M&T Bank related to the current principal balance of the Cascades Loan. The Cascades Project contains a total of 191 condominium units with the first phase of the Cascades Project (88 units) being completed by the Company in 2007. See Note 17 for details related to troubled debt restructuring and the M&T foreclosure agreement.

At December 31, 2009 the Company had \$0.4 million outstanding to Cornerstone Bank ("Cornerstone") relating to the Company's Gates at Luberon project. The original \$5.1 million in loans matured in November 2007. Haven Trust Bank, the originating lender, and its participating lenders were unwilling to grant an extension on terms the Company felt were reasonable so the loans remained unpaid and unmodified. Haven Trust Bank initiated foreclosure proceedings and the Company protected the equity in the project by seeking bankruptcy protection for the entity that owned Gates at Luberon. The Company elected not to

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submit a plan of reorganization to the court by September 30, 2008 which resulted in Haven Trust filing a motion to lift the court imposed stay of foreclosure. In December 2008 Haven Trust Bank was closed by the FDIC and its loan portfolio was taken over by the FDIC. Litigation with respect to Haven Trust's guarantee action against Comstock was stayed with the court while the FDIC determines its intended course of action. Comerstone, one of the banks to which Haven Trust participated the loan assumed control of the loan and reinstated the guarantee and foreclosure actions. Comerstone's foreclosure on the Gates of Luberon project real estate was completed by September 30, 2009. On September 21, 2009 the Company entered into a settlement agreement and mutual release with Comerstone relating to the aforementioned litigation. In connection with the settlement, Comerstone released the Company, and its subsidiary Mathis Partners, LLC, from their respective obligations and guarantees relating to \$5.1 million of debt owed by the Company to Comerstone in exchange for a non-interest bearing unsecured subordinate note in the amount of \$0.4 million with a three year term. The parties dismissed all pending litigation against each other. See Note 17 for details related to troubled debt restructuring and the Comerstone settlement and mutual release.

At December 31, 2009, the Company had \$3.8 million outstanding to Bank of America in a 10-year unsecured note. Bank of America and Comstock modified the terms of the Company's existing unsecured note by extending the term to ten (10) years, establishing an interest accrual for the first two years and a six year curtailment schedule starting in year four of the loan's term. See the subsequent event disclosure related to Bank of America below.

Cash Flow

Net cash provided by operating activities was \$11.9 million for the year ended December 31, 2009, \$12.9 million for the year ended December 31, 2008 and \$116.5 million for the year ended December 31, 2007. In 2009 and 2007, the primary source of cash provided by operating activities was the sale of real estate assets. In 2008, our primary source of cash from operating activities was \$13.0 million in federal and state income tax refunds.

Net cash used in financing activities was \$16.8 million for the year ended December 31, 2009, \$13.7 million for the year ended December 31, 2008 and \$130.8 million for the year ended December 31, 2007. Repayments of indebtedness were the primary use of cash from financing activities in all three years. For the year ended December 31, 2008, a primary source of cash was the refinancing of our Eclipse at Potomac Yard project and the primary use was the payoff of our Corus Bank loan and a \$6.0 million principal payment to JP Morgan Ventures.

Subsequent Events

On February 15, 2010 the Company entered into a Modification Agreement to modify the terms of the Company's senior unsecured note with Stonehenge Funding, LC ("Stonehenge"), an entity wholly-owned by Christopher Clemente, the Chairman and Chief Executive Officer of the Company. On December 23, 2009 Stonehenge acquired the senior unsecured note from JP Morgan Ventures ("JPMV") which had a \$9,000,000 principal balance as described in the Amended and Restated Indenture between the Company and JPMV dated March 14, 2008 (the "JP Morgan Debt"). The purchase of the JP Morgan Debt also resulted in the transfer to Stonehenge of a warrant previously issued to JPMV for the purchase of 1,500,000 shares of the Company's Class A Common Stock with a strike price of \$0.70 per share ("JP Morgan Warrant"). Gregory Benson, the Company's Chief Operating Officer and a member of the Company's Board of Directors, subsequently purchased a participation interest in the JP Morgan Debt and the JP Morgan Warrant from the Subordinate Lender.

Under the terms of the Modification Agreement, Stonehenge has agreed to forgive \$4,500,000 of the principal balance due from the Company under the JP Morgan Debt; reducing the principal balance by 50% to \$4,500,000. Stonehenge also agreed to forgive an additional amount due from the Company of approximately \$875,000 representing all past due interest, late fees and penalties accruing through December 31, 2009 ("Interest and Loan Fees") under the JP Morgan Debt. Stonehenge further agreed to reduce the interest rate, effective January 1, 2010, by fifty percent (50%) to 300 basis points above the one year LIBOR on a floating basis. In addition, to ensure the Company's ability to comply with certain restrictions placed upon the Company by KeyBank and Guggenheim Corporate Funding (collectively "Secured Lenders") in connection with previously announced loan modifications enhancing cashflow to the Company, Stonehenge agreed to allow all future interest payments due from the Company under the JP Morgan Debt to accrue until at least 90 days after the Secured Lenders have been fully repaid. In connection therewith, Stonehenge may, on a quarterly basis, elect to accept stock of the Company (or warrants for the purchase thereof) with a cumulative value equal to the value of the scheduled interest payment in lieu of accruing a future quarterly interest payment.

Further, the Modification Agreement provides for the elimination or forbearance upon the enforcement of all financial covenants contained in the JP Morgan Debt and all previously reported covenant violations by the Company. The maturity date of the JP Morgan Debt remains unchanged at March 14, 2013, provided however, the Modification Agreement provides the Company with two optional extension periods of six months each to further assist the Company with its compliance with the restrictions of the Secured Lenders.

On February 25, 2010 the Company entered into a Seventh Loan Modification Agreement with Bank of America ("BOA") regarding the modification of the terms of one certain unsecured loan with an approximate principal balance of \$3,700,000 ("Line of Credit"). In connection therewith the Company agreed to pay an extension fee of \$100,000 and BOA agreed to delay for one year, until January 2011, the commencement of repayments of all previously unpaid interest accruing since the date of the Company's previously reported modification of the Line of Credit in November 2008. The maturity date remains unchanged at December 28, 2018.

On March 17, 2010 the Company completed the sale of land at its Station View project located in Loudoun County, Virginia for \$2.8 million.

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Contractual Obligations and Commercial Commitments

In addition to the above financing arrangements, we have commitments under certain contractual arrangements to make future payments for goods and services. These commitments secure the future rights to various assets and services to be used in the normal course of operations. For example, we are contractually committed to make certain minimum lease payments for the use of property under operating lease agreements. In accordance with current accounting rules, the future rights and obligations pertaining to such firm commitments are not reflected as assets or liabilities on the consolidated balance sheet. The following table summarizes our contractual and other obligations at December 31, 2009, and the effect such obligations are expected to have on liquidity and cash flow in future periods:

	Payments due by period				
	Total	Less than 1 Year	1-3 Years (In thousands)	3-5 Years	More than 5 Years
Notes payable(1), (2)	\$51,726	\$15,488	\$32,421	\$ 3,816	\$ —
Operating leases	698	224	474	—	—
Total	<u>\$52,424</u>	<u>\$15,712</u>	<u>\$32,895</u>	<u>\$ 3,816</u>	<u>\$ —</u>

(1) Notes payable includes estimated interest payments based on interest rates in effect at December 31, 2009. Notes payable does not include any penalty or default interest.

(2) Notes payable excludes \$15,895 of Wachovia debt which will be extinguished upon foreclosure of related real estate assets in 2010.

Notes payable have an undefined repayment due date and are typically due and payable as homes are settled. We are not an obligor under, or guarantor of, any indebtedness of any party other than for obligations entered into by certain wholly owned subsidiaries of the Company. We have no off-balance sheet arrangements except for the operating leases described above.

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Seasonality and Weather

Our business is affected by seasonality with respect to orders and deliveries. In the market in which we operate, the primary selling season is from January through May as well as September and October. Orders in other months typically are lower. In addition, the markets in which we operate are four-season markets that experience significant periods of rain and snow. Construction cycles and efforts are often adversely affected by severe weather.

Inflation

Inflation can have a significant impact on our business performance and the home building industry in general. Rising costs of land, transportation costs, utility costs, materials, labor, overhead, administrative costs and interest rates on floating credit facilities can adversely affect our business performance. In addition, rising costs of certain items, such as lumber, can adversely affect the expected profitability of our backlog. Generally, we have been able to recover any increases in costs through increased selling prices. However, there is no assurance we will be able to increase selling prices in the future to cover the effects of inflation and other cost increases.

Item 7A. Quantitative and Qualitative Disclosures about Market Risk

Market risk represents the risk of loss that may impact our financial position, results of operations or cash flows, due to adverse changes in financial and commodity market prices and interest rates. We are exposed to market risk in the area of interest rate changes. A majority of our debt is variable rate based on LIBOR and prime rate, and, therefore, affected by changes in market interest rates. Based on current operations, as of December 31, 2009, an increase/decrease in interest rates of 100 basis points on our variable rate debt would have resulted in a corresponding increase/decrease in interest actually incurred by us of approximately \$0.5 million in a fiscal year, which would be expensed as incurred if the project is inactive. As a result, the effect on net income could be immediate if the variable rate debt was related to projects classified for accounting purposes as inactive. Changes in the prices of commodities that are a significant component of home construction costs, particularly lumber, may result in unexpected short-term increases in construction costs. Because the sales price of our homes is fixed at the time a buyer enters into a contract to acquire a home and we generally contract to sell our homes before construction begins, any increase in costs in excess of those anticipated at the time of each sale may result in lower consolidated operating income for the homes in our backlog. We attempt to mitigate the market risks of the price fluctuation of commodities by entering into fixed price option contracts with our subcontractors and material suppliers for a specified period of time, generally commensurate with the building cycle. These contracts afford us the option to purchase materials at fixed prices but do not obligate us to any specified level of purchasing.

Item 8. Financial Statements and Supplementary Data

Reference is made to the financial statements, the notes thereto, and the report thereon, commencing on page F-1 of this report, which financial statements, notes, and report are incorporated herein by reference.

Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure

Not applicable.

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Item 9A. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

We have evaluated, with the participation of our Chief Executive Officer and our Chief Financial Officer, the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act) as of December 31, 2009. Based on this evaluation, our Chief Executive Officer and Chief Financial Officer have each concluded that our disclosure controls and procedures as of December 31, 2009 are functioning effectively to provide reasonable assurance that the information required to be disclosed by us in reports filed under the Securities Exchange Act of 1934 is (i) recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and (ii) accumulated and communicated to our management, including our principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

Limitations on the Effectiveness of Controls

We do not expect that our disclosure controls and internal controls will prevent all error and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

The design of any system of controls also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions; over time, a control may become inadequate because of changes in conditions or the degree of compliance with the policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and may not be detected.

Management's Report on Internal Control Over Financial Reporting

Management is responsible for establishing and maintaining adequate internal control over our financial reporting.

Our management assessed the effectiveness of our internal control over financial reporting as of December 31, 2009, based on criteria set forth in the framework in Internal Control — Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). This evaluation included review of the documentation of controls, evaluation of the design effectiveness of controls, testing of the operating effectiveness of controls and a conclusion on this evaluation. Our management determined that, as of December 31, 2009, our internal control over financial reporting is effective.

This annual report on Form 10-K does not include an attestation report of the Company's independent registered public accounting firm regarding internal control over financial reporting. Management's report was not subject to attestation by the Company's independent registered public accounting firm pursuant to temporary rules of the Securities and Exchange Commission that permit the Company to provide only management's report in this annual report.

No change has occurred in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) during the year ended December 31, 2009, that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Item 9B. Other Information

Not applicable.

PART III

Item 10. Directors and Executive Officers of the Registrant

The information required by this Item relating to our directors is incorporated herein by reference to the definitive Proxy Statement to be filed pursuant to Regulation 14A of the Exchange Act for our 2010 Annual Meeting of Stockholders. The information required by this Item relating to our executive officers is included in Item 1, “Business — Executive Officers” of this report.

Item 11. Executive Compensation

The information required by this Item is incorporated herein by reference to the definitive Proxy Statement to be filed pursuant to Regulation 14A of the Exchange Act for our 2010 Annual Meeting of Stockholders.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

The information required by this Item is incorporated herein by reference to the definitive Proxy Statement to be filed pursuant to Regulation 14A of the Exchange Act for our 2010 Annual Meeting of Stockholders.

Item 13. Certain Relationships and Related Transactions

The information required by this Item is incorporated herein by reference to the definitive Proxy Statement to be filed pursuant to Regulation 14A of the Exchange Act for our 2010 Annual Meeting of Stockholders.

Item 14. Principal Accountant Fees and Services

The information required by this Item is incorporated herein by reference to the definitive Proxy Statement to be filed pursuant to Regulation 14A of the Exchange Act for our 2010 Annual Meeting of Stockholders.

PART IV

Item 15. Exhibit and Financial Statement Schedules

(a) Financial Statements

(1) Financial Statements are listed in the Index to Financial Statements on page F-1 of this report.

(2) Schedules have been omitted because they are not applicable or because the information required to be set forth therein is included in the consolidated and combined financial statements or notes thereto.

(b) Exhibits

<u>Exhibit Number</u>	<u>Exhibit</u>
3.1(2)	Amended and Restated Certificate of Incorporation
3.2(2)	Amended and Restated Bylaws
4.1(1)	Specimen Stock Certificate
10.1(1)	Lease Agreement, dated as of January 31, 2004, with Comstock Partners, L.C.
10.2(1)	Agreement of Sublease, dated as of October 1, 2004, with Comstock Asset Management, L.C.
10.3(1)	Loan Agreement, dated December 17, 1997, as amended, with Bank of America, N.A.
10.4(1)	Disbursement and Construction Loan Agreement and Disbursement and Development Loan Agreement, each dated October 10, 2002 and as amended, with Branch Banking and Trust Company of Virginia.
10.5(1)	Disbursement and Construction Loan Agreement and Acquisition, Disbursement and Development Loan agreement, each dated July 25, 2003, with Branch Banking and Trust Company of Virginia.
10.6(2)	Loan Agreement, dated January 25, 2005, with Corus Bank, N.A.
10.7(2)	Completion Guaranty, dated January 25, 2005 in favor of Corus Bank, N.A.
10.8(2)	Carve-Out Guaranty, dated January 25, 2005, in favor of Corus Bank, N.A.
10.9(1)	Form of Indemnification Agreement
10.10(1)	Form of Promissory Note to be issued to each of Christopher Clemente, Gregory Benson, James Keena and Lawrence Golub by each of Comstock Holding Company, Inc., Comstock Homes, Inc., Sunset Investment Corp., Inc. and Comstock Service Corp., Inc.
10.11(1)	Form of Tax Indemnification Agreement to be entered into by each of Christopher Clemente, Gregory Benson, James Keena and Lawrence Golub with each of Comstock Holding Company, Inc., Comstock Homes, Inc., Sunset Investment Corp., Inc. and Comstock Service Corp., Inc.
10.12(1)	2004 Long-Term Incentive Compensation Plan
10.13(1)	Form Of Stock Option Agreement under the 2004 Long-Term Incentive Compensation Plan
10.14(2)	Form Of Restricted Stock Grant Agreement under the 2004 Long-Term Incentive Compensation Plan
10.15(1)	Employee Stock Purchase Plan
10.16(1)	Purchase and Sale Agreement, dated as of April 25, 2003, as amended, with Crescent Potomac Yard Development, LLC
10.17(2)	Purchase and Sale Agreement, dated as of November 9, 2004, as amended, with Fair Oaks Penderbrook Apartments L.L.C.
10.18(2)	Real Estate Purchase Contract, dated as of February 4, 2005, with Westwick Apartments LLC
10.19(2)	Services Agreement, dated March 4, 2005, with Comstock Asset Management, L.C.
10.20(1)	Employment Agreement with Christopher Clemente
10.21(1)	Employment Agreement with Gregory Benson

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<u>Exhibit Number</u>	<u>Exhibit</u>
10.22(1)	Employment Agreement with Bruce Labovitz
10.23(1)	Confidentiality and Non-Competition Agreement with Christopher Clemente
10.24(1)	Confidentiality and Non-Competition Agreement with Gregory Benson
10.25(1)	Confidentiality and Non-Competition Agreement with Bruce Labovitz
10.26(2)	Description of Arrangements with William Bensten
10.27(2)	Description of Arrangements with David Howell
10.28(1)	Trademark License Agreement
10.29(2)	Purchase Agreement, dated as of November 12, 2004 with Comstock Asset Management, L.C.
10.30(3)	Agreement of Purchase and Sale, dated June 23, 2005, by and between Comstock Carter Lake, L.C. and E.R. Carter, L.L.C.
10.31(3)	Agreement of Purchase and Sale, dated September 28, 2005, by and between Comstock Bellemeade, L.C. and Bellemeade Farms Investors, LLC et. al.
10.32(3)	Loan Agreement, dated September 28, 2005, by and between Comstock Bellemeade, L.C. and Bank of America, N.A.
10.33(3)	Guaranty Agreement, dated September 28, 2005, by the Registrant in favor of Bank of America, N.A.
10.34(4)	Life Insurance Reimbursement Agreement with William P. Bensten
10.35(4)	Life Insurance Reimbursement Agreement with Bruce Labovitz
10.36(4)	Description of Reimbursement and Indemnification Arrangement with Christopher Clemente and Gregory Benson
10.37(3)	Agreement of Purchase and Sale, dated June 23, 2005, by and between Comstock Carter Lake, L.C. and E.R. Carter, L.L.C.
10.38(5)	Stock Purchase Agreement with Parker-Chandler Homes, Inc. and the Selling Stockholders identified therein, dated as of January 19, 2006
10.39(5)	Loan Agreement, dated January 31, 2006, by and between Comstock Carter Lake, L.C. and Bank of America, N.A.
10.40(5)	Guaranty Agreement, dated January 31, 2006, by the Registrant in favor of Bank of America, N.A.
10.41(6)	Form of purchase agreement, dated as of May 5, 2006, as amended as of May 9, 2006, by and between the Company and the purchasers identified therein
10.42(6)	Form of warrant.
10.43(7)	Note Purchase Agreement with Kodiak Warehouse LLC, dated as of May 4, 2006
10.44(7)	Junior Subordinated Indenture with Wells Fargo Bank, N.A., dated as of May 4, 2006
10.45(7)	Credit Agreement with Wachovia Bank, N.A., dated as of May 26, 2006

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<u>Exhibit Number</u>	<u>Exhibit</u>
10.46(7)	Stock Purchase Agreement with Capitol Homes, Inc. and the Selling Shareholders identified therein, dated as of May 1, 2006
10.47(8)	Letter, dated October 18, 2007, from Friedlander, Misler, Sloan, Kletzkin & Ochsman, PLLC to the Registrant and Comstock Bellemeade, L.C.
10.48(8)	Purchase and Sale Agreement by and between Comstock Countryside L.C. and Merion-Loudon, LC, dated as of December 21, 2006
10.49(8)	Marketing and Sale Agreement by and between Comstock Countryside LC and Merion-Loudon, L.C., dated as of December 21, 2006
10.50(8)	Consulting Agreement with The Merion Group, LC, dated as of December 21, 2006
10.51(8)	Loan Modification Agreement, dated as of December 2006, by and among the Registrant, Highland Avenue Properties, LLC and Bank of America, N.A.
10.52(8)	Amended and Restated Guaranty Agreement, dated December 2006, by the Registrant in favor of Bank of America, N.A.
10.53(8)	Loan Modification Agreement, dated as of December 2006, by and among the Registrant, Comstock Homes of Atlanta, LLC, Comstock Homes of Myrtle Beach, LLC and Bank of America, N.A.
10.54(8)	Amended and Restated Guaranty Agreement, dated December 2006, by the Registrant in favor of Bank of America, N.A.
10.55(8)	First Loan Modification Agreement, dated as of December 2006, by and among the Registrant, Comstock Bellemeade, L.C., Bank of America, N.A. and Lenka E. Lundsten
10.56(8)	Second Loan Modification Agreement, dated as of December 22, 2006, by and between the Registrant and Bank of America, N.A.
10.57(9)	Loan and Security Agreement, dated as of February 2008, by and between the Registrant and Stonehenge Funding, LC.
10.58(9)	Guaranty Agreement, dated as of February 2008, by Comstock Potomac Yard, L.C. in favor of Stonehenge Funding, LC.
10.59(9)	Supplement to Indenture, dated as of January 7, 2008, by and between the Registrant and Wells Fargo Bank, N.A.
10.60(9)	Amended and Restated Indenture, dated as of March 14, 2008, by and between the Registrant and Wells Fargo Bank, N.A.
10.61(9)	Loan Agreement, dated as of March 14, 2008, by and among Comstock Station View, L.C., Comstock Potomac Yard, L.C., and KeyBank National Association.
10.62(9)	Unconditional Guaranty of Payment and Performance, dated as of March 2008, by the Registrant in favor of KeyBank National Association.
10.63(10)	Forbearance and Conditional Release Agreement, dated as of November 25, 2008, by and among Highland Avenue Properties, LLC, Comstock Homes of Atlanta, LLC, the Registrant and Bank of American, N.A.
10.64(10)	Sixth Loan Modification Agreement, dated as of November 26, 2008, by and among the Registrant and Bank of America, N.A.

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<u>Exhibit Number</u>	<u>Exhibit</u>
10.65(10)	Amended and Restated Promissory Note (Tribble Road Loan), dated as of December 10, 2008, by the Registrant in favor of Wachovia Bank, National Association.
10.66(10)	Loan Modification and Forbearance Agreement, dated as of December 10, 2008, by and among the Registrant, various wholly owned subsidiaries as guarantors and Wachovia Bank, National Association.
10.67(10)	Amended and Restated Promissory Note (Revolving Line of Credit), dated as of December 10, 2008, by the Registrant in favor of Wachovia Bank, National Association.
10.68(10)	Amended and Restated Promissory Note (Term Loan), dated as of December 10, 2008, by the Registrant in favor of Wachovia Bank, National Association.
10.69(11)	Settlement Agreement, dated July 8, 2009, by and among Comstock Belmont Bay 89, L.C., the Registrant and Belmont Bay, L.C., et.al.
10.70(11)	Consensual Foreclosure and Settlement Agreement, dated August 17, 2009, by and among the Registrant, et.al. and Wachovia Bank, National Association
10.71(11)	Third Amendment of Loan Agreement, dated September 16, 2009, by and among Comstock Penderbrook, L.C., the Registrant and Guggenheim Corporate Funding, LLC
10.72(11)	Settlement Agreement and Mutual Release, dated September 21, 2009, by and among Registrant, Mathis Partners, LLC and Cornerstone Bank
10.73(11)	Forbearance Agreement, dated September 28, 2009, by and among Comstock Cascades, L.C., the Registrant and Manufacturers and Traders Trust Company
10.74(11)	Forbearance and Conditional Release Agreement, dated September 28, 2009, by and among Comstock Belmont Bay 89, L.C., the Registrant and Manufacturers and Traders Trust Company
10.75(11)	First Amendment to Loan Agreement, dated October 30, 2009, by and among Comstock Station View, L.C., Comstock Potomac Yard, L.C., the Registrant and Key Bank National Association
10.76(11)	Forbearance and Conditional Release Agreement, dated November 10, 2009, by and among Comstock Homes of Raleigh, L.L.C., the Registrant and Fifth Third Bank, N.A.
10.77*	Forbearance Agreement and Second Amendment to Loan Agreement, dated January 27, 2009, by and among Comstock Penderbrook, L.C., the Registrant and Guggenheim Corporate Funding, LLC
10.78*	Fourth Amendment to Sublease Agreement and Services Agreement, dated February 26, 2009, with Comstock Asset Management
10.79*	Mutual Release and Settlement Agreement, dated June 8, 2009, by and between Comstock Homes of Raleigh, LLC, Providence Development of Raleigh, LLC and Manning Fulton & Skinner
10.80*	Subordinated Deficiency Note, dated as of September 21, 2009, by the Registrant in favor of Cornerstone Bank., successor-in-interest to Haventrust Bank.
10.81*	Amended and Restated Subordinated Deficiency Note, dated as of November 5, 2009, by the Registrant in favor of Wachovia Bank, National Association.
10.82*	Bankruptcy filing for Buckhead Overlook, LLC, filed November 2009 in the U.S. Bankruptcy Court, Northern District of Georgia, Atlanta Division
10.83*	Bankruptcy filing for Post Preserve, LLC filed November 2009 in the U.S. Bankruptcy Court, Northern District of Georgia, Atlanta Division

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<u>Exhibit Number</u>	<u>Exhibit</u>
10.84*	Bankruptcy filing for Parker Chandler Homes, LLC f/k/a Comstock Homes of Atlanta, LLC filed November 2009 in the U.S. Bankruptcy Court, Northern District of Georgia, Atlanta Division
10.85*	Lease Agreement, dated on or about December 31, 2009, with Comstock Asset Management, L.C. by Comstock Property Management, L.C., a subsidiary of Registrant
10.86*	License Agreement, effective January 1, 2010, with I-Connect
10.87*	Letter of Intent, effective February 12, 2010, by and between Registrant and Stonehenge Funding, L.C. and Subordination and Standstill Agreements between Registrant and Guggenheim Corporate Funding, LLC and between Registrant and Key Bank, National Association
10.88*	Seventh Loan Modification Agreement, dated as of February 25, 2010, by and among the Registrant and Bank of America, N.A.
10.89*	Memorandum Opinion, filed February 23, 2010, by the US District Court in favor of Comstock Potomac Yard, L.C., a subsidiary of Registrant, against Balfour Beatty Construction, LLC
10.90*	Purchase Agreement, dated October 30, 2009, by and between Comstock Station View, L.C. and M/I Homes of DC, LLC
14.1(2)	Code of Ethics
21.1*	List of subsidiaries
23.1*	Consent of PricewaterhouseCoopers LLP
24.1*	Power of Attorney (see signature page to this Annual Report on Form 10-K.)
31.1*	Certification of Chief Executive Officer pursuant to Section 302 of Sarbanes-Oxley Act of 2002
31.2*	Certification of Chief Financial Officer pursuant to Section 302 of Sarbanes-Oxley Act of 2002
32.1*	Certification of Chief Executive Officer and Chief Financial Officer pursuant to Section 906 of Sarbanes-Oxley Act of 2002

* Filed herewith.

- (1) Incorporated by reference to an exhibit to the Registrant's Registration Statement on Form S-1, as amended, initially filed with the Commission on August 13, 2004 (No. 333-118193).
- (2) Incorporated by reference to an exhibit to the Registrant's Annual Report on Form 10-K filed with the Commission on March 31, 2005.
- (3) Incorporated by reference to an exhibit to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on November 14, 2005.
- (4) Incorporated by reference to an exhibit to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on August 9, 2005.
- (5) Incorporated by reference to an exhibit to the Registrant's Annual Report on Form 10-K filed with the Commission on March 16, 2006.
- (6) Incorporated by reference to an exhibit to the Current Report on Form 8-K of the Registrant filed with the Commission on May 10, 2005.
- (7) Incorporated by reference to an exhibit to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on August 9, 2006.
- (8) Incorporated by reference to an exhibit to the Registrant's Annual Report on Form 10-K filed with the Commission on March 16, 2007.
- (9) Incorporated by reference to an exhibit to the Registrant's Annual Report on Form 10-K filed with the Commission on March 24, 2008.
- (10) Incorporated by reference to an exhibit to the Registrant's Annual Report on Form 10-K filed with the Commission on March 31, 2009.
- (11) Incorporated by reference to an exhibit to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on November 13, 2009.

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Report of Independent Registered Public Accounting Firm

To the Board of Directors and Shareholders of Comstock Homebuilding Companies, Inc.:

In our opinion, the consolidated financial statements listed on page F-1 present fairly, in all material respects, the financial position of Comstock Homebuilding Companies, Inc. and subsidiaries (the "Company") at December 31, 2009 and 2008, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2009 in conformity with accounting principles generally accepted in the United States of America. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits of these statements in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

/s/ PricewaterhouseCoopers LLP
McLean, Virginia
March 31, 2010

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS
(Amounts in thousands, except per share data)

	December 31, 2009	December 31, 2008
ASSETS		
Cash and cash equivalents	\$ 1,085	\$ 5,977
Restricted cash	3,249	3,859
Real estate held for development and sale	70,890	129,542
Inventory not owned - variable interest entities	—	19,250
Property, plant and equipment, net	144	829
Other assets	1,963	1,402
TOTAL ASSETS	<u>\$ 77,331</u>	<u>\$ 160,859</u>
LIABILITIES AND SHAREHOLDERS' EQUITY		
Accounts payable and accrued liabilities	\$ 5,579	\$ 8,232
Obligations related to inventory not owned	—	19,050
Notes payable - secured by real estate	50,530	84,563
Notes payable - due to affiliates, unsecured	12,743	—
Notes payable - unsecured	4,346	18,266
TOTAL LIABILITIES	<u>73,198</u>	<u>130,111</u>
Commitments and contingencies (Note 13)		
SHAREHOLDERS' EQUITY		
Class A common stock, \$0.01 par value, 77,266,500 shares authorized, 15,608,438 and 15,608,438 issued and outstanding, respectively	156	156
Class B common stock, \$0.01 par value, 2,733,500 shares authorized, 2,733,500 issued and outstanding	27	27
Additional paid-in capital	157,418	157,058
Treasury stock, at cost (391,400 Class A common stock)	(2,439)	(2,439)
Accumulated deficit	(151,029)	(124,277)
TOTAL COMSTOCK HOMEBUILDING COMPANIES, INC SHAREHOLDERS' EQUITY	4,133	30,525
Noncontrolling interest	—	223
TOTAL EQUITY	<u>4,133</u>	<u>30,748</u>
TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	<u>\$ 77,331</u>	<u>\$ 160,859</u>

The accompanying notes are an integral part of these consolidated financial statements.

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COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS
(Amounts in thousands, except per share data)

	Twelve Months Ended December 31,		
	2009	2008	2007
Revenues			
Revenue - homebuilding	\$ 21,401	\$ 44,097	\$232,805
Revenue - other	3,665	2,565	33,354
Total revenue	25,066	46,662	266,159
Expenses			
Cost of sales - homebuilding	19,635	39,246	211,068
Cost of sales - other	2,094	1,340	34,330
Impairments and write-offs	22,938	18,022	78,264
Selling, general and administrative	8,073	15,088	34,582
Interest, real estate taxes and indirect costs related to inactive projects	4,138	5,685	—
Operating loss	(31,812)	(32,719)	(92,085)
Gain on troubled debt restructuring	(3,403)	(12,851)	—
Gain on deconsolidation of subsidiaries	(1,965)	—	—
Other loss (income), net	1,237	(2,850)	(1,886)
Total pre tax loss	(27,681)	(17,018)	(90,199)
Income taxes (benefit) expense	(929)	48	(2,552)
Net loss	(26,752)	(17,066)	(87,647)
Net loss attributable to noncontrolling interest	—	(8)	(137)
Net loss attributable to Comstock Homebuilding Companies, Inc.	<u>\$(26,752)</u>	<u>\$(17,058)</u>	<u>\$ (87,510)</u>
Basic loss per share	\$ (1.51)	\$ (0.98)	\$ (5.42)
Basic weighted average shares outstanding	<u>17,670</u>	<u>17,462</u>	<u>16,140</u>
Diluted loss per share	\$ (1.51)	\$ (0.98)	\$ (5.42)
Diluted weighted average shares outstanding	<u>17,670</u>	<u>17,462</u>	<u>16,140</u>

The accompanying notes are an integral part of these consolidated financial statements.

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CHANGES IN
SHAREHOLDERS' EQUITY
(Amounts in thousands, except per share data)

	Class A		Class B		Additional paid-in capital	Treasury stock	Noncontrolling interest	Retained earnings (deficit)	Total
	Shares	Amount	Shares	Amount					
Balance at December 31, 2006	14,129	141	2,733	27	147,528	(2,439)	371	(21,372)	124,256
Stock compensation and issuances	971	10	—	—	8,415	—	—	—	8,425
Issuance of common stock under employee stock purchase plans	21	—	—	—	55	—	—	—	55
FIN 48 cumulative effect of adoption	—	—	—	—	—	—	—	1,663	1,663
Distributions	—	—	—	—	—	—	(3)	—	(3)
Net loss	—	—	—	—	—	—	(137)	(87,510)	(87,647)
Balance at December 31, 2007	15,121	151	2,733	27	155,998	(2,439)	231	(107,219)	46,749
Stock compensation and issuances	472	5	—	—	329	—	—	—	334
Issuance of common stock under employee stock purchase plans	16	—	—	—	8	—	—	—	8
Treasury stock purchases	—	—	—	—	—	—	—	—	—
Warrants	—	—	—	—	723	—	—	—	723
Net loss	—	—	—	—	—	—	(8)	(17,058)	(17,066)
Balance at December 31, 2008	15,609	\$ 156	2,733	\$ 27	\$157,058	\$(2,439)	223	\$(124,277)	30,748
Stock compensation and issuances	—	—	—	—	76	—	—	—	76
Warrants	—	—	—	—	163	—	(82)	—	81
Gain on noncontrolling interest settlement	—	—	—	—	121	—	(121)	—	—
Note payable to noncontrolling interest holder	—	—	—	—	—	—	(20)	—	(20)
Net loss	—	—	—	—	—	—	—	(26,752)	(26,752)
Balance at December 31, 2009	15,609	\$ 156	2,733	\$ 27	\$157,418	\$(2,439)	\$ —	\$(151,029)	\$ 4,133

The accompanying notes are an integral part of these consolidated financial statements.

CONSOLIDATED STATEMENTS OF CASH FLOWS
(Amounts in thousands, except per share data)

	Twelve Months Ended December 31,		
	2009	2008	2007
Cash flows from operating activities:			
Net loss	\$(26,752)	\$(17,058)	\$ (87,510)
Adjustment to reconcile net loss to net cash provided by operating activities			
Amortization and depreciation	685	710	852
Impairments and write-offs	22,938	18,022	78,264
Loss on disposal of assets	—	2	461
Noncontrolling interest	—	(8)	(137)
Gain on troubled debt restructuring	(3,403)	(12,851)	—
Gain on trade payable settlements	(333)	—	—
Gain on deconsolidation of subsidiary	(1,965)	—	—
Board of directors compensation	—	148	198
Amortization of stock compensation	158	186	6,141
Deferred income tax	—	—	10,657
Changes in operating assets and liabilities:			
Restricted cash	610	1,126	7,341
Receivables	—	370	4,185
Due from related parties	—	92	3,467
Real estate held for development and sale	18,276	14,280	133,542
Other assets	(561)	19,964	(8,192)
Accounts payable and accrued liabilities	2,278	(12,084)	(31,629)
Due to related parties	—	—	(1,140)
Net cash provided by operating activities	<u>11,931</u>	<u>12,899</u>	<u>116,501</u>
Cash flows from investing activities:			
Purchase of property, plant and equipment	—	—	(129)
Net cash used in investing activities	<u>—</u>	<u>—</u>	<u>(129)</u>
Cash flows from financing activities:			
Proceeds from notes payable	874	49,391	84,570
Payments on senior unsecured debt	—	(6,000)	—
Proceeds from senior unsecured debt	—	—	30,000
Payments on junior subordinated debt	—	—	(30,000)
Payments on notes payable	(17,697)	(57,144)	(215,434)
Distributions paid to minority shareholders	—	—	(3)
Proceeds from shares issued under employee stock purchase plan	—	9	55
Net cash used in financing activities	<u>(16,823)</u>	<u>(13,744)</u>	<u>(130,812)</u>
Net decrease in cash and cash equivalents	(4,892)	(845)	(14,441)
Cash and cash equivalents, beginning of year	5,977	6,822	21,263
Cash and cash equivalents, end of year	<u>\$ 1,085</u>	<u>\$ 5,977</u>	<u>\$ 6,822</u>
Supplemental cash flow information:			
Interest paid (net of interest capitalized)	\$ —	\$ —	\$ —
Income taxes paid	\$ —	\$ —	\$ 27
Supplemental disclosure for non-cash activity:			
Interest incurred but not paid in cash	\$ 1,619	\$ 290	\$ 6,674
Warrants issued in connection with troubled debt restructuring	\$ —	\$ 723	\$ —
Reduction in real estate held for development and sale in connection with troubled debt restructuring	\$ 10,884	\$ 42,307	\$ —
Reduction in notes payable in connection with troubled debt restructuring	\$ 13,926	\$ 45,117	\$ —
Reduction in accrued liabilities in connection with troubled debt restructuring	\$ 610	\$ 1,646	\$ —
Reduction in inventory and related debt – variable interest entity	\$ 19,050	\$ —	\$ —
Reduction in real estate held for development and sale in connection with deconsolidation of subsidiaries	\$ 6,554	\$ —	\$ —
Reduction in notes payable in connection with deconsolidation of subsidiaries	\$ 6,080	\$ —	\$ —
Reduction in accrued liabilities in connection with deconsolidation of subsidiaries	\$ 2,438	\$ —	\$ —

The accompanying notes are an integral part of these consolidated financial statements.

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(Amounts in thousands, except per share data)

1. ORGANIZATION

Comstock Companies, Inc. (the "Company") was incorporated on May 24, 2004 as a Delaware corporation. On June 30, 2004, the Company changed its name to Comstock Homebuilding Companies, Inc. On December 17, 2004, the Company completed an initial public offering ("IPO") of its Class A common stock.

The Company's Class A common stock is traded on the NASDAQ Capital market ("NASDAQ") under the symbol "CHCI" and has no public trading history prior to December 17, 2004. On November 16, 2009, the Company received notice that NASDAQ had granted the Company's request to transfer the listing of its common stock from the NASDAQ Global Market to the NASDAQ Capital Market. On November 13, 2009, the Company received notice from NASDAQ that it does not satisfy the \$1.00 minimum bid price requirement for continued listing on NASDAQ. The Company has until May 11, 2010 to regain compliance with the \$1.00 minimum bid price requirement. Regaining compliance would require a closing bid price of \$1.00 or more for a minimum of ten consecutive trading days on or before May 11, 2010. If that does not occur, we would request a hearing before a NASDAQ panel to request an additional 180 days to regain compliance. There is no assurance that a NASDAQ panel would grant the Company any additional time after May 11, 2010 to regain compliance. If a NASDAQ panel did grant the Company additional time, there are no assurances that the Company would regain compliance. The Company is currently in compliance with the \$5.0 million minimum market value of publicly held shares and the \$2.5 million minimum shareholder equity continued listing requirements of the NASDAQ Capital Market.

The homebuilding industry is cyclical and significantly affected by changes in national and local economic, business and other conditions. Over the past five years, the Company has developed, built and marketed single-family homes, townhouses and condominiums in the Washington D.C., Raleigh, N.C. and Atlanta, GA metropolitan markets. During 2006, new home sales in these markets began to slow and that trend significantly worsened in 2008 and 2009. In response to these conditions, the Company significantly reduced selling, general and administrative expenses in order to align its cost structure with the level of sales activity, ceased land acquisition, land development and construction activities (except where required for near term sales) and offered for sale various developed lots and land parcels that the Company believed were not needed based on current absorption rates. Due primarily to foreclosure agreements entered into in 2009, the Company no longer controls any significant real estate positions in Raleigh, North Carolina. On November 13, 2009, three of the Company's Atlanta, GA subsidiaries filed petitions to liquidate under chapter 7 of the U.S. bankruptcy code. On or about January 21, 2010, the United States Bankruptcy Court, Northern District of Georgia entered an order approving the trustee's report of no distribution, discharged the trustee and closed the estate for all three subsidiary filings. As a result, the Company no longer controls any significant real estate positions in Atlanta, GA. Certain foreclosure agreements will result in the foreclosures on the related assets not being completed until 2010. The Company also provides certain management and administrative support services to certain related parties.

Liquidity Developments

In an effort to stabilize the Company, management has spent much of 2009 focused on negotiating with lenders to eliminate and restructure debt which has temporarily limited our ability to pursue new business opportunities. Early in 2009, management formulated a Strategic Realignment Plan (the "Plan") which identified real estate projects to be retained by the Company. The Company then worked to restructure the debt related to those core projects. The restructuring was completed in 2009 and has resulted in improved operating cash flow as the lenders have agreed to provide the Company with increased cash from proceeds as units are settled. This improved cash flow from settlements is contingent upon the Company settling a minimum of 10 units per quarter at Penderbrook and 9 units per quarter at Eclipse, on a cumulative basis. If the Company fails to maintain the minimum settlement requirements, while that would not be deemed an event of loan default, it would give the lenders the right to apply substantially all of the unit settlement proceeds to principal reduction. At December 31, 2009, the Company was in compliance with the minimum settlement requirements.

The Plan also identified real estate projects which it deemed to be non-essential to future growth. The strategic approach to debt secured by non-essential real estate projects was to pursue foreclosure agreements with the related lenders with the goal of transferring the real estate to the lender in return for a release from the related debt obligation. As detailed herein, the Company has made significant progress in that regard. As of December 31, 2009 the Company had successfully negotiated settlements with all of its secured lenders regarding the loans guaranteed by the Company and had reduced the outstanding balance of debt from \$102.8 million at December 31, 2008 to \$51.7 million (\$67.6 million of total debt less \$15.9 million of Wachovia debt for which extinguishment will occur once real estate assets are foreclosed in 2010) at December 31, 2009. In most cases the Company has been released from the obligations under the loan in return for its agreement to cooperate in the bank's foreclosure on the real estate assets securing the loan. In a limited number of cases, the Company provided the lenders with non-interest bearing deficiency notes with three year maturities in an amount equal to a fraction of the original debt. The balance of the deficiency notes at December 31, 2009 was \$1.1 million. Due to the time required to complete the requisite foreclosures on certain real estate assets, the foreclosure actions were not all complete at December 31, 2009 and will occur in future periods.

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Following is a summary of liquidity events that have already occurred or are anticipated in 2010:

- As a result of the restructuring effort, the only debt service required in 2010 will be covered by, assuming we are able to maintain sales quotas, settlements of units or land parcels.
- Due to a tax law change resulting from the passage of the Unemployment Insurance Extension Act of 2009, the Company received a tax refund of \$861 in February 2010.
- On July 29, 2008 Balfour Beatty Construction, LLC, successor in interest to Centex Construction (“Balfour”), the general contractor for a subsidiary of the Company, filed liens totaling approximately \$552,000 at The Eclipse on Center Park Condominium project (“Project”) in connection with its claim for amounts allegedly owed under the Project contract documents. In September 2008 the Company’s subsidiary filed suit against Balfour to invalidate the liens and for its actual and liquidated damages in the approximate amount of \$17.1 million due to construction delays and additional costs incurred by the Company’s subsidiary with respect to the Project. In October 2008 Balfour filed counterclaims in the approximate amount of \$2.8 million. Subsequent to an expedited hearing filed by the Company’s subsidiary to determine the validity of the liens that was ultimately heard in February 2009, we received an order of the court in April 2009 invalidating the liens. The trial began on September 8, 2009 and closed on September 16, 2009. On February 23, 2010, the Company’s subsidiary received a judgment against Balfour in an amount of \$11.7 million plus attorney’s fees to be determined at a later date. On March 3, 2010, the Company’s subsidiary received notice of Balfour’s intention to appeal the judgment and post a supersedeas bond in the amount of \$12.5 million. If the judgment amount is upheld on appeal, a significant portion is required to be applied toward principal curtailment under the Company’s loan agreement with KeyBank.

Based on the debt restructuring effort completed to date, we are anticipating that the combination of additional cash from settlement proceeds, the cash generated by our rental operations, the cash generated by sales of land parcels and the cash received from the tax refund will be sufficient to sustain our operations through 2010. However, this outcome is primarily dependent upon our ability to meet the minimum settlement requirements specified by our lenders. If we are unable to meet these quotas, substantially all of the proceeds from any settlements will be retained by the lenders. We were in compliance with these settlement requirements at March 31, 2010. At December 31, 2009, we had \$1.1 million in unrestricted cash and \$3.2 million in restricted cash. Included in our restricted cash balance, to which we have no access currently, is a \$3.0 million deposit with an insurance provider as security for future claims. Our access to external working capital is very limited and we have few other sources of cash as commercial banks and other unregulated lenders have experienced a liquidity crisis which has made funding for real estate investment extremely difficult to secure. This tightening of the credit markets presents substantial risk to our ability to secure financing for our operations, including any future construction and land development efforts.

If we are unable to maintain compliance with the cumulative minimum settlement requirements for an extended period of time, it would be necessary to seek waivers or additional loan modifications from the project lenders. If we were unable to secure such waivers or modifications, this would substantially reduce the amount of cash generated through unit settlements and make it necessary for us to attempt to generate alternative sources of revenue to meet our operating cashflow requirements. To do so, we may have to seek to leverage the judgment award which we obtained against Balfour Beatty, sell our remaining parcels of land, seek to raise additional capital or seek to obtain additional financing to meet our operating cashflow requirements. If, in the absence of cashflow being generated from unit settlements, we were unable to generate additional capital through any of these alternative sources, we could deplete our cash reserves and may be forced to seek protections afforded under the bankruptcy code. There can be no assurance that in the event we were forced to seek bankruptcy protection that we would be able to reorganize, and in such event we could be forced to liquidate our assets.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

A summary of the significant accounting policies and practices used in the preparation of the consolidated financial statements is as follows:

Basis of presentation

The accompanying consolidated financial statements include the accounts of Comstock Homebuilding Companies, Inc (the Company), a Delaware corporation, and its majority-owned subsidiaries. All significant intercompany accounts and transactions have been eliminated. Investments in 50% or less owned partnerships and affiliates are accounted for using the equity method unless it is determined that the Company has effective control of the entity, in which case the entity would be consolidated.

Cash and cash equivalents and restricted cash

Cash and cash equivalents are comprised of cash and short-term investments with maturities when purchased of three months or less. At times, the Company may have deposits with institutions in excess of federally insured limits. Banking institutions with which the Company does business are considered credit worthy; therefore, credit risk associated with cash and cash equivalents is considered low. At December 31, 2009 and 2008, the Company had restricted cash of \$3.2 million and \$3.8 million, respectively, which includes a \$3.0 million deposit with an insurance provider as security for future claims.

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Real estate held for development and sale

Real estate held for development and sale includes land, land development costs, interest and other construction costs. Land held for development is stated at cost, or when circumstances or events indicate that the land is impaired, at estimated fair value. Real estate held for sale is carried at the lower of cost or fair value less costs to sell. Land, land development and indirect land development costs are accumulated by specific project and allocated to various lots or housing units within that project using specific identification and allocation based upon the relative sales value, unit or area methods. Direct construction costs are assigned to housing units based on specific identification. Construction costs primarily include direct construction costs and capitalized field overhead. Other costs are comprised of prepaid local government fees and capitalized interest and real estate taxes. Selling costs are expensed as incurred.

Estimated fair value is based on comparable sales of real estate in the normal course of business under existing and anticipated market conditions. The evaluation takes into consideration the current status of the property, various restrictions, carrying costs, costs of disposition and any other circumstances, which may affect fair value including management's plans for the property. Due to the large acreage of certain land holdings, disposition in the normal course of business can extend over a number of years. A write-down to estimated fair value is recorded when the net carrying value of the property exceeds its estimated undiscounted future cash flows. These evaluations are made on a property-by-property basis as seen fit by management whenever events or changes in circumstances indicate that the net carrying value may not be recoverable.

Capitalized interest and real estate taxes

Interest and real estate taxes incurred relating to the development of lots and parcels are capitalized to real estate held for development and sale during the active development period, which generally commences when borrowings are used to acquire real estate assets and ends when the properties are substantially complete or the property becomes inactive. A project becomes inactive when development and construction activities have been suspended indefinitely. Interest is capitalized based on the interest rate applicable to specific borrowings or the weighted average of the rates applicable to other borrowings during the period. Interest and real estate taxes capitalized to real estate held for development and sale are expensed as a component of cost of sales as related units are sold. The following table is a summary of interest incurred and capitalized and interest expensed for units settled:

	Years ended December 31,		
	2009	2008	2007
Total interest incurred and capitalized	\$ 12	\$4,742	\$23,214
Interest expensed as a component of cost of sales	\$2,955	\$3,722	\$24,605

During 2009 all of the Company's projects were determined to be inactive for accounting purposes as they were either substantially complete or management elected to suspend construction activities indefinitely. When a project becomes inactive, its interest, real estate taxes and indirect production overhead costs are no longer capitalized but rather expensed in the period in which they are incurred. Following is a breakdown of the interest, real estate taxes and indirect costs related to inactive projects reported in real estate held for development and sale:

	Years ended December 31,		
	2009	2008	2007
Total interest incurred and expensed for inactive projects	\$2,626	\$3,993	\$—
Total real estate taxes incurred and expensed for inactive projects	845	1,022	—
Total production overhead incurred and expensed for inactive projects	667	670	—
	\$4,138	\$5,685	—

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Property, plant and equipment

Property, plant and equipment are carried at cost less accumulated depreciation and are depreciated on the straight-line method over their estimated useful lives as follows:

Furniture and fixtures	7 years
Office equipment	5 years
Computer equipment and capitalized software	3 years
Leasehold improvements	Life of related lease

When assets are retired or otherwise disposed of, the cost and accumulated depreciation are removed from their separate accounts and any gain or loss on sale is reflected in operations. Expenditures for maintenance and repairs are charged to expense as incurred.

Warranty reserve

Warranty reserves for houses settled are established to cover potential costs for materials and labor with regard to warranty-type claims expected to arise during the one-year warranty period provided by the Company or within the five-year statutorily mandated structural warranty period. Since the Company subcontracts its homebuilding work, subcontractors are required to provide the Company with an indemnity and a certificate of insurance prior to receiving payments for their work. Claims relating to workmanship and materials are generally the primary responsibility of the subcontractors and product manufacturers. The warranty reserve is established at the time of closing, and is calculated based upon historical warranty cost experience and current business factors. Variables used in the calculation of the reserve, as well as the adequacy of the reserve based on the number of homes still under warranty, are reviewed on a periodic basis. Warranty claims are directly charged to the reserve as they arise. The following table is a summary of warranty reserve activity which is included in accounts payable and accrued liabilities:

	Years ended December 31,		
	2009	2008	2007
Balance at beginning period	\$1,031	\$1,537	\$ 1,669
Additions	116	432	1,010
Releases and/or charges incurred	(454)	(938)	(1,142)
Balance at end of period	<u>\$ 693</u>	<u>\$1,031</u>	<u>\$ 1,537</u>

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Revenue recognition

The Company recognizes revenues and related profits or losses from the sale of residential properties, including multiple units to the same buyer, finished lots and land sales when closing has occurred, full payment has been received, title and possession of the property transfer to the buyer and the Company has no significant continuing involvement in the property. Other revenues include revenue from land sales, rental revenue from leased apartments and revenue earned from management and administrative support services provided to related parties that is recognized as the services are provided.

Advertising costs

The total amount of advertising costs charged to selling, general and administrative expense was \$47, \$878 and \$3,350 for the years ended December 31, 2009, 2008 and 2007, respectively.

Stock compensation

As discussed in Note 12, the Company sponsors stock option plans and restricted stock award plans. Prior to December 14, 2004, the Company did not sponsor any such plans. Effective January 1, 2004, the Company prospectively adopted Statement of Financial Accounting Standards ("SFAS") No. 123R (revised 2004), *Share-Based Payment* (Accounting Standards Codification ("ASC") 718). ASC 718 requires all share-based payments to employees, including grants of employee stock options, to be recognized in the financial statements over the vesting period based on their fair values at the date of grant. As a result of the inactive status of all of the Company's projects during 2009 all of the cost associated with stock-based compensation was charged to selling, general and administrative expense. The total stock-based compensation for 2009 was \$77 which related to grants made prior to 2009. There were no grants in 2009.

Income taxes

As discussed in Note, 1, we adopted the provisions of ASC 740-10-26-6 Income Tax Recognition as of January 1, 2007. As a result of this adoption, the Company recorded a benefit to the opening accumulated deficit in the amount of \$1,663. The Company recognizes interest accrued related to unrecognized tax benefits in interest expense. Penalties, if incurred, would be recognized as a component of general and administrative expense. At December 31, 2008, the Company had gross unrecognized tax benefits of \$77, which was fully reserved. The reserve was limited to interest on the net timing difference. During 2009 the Company received approval for an accounting method change from the Internal Revenue Service that effectively allows the Company to recognize the previously unrecognized tax benefit. As a result, the Company reversed the \$77 reserve in 2009. As of December 31, 2009, the Company had no unrecognized tax benefit and the Company does not expect this to change significantly over the next 12 months.

[Table of Contents](#)**Loss per share**

The following weighted average shares and share equivalents are used to calculate basic and diluted EPS for the years ended December 31, 2009, 2008 and 2007:

	Years Ended December 31,		
	2009	2008	2007
Basic loss per share			
Net loss	<u>\$(26,752)</u>	<u>\$(17,058)</u>	<u>\$(87,510)</u>
Basic weighted-average shares outstanding	<u>17,670</u>	<u>17,462</u>	<u>16,140</u>
Per share amounts	<u>\$ (1.51)</u>	<u>\$ (0.98)</u>	<u>\$ (5.42)</u>
Dilutive loss per share			
Net loss	<u>\$(26,752)</u>	<u>\$(17,058)</u>	<u>\$(87,510)</u>
Basic weighted-average shares outstanding	<u>17,670</u>	<u>17,462</u>	<u>16,140</u>
Stock options and restricted stock grants	<u>—</u>	<u>—</u>	<u>—</u>
Dilutive weighted-average shares outstanding	<u>17,670</u>	<u>17,462</u>	<u>16,140</u>
Per share amounts	<u>\$ (1.51)</u>	<u>\$ (0.98)</u>	<u>\$ (5.42)</u>

There were no restricted stock grants outstanding at December 31, 2009. As a result of net losses for the years ended December 31, 2009, 2008 and 2007, options and warrants were excluded from the computation of dilutive earnings per share because their inclusion would have been anti-dilutive.

Comprehensive income

For the years ended December 31, 2009, 2008 and 2007, comprehensive income equaled net income; therefore, a separate statement of comprehensive income is not included in the accompanying consolidated financial statements.

Segment reporting

ASC 280-10 Segment Reporting establishes standards for the manner in which companies report information about operating segments. The Company determined it provides one single type of business activity, homebuilding, which operates in multiple geographic or economic environments. The Company had, in years prior to 2009, determined that its homebuilding operations primarily involved three reportable geographic segments: Washington D.C. metropolitan area, Raleigh, North Carolina and Atlanta, Georgia. Based on the Company's withdrawal from the Atlanta market, which was effectively completed in the fourth quarter of 2009, the Company elected to consolidate the Raleigh and Atlanta segments into the Southeast region segment, effective January 1, 2009. As such, 2008 and 2007 have been restated for presentation purposes only. As the Company completes its exit from the Raleigh, North Carolina market, effective in the first quarter of 2010, the Company's operations will be concentrated in the Washington D.C. metropolitan area. The aggregation criteria are based on the similar economic characteristics of the projects located in each of these regions. The table below summarizes revenue and income (loss) before income taxes for each of the Company's geographic segments (amounts in thousands):

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The table below summarizes revenue and operating (loss) income for each of the Company's geographic segments:

	Years Ended December 31,		
	2009	2008	2007
Revenues:			
Washington, D.C. metropolitan area	\$ 23,170	\$ 23,929	\$200,622
Southeast region	1,896	22,733	65,537
Total	<u>\$ 25,066</u>	<u>\$ 46,662</u>	<u>\$266,159</u>
Operating loss			
Washington, D.C. metropolitan area	\$(17,497)	\$ (10,060)	\$ (25,890)
Southeast region	(8,575)	(14,037)	(47,828)
Segment operating loss	<u>(26,072)</u>	<u>(24,097)</u>	<u>(73,718)</u>
Corporate expenses unallocated	<u>(5,740)</u>	<u>(8,622)</u>	<u>(18,367)</u>
Total operating loss	<u>(31,812)</u>	<u>(32,719)</u>	<u>(92,085)</u>
Gain on debt restructuring	(3,403)	(12,851)	—
Gain on deconsolidation of subsidiaries	(1,965)	—	—
Other loss (income)	1,237	(2,850)	(1,886)
Loss before income taxes	<u>\$(27,681)</u>	<u>\$ (17,018)</u>	<u>\$ (90,199)</u>

The following table summarizes impairment and write-offs by segment. These expense amounts are included in the segment operating income (loss) as reflected in the table above.

	Years Ended December 31,		
	2009	2008	2007
Washington, D.C. metropolitan area	\$15,351	\$ 6,141	\$35,005
Southeast region	7,587	11,881	43,259
	<u>\$22,938</u>	<u>\$18,022</u>	<u>\$78,264</u>

The table below summarizes total assets for each of the Company's segments at December 31,

	2009	2008
Washington, D.C. metropolitan area	\$56,732	\$116,483
Southeast region	15,060	34,924
Corporate	5,539	9,452
Total assets	<u>\$77,331</u>	<u>\$160,859</u>

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Use of estimates

The preparation of the financial statements, in conformity with accounting principles generally accepted in the United States of America, requires management to make estimates and assumptions that affect the reported amounts in the financial statements and accompanying notes. Actual results could differ from those estimates. Material estimates are utilized in the valuation of real estate held for development and sale, valuation of deferred tax assets, capitalization of costs, consolidation of variable interest entities and warranty reserves.

Recent accounting pronouncements

Effective January 1, 2009, the Company adopted SFAS No. 157, "Fair Value Measurements" (codified in "ASC 820"), for its non-financial assets and liabilities and for its financial assets and liabilities measured at fair value on a non-recurring basis. ASC 820 provides a framework for measuring fair value in generally accepted accounting principles, expands disclosures about fair value measurements, and establishes a fair value hierarchy that requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. The adoption of ASC 820 for the Company's non-financial assets and liabilities did not have a material impact on the Company's consolidated financial statements, though it may in the future. In April 2009, the FASB issued FSP FAS 157-4, "Determining Fair Value When the Volume and Level of Activity for the Asset or Liability Have Significantly Decreased and Identifying Transactions That Are Not Orderly," FSP No. FAS 115-2 and FAS 124-2, "Recognition and Presentation of Other-Than-Temporary Impairments," and FSP FAS 107-1 and APB 28-1, "Interim Disclosures about Fair Value of Financial Instruments" (all codified in ASC 820). The Company adopted the FSPs as of January 2009, which did not have a material impact on the Company's consolidated financial statements.

In December 2007, the FASB also issued SFAS No. 160, "Noncontrolling Interests in Consolidated Financial Statements" (codified in "ASC 810"). ASC 810 requires all entities to report noncontrolling (i.e. minority) interests in subsidiaries as equity in the consolidated financial statements and to account for transactions between an entity and noncontrolling owners as equity transactions if the parent retains its controlling financial interest in the subsidiary. ASC 810 also requires expanded disclosure that distinguishes between the interests of the controlling owners and the interests of the noncontrolling owners of a subsidiary. ASC 810 was effective for the Company beginning on January 1, 2009. The adoption of ASC 810-10 did not have a material impact on the Company's consolidated financial statements.

In May 2009, the FASB issued SFAS No. 165, "Subsequent Events," (codified in "ASC 855"). ASC 855 establishes general standards of accounting for and disclosure of events that occur after the balance sheet date but before financial statements are issued or are available to be issued. ASC 855 was effective for the Company for the period ending June 30, 2009. The adoption did not have a material impact on the Company's consolidated financial statements.

In June 2009, the FASB issued SFAS No. 166, "Accounting for Transfers of Financial Assets an amendment of FASB Statement No. 140," (codified in "ASC 860"). ASC 860 requires enhanced disclosures regarding transfers of financial assets and continuing exposure to the related risks. ASC 860 also eliminates the concept of a qualifying special-purpose entity and changes the requirements for derecognizing financial assets. ASC 860 will be effective for the Company's fiscal year beginning January 1, 2010. The adoption of ASC 860 is not expected to have a material impact on the Company's consolidated financial statements.

In June 2009, the FASB issued SFAS No. 167, "Amendments to FASB Interpretation No. 46(R)," (codified in "ASC 810"). ASC 810 amends existing consolidation guidance for variable interest entities, requires ongoing reassessment to determine whether a variable interest entity must be consolidated, and requires additional disclosures regarding involvement with variable interest entities and any significant changes in risk exposure due to that involvement. ASC 810 will be effective for the Company's fiscal year beginning January 1, 2010. The Company is currently evaluating the effects of ASC 810 on its consolidated financial statements.

In June 2009, the FASB issued SFAS No. 168, "The FASB Accounting Standards Codification™ and the Hierarchy of Generally Accepted Accounting Principles," (codified in "ASC 105"), which created a single source of authoritative nongovernmental U.S. GAAP. The Codification was effective for the Company's interim and annual periods ending after September 15, 2009. Upon adoption, all existing non-SEC accounting and reporting standards were superseded. All other non-SEC accounting literature not included in the Codification are considered non-authoritative. The required disclosures have been incorporated into and did not have a material impact on the Company's consolidated financial statements.

In August 2009, the FASB issued Accounting Standards Update No. 2009-05, "Measuring Liabilities at Fair Value" ("ASU 2009-05"), amending ASC 820 to provide additional guidance to clarify the measurement of liabilities at fair value. ASU 2009-05 was effective for the Company's quarter ended December 31, 2009 and did not have a material impact on the Company's consolidated financial statements.

In January 2010, the FASB issued Accounting Standards Update No. 2010-06, "Improving Disclosures about Fair Value Measurements" ("ASU 2010-06"), amending ASC 820 to increase disclosure requirements regarding recurring and nonrecurring fair value measurements. ASU 2010-06 will be effective for the Company's fiscal year beginning January 1, 2010, except for the disclosures about activity in Level 3 fair value measurements which will be effective for the Company's fiscal year beginning January 1, 2011. ASC 820 is not expected to have a material impact on the Company's consolidated financial statements.

3. CONSOLIDATION OF VARIABLE INTEREST ENTITIES

The Company typically acquires land for development at market prices from various entities under fixed price purchase agreements. The purchase agreements require deposits that may be forfeited if the Company fails to perform under the agreements. The deposits required under the purchase agreements are in the form of cash or letters of credit in varying amounts. The Company may, at its option, choose for any reason and at any time not to perform under these purchase agreements by delivering notice of its intent not to acquire the land under contract. The Company's sole legal obligation and economic loss for failure to perform under these purchase agreements is typically limited to the amount of the deposit pursuant to the liquidated damages provision contained within the purchase agreement. As a result, none of the creditors of any of the entities with which the Company enters into forward fixed price purchase agreements have recourse to the general credit of the Company.

The Company also does not share in an allocation of either the profit earned or loss incurred by any of these entities with which the Company has fixed price purchase agreements. The Company has concluded that whenever it options land or lots from an entity and pays a significant non-refundable deposit as described above, a variable interest entity is created under the provisions of ASC 810-10 Consolidation. This is because the Company has been deemed to have provided subordinated financial support, which creates a variable interest which limits the equity holder's returns and may absorb some or all of an entity's expected theoretical losses if they occur. The Company, therefore, examines the entities with which it has fixed price purchase agreements for possible consolidation by the Company under the provision of ASC 810-10. This requires the Company to compute expected losses and expected residual returns based on the probability of future cash flows which requires substantial management judgments and estimates. In addition, because the Company

does not have any contractual or ownership interests in the entities with which it contracts to buy the land, the Company does not have the ability to compel these development entities to provide financial or other data to assist the Company in the performance of the primary beneficiary evaluation.

On July 7, 2009 the Company reached a settlement agreement with Belmont Bay, LC in a dispute related to the fixed price purchase agreement regarding Phase II of Beacon Park. Under the terms of the settlement agreement, the Company forfeited its \$200 deposit and was released from debt owed to Belmont Bay, LC of approximately \$1,797. As a result of this settlement agreement, the Company is no longer the primary beneficiary and has deconsolidated the entity from its consolidated balance sheet at June 30, 2009. The effect of the deconsolidation was the removal of \$19,250 in "Inventory not owned-variable interest entities" with a corresponding reduction of \$19,050 (net of land deposits paid of \$200) to "Obligations related to inventory not owned." Creditors, if any, of this deconsolidated variable interest entity have no recourse against the Company relating to this purchase contract.

4. REAL ESTATE HELD FOR DEVELOPMENT AND SALE

Real estate held for development and sale includes land, land development costs, interest and other construction costs. Land held for development is stated at cost, or when circumstances or events indicate that the land is impaired, at estimated fair value. Real estate held for sale is carried at the lower of cost or fair value less costs to sell. Land, land development and indirect land development costs are accumulated by specific project and allocated to various lots or housing units within that project using specific identification and allocation based upon the relative sales value, unit or area methods. Direct construction costs are assigned to housing units based on specific identification. Construction costs primarily include direct construction costs and capitalized field overhead. Other costs are comprised of prepaid local government fees and capitalized interest and real estate taxes. Selling costs are expensed as incurred.

Estimated fair value is based on comparable sales of real estate in the normal course of business under existing and anticipated market conditions. The evaluation takes into consideration the current status of the property, various restrictions, carrying costs, costs of disposition and any other circumstances, which may affect fair value including management's plans for the property. In the normal course of business, dispositions of large land holdings can extend over a number of years. A write-down to estimated fair value is recorded when the net carrying value of the property exceeds its estimated undiscounted future cash flows. These evaluations are made on a property-by-property basis as seen fit by management whenever events or changes in circumstances indicate that the net book value may not be recoverable.

During the third quarter of 2009, the Company executed a foreclosure agreement with Wachovia Bank that will result in cancellation of indebtedness (see Note 8) in exchange for the Company's agreement to cooperate in the bank's foreclosure process on assets that secure the debt. Wachovia Bank had not foreclosed on the real estate assets as of December 31, 2009. The following summary of the carrying value of real estate held for development and sale reflects the Wachovia assets scheduled for foreclosure, net of the Wachovia projects that were deconsolidated due to loss of financial control in the fourth quarter of 2009 (See Note 20).

	Number of projects	December 31, 2009
Real estate held for development and sale	16	\$ 70,890
Real estate projects awaiting foreclosure related to the Wachovia foreclosure agreement:	(11)	(15,407)
Real estate held for development and sale, net of assets awaiting foreclosure	5	\$ 55,483

Deteriorating market conditions, turmoil in the credit markets and increased price competition have continued to negatively impact the Company during 2009 resulting in reduced sales prices, increased customer concessions, reduced gross margins and extended estimates for project completion dates. The Company evaluates its projects on a quarterly basis to determine if recorded carrying amounts are recoverable. For the three months ended December 31, 2009, the Company evaluated all 16 of its projects for impairment and the evaluation resulted in no impairment charges. Impairment charges of \$3,443 were recorded for the three months ended December 31, 2008. As a result of this analysis, the Company believes that book value approximates fair value for all of its projects except for one project where the fair value exceeds the carrying value of \$34,478.

For projects where the Company expects to continue sales, these impairment evaluations are based on discounted cash flow models. Discounted cash flow models are dependent upon several subjective factors, primarily estimated average sales prices, estimated sales pace, and the selection of an appropriate discount rate. While current market conditions make the selection of a timeframe for sales in a community challenging, the Company has generally assumed sales prices equal to or less than current prices and the remaining lives of the communities were estimated to be one to two years. These assumptions are often interrelated as price reductions can generally be assumed to increase the sales pace. In addition, the Company must select what it believes is an appropriate discount rate based on current market cost of capital and returns expectations. The Company has used its best judgment in determining an appropriate discount rate based on anecdotal information it has received from marketing its deals for sale in recent months. The Company has elected to use a rate of 17% in its discounted cash flow model, which is consistent with the discount rate used in prior periods as the Company's cost of capital has not changed significantly. While the selection of a 17% discount rate was subjective in nature, the Company believes it is an appropriate rate in the current market. The estimates of sales prices, sales pace, and discount rates used by the Company are based on the best information available at the time the estimates were made. In recent months, market conditions affecting the Company's Washington, D.C. area projects have improved, however, if market conditions deteriorate again, additional adverse changes to these estimates in future periods could result in further material impairment amounts to be recorded.

For projects where the Company expects to sell the remaining lots in bulk or convey the remaining lots to a lender where the loans have matured, the fair value is determined based on offers received from third parties, comparable sales transactions, and/or cash flow valuation techniques.

If the project meets the GAAP accounting criteria of held for sale, the project is valued at the lower of cost or fair value less estimated selling costs. At December 31, 2009, the Company had three projects with a carrying value of \$39,526 that met these criteria. If the project sales are expected to extend over a period of time, the Company calculates fair value utilizing a discounted cash flow model as discussed above, although the Company would select a lower discount rate to reflect a reduced construction risk. No writedowns to fair value were recorded using this method during the years ended December 31, 2009 or 2008.

At May 31, 2009 Mathis Partners, LLC, a wholly owned subsidiary of the Company had approximately \$5.1 million of principal, accrued interest and fees outstanding to Comerstone Bank ("Comerstone") relating to the Company's Gates at Luberon project ("Gates"). In June 2009, Comerstone foreclosed on Gates lots carried in real estate held for development and sale with an estimated fair value of \$3.3 million. Upon this foreclosure the Company had been relieved of a portion of the outstanding debt balance and recorded this as an extinguishment of debt paid for by the foreclosed lots, in accordance with ASC 405.20.40-1. As a result, \$1.8 million of Comerstone debt remained at June 30, 2009 as the Company reduced its assets for the lots that were legally transferred to Comerstone and recorded a corresponding reduction in the related debt as a result of the transfer of assets in partial satisfaction of the debt. On September 22, 2009, the Company entered into a settlement agreement and mutual release with Comerstone relating to litigation between the Company and Comerstone. In connection with the settlement, Comerstone released the Company, and its subsidiary Mathis Partners, LLC, from their respective obligations and guarantees relating to \$5.1 million of debt. As a result of completing the negotiations in September, the Company wrote off the remaining carrying value of the Gates inventory on which Comerstone foreclosed and reduced the recorded value of the debt to the final settlement amount. See Note 17 for the calculation of gain on troubled debt restructuring related to the Comerstone settlement agreement.

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The following table summarizes impairment charges and write-offs for the twelve months ended December 31, 2009, 2008 and 2007:

	Twelve Months Ended		
	December 31,		
	2009	2008	2007
Impairments	\$22,938	\$18,011	\$68,788
Write-offs	—	11	9,476
	<u>\$22,938</u>	<u>\$18,022</u>	<u>\$78,264</u>

After impairments and write-offs, real estate held for development and sale consists of the following:

	December 31,	
	2009	2008
Land and land development costs	\$28,173	\$ 51,421
Cost of construction (including capitalized interest and real estate taxes)	42,717	78,121
	<u>\$70,890</u>	<u>\$129,542</u>

5. PROPERTY, PLANT AND EQUIPMENT, NET

Property, plant and equipment consist of the following:

	December 31,	
	2009	2008
Computer equipment and capitalized software	\$ 1,981	\$ 2,145
Furniture and fixtures	272	317
Office equipment	114	309
Leasehold improvements	70	79
	<u>2,437</u>	<u>2,850</u>
Less: accumulated depreciation	<u>(2,293)</u>	<u>(2,021)</u>
	<u>\$ 144</u>	<u>\$ 829</u>

Depreciation and amortization expense, included in “selling, general, and administrative” in the consolidated financial statements of operations, amounted to \$685, \$710 and \$852 for the years ended December 31, 2009, 2008 and 2007, respectively.

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6. OTHER ASSETS

Other assets consist of the following:

	December 31,	
	2009	2008
Income tax refund receivable (1)	\$ 862	\$ —
Restricted escrow deposits	308	492
Miscellaneous prepaid and other	793	910
	<u>\$1,963</u>	<u>\$1,402</u>

- (1) Income tax refund receivable was collected in full in February 2010.

7. ACCOUNTS PAYABLE AND ACCRUED LIABILITIES

Accounts payable and accrued liabilities consist of the following:

	December 31,	
	2009	2008
Trade payables	\$4,176	\$6,126
Warranty	693	1,031
Customer deposits	82	316
Other	628	759
	<u>\$5,579</u>	<u>\$8,232</u>

8. CREDIT FACILITIES

The Company has outstanding borrowings with various financial institutions and other lenders that have been used to finance the acquisition, development and construction of real estate property.

As of December 31, 2009, maturities and/or curtailment obligations of all of our borrowings are as follows:

Year ending December 31,	
Debt to be extinguished when foreclosure process is complete (1)	\$15,895
Past due(2)	263
2010	15,223
2011	18,577
2012	1,101
2013	12,743
2014 and thereafter	3,817
Total	<u>\$67,619</u>

- (1) Debt related to Wachovia foreclosure agreement executed during the third quarter of 2009. This debt will be extinguished after the bank forecloses on the real estate assets that secure the debt, which is pending but had not occurred at December 31, 2009. There will be no further cash outlay on this debt by the Company.
- (2) Lender is BB&T.

The majority of the Company's debt is variable rate, based on LIBOR or the prime rate plus a specified number of basis points, typically ranging from 220 to 600 basis points over the LIBOR rate and from 25 to 200 basis points over the prime rate. As a result, we are exposed to market risk in the event of interest rate increases. At December 31, 2009, the one-month LIBOR and prime rates of interest were 0.23% and 3.25%, respectively, and the interest rates in effect under the existing secured revolving development and construction credit facilities ranged from 3.50% to 15.19%. During 2009 these rates have been relatively stable. Based on current operations, as of December 31, 2009, an increase/decrease in interest rates of 100 basis points on our variable rate debt would result in a corresponding increase/decrease in interest actually incurred by us of approximately \$0.5 million in a fiscal year. Since all projects are currently inactive by accounting standards, any change in interest would be expensed in the period incurred.

In the past the Company has generally financed its development and construction activities on a single or multiple project basis so it is not uncommon for each project or collection of projects the Company develops and builds to have a separate credit facility. Accordingly, the Company typically has had numerous credit facilities and lenders. As described below in more detail, the Company made significant progress during 2009 in its efforts to restructure or amend its loan facilities to improve its liquidity outlook for 2010.

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As described in more detail below, at December 31, 2009 our outstanding debt by lender was as follows (dollars in 000s):

Bank	Balance as of 12/31/09	Recourse
KeyBank	\$ 22,269	Secured
Wachovia (1)	15,895	Secured
Wachovia	205	Unsecured
Guggenheim Capital Partners	10,492	Secured
M&T Bank – Cascades	1,016	Secured
M&T Bank	495	Secured
Cornerstone (Haven Trust)	400	Unsecured
Bank of America	3,716	Unsecured
Fifth Third	25	Unsecured
Branch Banking & Trust	263	Secured
Seller – Emerald Farm	100	Secured
	<u>54,876</u>	
Due to affiliates – Stonehenge Funding	<u>12,743</u>	Unsecured
Total	<u>\$ 67,619</u>	

- (1) Debt related to Wachovia foreclosure agreement executed during the third quarter of 2009. This debt will be extinguished after the banks foreclose on the real estate assets that secure the debt, which had not occurred at December 31, 2009. There will be no further cash outlay on this debt by the Company.

At December 31, 2009 the Company had \$22.3 million outstanding to KeyBank under a credit facility secured by the Company's Eclipse and Station View projects. Under the terms of the note there is an interest reserve which represents the amount by which we can avoid cash payments of future monthly interest obligations by adding them to the principal balance. At December 31, 2009 the available balance in the interest reserve was approximately \$1.6 million. While there are no financial covenants associated with the loan, there are a series of curtailment requirements commencing March 31, 2009. On October 30, 2009 the Company executed a loan modification with KeyBank with respect to \$22.8 million of principal outstanding under the Company's secured Potomac Yard and Station View project loan (the "Loan"). The key terms of the loan modification adjust the interest rate to the higher of LIBOR plus 5.0% or the prime rate plus 2.0% subject to a LIBOR floor of 2.0%. In exchange, KeyBank has agreed to increase the cash flow available to the Company from settlements at the Potomac Yard project by providing the Company with accelerated releases equal to fifteen percent of the net sales price. However, these accelerated releases are subject to meeting a cumulative minimum sales requirement of nine (9) units per quarter (the "Modification Covenants"). Failure to meet the Modification Covenants will not result in an event of default but may result in a reversion of the unit release provisions whereby KeyBank will retain the entire net sales price of sold units. The Modification also adjusted the release provisions for the Station View project allowing for additional monies from the net sales price of the bulk sale of the Station View project, under contract on a contingent basis, to be made available to the Company for the repayment of certain indebtedness. The Modification also provided that any unsecured deficiency notes issued by the Company in satisfaction of foreclosure deficiencies from other lenders are fully subordinate to the Loan.

On August 17, 2009 the Company entered into a foreclosure agreement ("Agreement") with Wachovia Bank with respect to approximately \$17.8 million of secured debt, accrued interest and fees. Under the terms of the Agreement, the Company has agreed to cooperate with Wachovia with respect to its foreclosure on certain of the Company's real estate assets. In return, Wachovia agreed to release the Company from their obligations and guarantees relating to the \$17.8 million of indebtedness contemporaneous with the execution by the Company of a non-interest bearing, unsecured deficiency note payable to Wachovia in the amount of approximately \$1.8 million. The deficiency note was reduced by the principal payments related to certain homes sold by the Company prior to September 30, 2009. As of December 31, 2009 the deficiency note balance was \$205 and the debt from which the Company will be released upon foreclosure of the assets was \$15.9 million. The related assets are stated at the lower of cost or fair value.

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The assets scheduled for foreclosure by Wachovia include: Massey Preserve, raw land located in Raleigh, North Carolina; Haddon Hall, finished pads for a condominium project in Raleigh, North Carolina; Holland Farm, a single-family project in Raleigh, North Carolina; Wakefield Plantation, a single-family project in Raleigh, North Carolina; Riverbrooke, a single-family project in Raleigh, North Carolina; Wheatleigh Preserve, a single-family project in Raleigh, North Carolina; Brookfield Station, a single-family project in Raleigh, North Carolina; Providence, a single-family project in Raleigh, North Carolina; Allyn's Landing, a townhome development project in Raleigh, North Carolina; Allen Creek, a single-family project in Atlanta, Georgia; Arcanum Estates, a single-family project in Atlanta, Georgia; Falling Water, a single-family project in Atlanta, Georgia; James Road, a single-family development project in Atlanta, Georgia; Tribble Lakes, a development project in Atlanta, Georgia; and Summerland, finished pads for a condominium project in Woodbridge, Virginia. None of these assets had been foreclosed upon at December 31, 2009. Due to the large volume of assets upon which Wachovia will foreclose, it is likely that the foreclosure process will extend well into 2010.

At December 31, 2009 the Company had approximately \$10.5 million outstanding to Guggenheim Corporate Funding ("Guggenheim") relating to the Company's Penderbrook Condominium project. On August 20, 2008 Guggenheim issued a notice of default to the Company regarding a purported default. The Company subsequently entered into a loan modification and forbearance agreement whereby Guggenheim agreed to forgo any remedies it may have had with respect to the alleged default. On September 16, 2009 the Company entered into a third amendment to the loan agreement with Guggenheim in which Guggenheim agreed to continue to forebear from exercising its rights related to the defaults and make certain other modifications to the loan agreement. Other than a minimum number of sales per month and sales per quarter requirement, the Guggenheim loan agreement and the three loan amendments contain no significant financial covenants. The key financial terms of the third amendment increase the cash flow available to the Company through reduced principal payments to Guggenheim as units are settled. Specifically, the third amendment will provide the Company with cash equal to 25% of the net sales price provided the Company meets the cumulative minimum sales requirements of three (3) units per month and ten (10) units per quarter. However, if the Company is unable to meet the minimum sales requirements, it will not constitute an event of default but may result in a reversion to the unit release provisions to ten percent (10%) of the net sales price of sold units in accordance with the loan agreement and first two amendments. The Company has met the minimum sales requirement as of December 31, 2009 and based on the pace of Q1 2010 sales, settlements and backlog believes it will meet the minimum sales requirement as of March 31, 2010.

As of December 31, 2009, \$12.7 million was outstanding to JP Morgan Ventures ("JPMV"), which includes its principal amount of \$9.0 million plus the total estimated future interest payments of \$3.7 million. On May 4, 2006 the Company closed on a \$30.0 million junior subordinated note offering. The term of the

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note was thirty years and it could be retired after five years with no penalty. The rate was fixed at 9.72% the first five years and LIBOR plus 420 basis points the remaining twenty-five years. In March 2007 the Company retired the junior subordinated note without penalty and entered into a new 10-year, \$30.0 million senior unsecured note with the same lender at the same interest rate. During the third quarter of 2007, the lender's rights were assumed by JPMV. On March 14, 2008, the Company executed an option to restructure the \$30.0 million unsecured note. In connection therewith, the Company made a \$6.0 million principal payment to JPMV and executed an amended and restated indenture with a new principal balance of \$9.0 million, loosened financial covenants and a revised term of 5 years. The Company also issued JPMV a seven-year warrant to purchase 1.5 million shares of Class A common stock at \$0.70 per share. In exchange JPMV agreed to cancel \$15.0 million of the outstanding principal balance. This transaction was accounted for as a troubled debt restructuring and the amended and restated indenture was recorded at \$13.4 million on March 31, 2008 which includes its principal amount of \$9.0 million plus the total estimated future interest payments of \$4.4 million. At March 31, 2009 the Company elected not to make a scheduled interest payment in the amount of \$0.2 million. On April 27, 2009, the Company received a notice of payment default from the lender. The notice of payment default indicated that the failure of the Company to make its quarterly interest payment within 30 days of March 30, 2009 would constitute an Event of Default under the Indenture. The Company has not cured the default. The Company did not make scheduled interest payments at June 30, 2009, September 30, 2009 or December 31, 2009.

On December 23, 2009, Stonehenge Funding, LC ("Stonehenge"), an entity wholly-owned by Christopher Clemente, the Chairman and Chief Executive Officer of the Company, completed the purchase of the senior unsecured note from JPMV in the current outstanding amount of approximately \$9.0 million, plus accrued and unpaid interest. The purchase of the JPMV note also resulted in the transfer to Stonehenge of the warrant previously issued to JPMV for the purchase of 1.5 million shares of the Company's Class A Common Stock. In connection with Stonehenge's purchase of the JP Morgan debt from JPMV, Stonehenge and the Company entered into two separate subordination and standstill agreements for the benefit of the Company and its secured lenders, KeyBank and Guggenheim. The subordination agreements allow for Stonehenge and the Company to negotiate permanent modifications to the terms of the JP Morgan Debt and provide KeyBank and Guggenheim with assurances that the Company will not make any cash payments to the Stonehenge prior to the full repayment of loans to them in connection with the Company's Eclipse and Penderbrook projects. See a related subsequent event disclosure at Note 18.

At December 31, 2009 the Company had \$1.0 million outstanding to M&T Bank. On September 28, 2009 the Company entered into a series of agreements with M&T with respect to the \$7.6 million of outstanding debt plus accrued interest and late fees. As a result of the agreements, the Belmont Bay loan, with a principal balance of \$6.1 million plus \$0.5 million of accrued interest and fees, was released in its entirety and the Cascades Loan, with a principal balance of \$1.0 million, was extended through January 31, 2011. Under the terms of the agreements, M&T Bank agreed to release the Company from its obligations and guarantees relating to the Belmont Loan and the Company agreed to cooperate with M&T Bank with respect to its foreclosure on the remaining portion of the Belmont Bay Project which includes 19 partially completed condominium units and 84 condominium building lots. M&T Bank's foreclosure on these assets was completed in December 2009. The Company also entered into a non-interest bearing subordinated promissory note in connection with the Belmont Loan in the amount of \$0.5 million with a three-year maturity secured by the Cascades Project. Under the terms of the agreements, M&T Bank agreed to extend the maturity date of the Cascades Loan by forbearing on enforcing its rights with respect to collection of the debt until January 31, 2011. The Company also agreed to commence current payment of interest due M&T Bank related to the current principal balance of the Cascades Loan. The Cascades Project contains a total of 191 condominium units with the first phase of the Cascades Project (88 units) being completed by the Company in 2007. See Note 17 for details related to troubled debt restructuring and the M&T foreclosure agreement.

At December 31, 2009 the Company had \$0.4 million outstanding to Comerstone Bank ("Comerstone") relating to the Company's Gates at Luberon project. The original \$5.1 million in loans matured in November 2007. Haven Trust Bank, the originating lender, and its participating lenders were unwilling to grant an extension on terms the Company felt were reasonable so the loans remained unpaid and unmodified. Haven Trust Bank initiated foreclosure proceedings and the Company protected the equity in the project by seeking bankruptcy protection for the entity that owned Gates at Luberon. The Company elected not to submit a plan of reorganization to the court by September 30, 2008 which resulted in Haven Trust filing a motion to lift the court imposed stay of foreclosure. In December 2008 Haven Trust Bank was closed by the FDIC and its loan portfolio was taken over by the FDIC. Litigation with respect to Haven Trust's guarantee action against Comstock was stayed with the court while the FDIC determines its intended course of action. Comerstone, one of the banks to which Haven Trust participated the loan assumed control of the loan and reinstated the guarantee and foreclosure actions. Comerstone's foreclosure on the Gates of Luberon project real estate was completed by September 30, 2009. On September 21, 2009 the Company entered into a settlement agreement and mutual release with Comerstone relating to the aforementioned litigation. In connection with the settlement, Comerstone released the Company, and its subsidiary Mathis Partners, LLC, from their respective obligations and guarantees relating to \$5.1 million of debt owed by the Company to Comerstone in exchange for a non-interest bearing unsecured subordinate note in the amount of \$0.4 million with a three year term. The parties have agreed to dismiss all pending litigation against each other. See Note 17 for details related to troubled debt restructuring and the Comerstone settlement and mutual release.

At December 31, 2009, the Company had \$3.8 million outstanding to Bank of America in a 10-year unsecured note. Bank of America and Comstock modified the terms of the Company's existing unsecured note by extending the term to ten (10) years, establishing an interest accrual for the first two years and a six year curtailment schedule starting in year four of the loan's term. See the subsequent event disclosure related to Bank of America at Note 18.

9. COMMON STOCK

As discussed in Note 1, the Company immediately prior to the IPO, had 4,333 and 2,734 shares Class A and B common stock outstanding. Class A and B common stock shares bear the same economic rights. However for voting purposes, Class A stock holders are entitled to one vote for each share held while Class B stock holders are entitled to fifteen votes for each share held. As a result of the IPO, the Company sold 3,960 Class A shares of common stock. The Company also sold an additional 594 shares of Class A common stock pursuant to the underwriters' exercise of their over-allotment option. On June 22, 2005 the Company completed a follow-on offering in which 2,360 shares of Class A common stock were sold to the public.

On May 12, 2006, the Company completed a private placement (the "PIPE") to institutional and other accredited investors of 2,121 shares of Class A common stock and warrants exercisable into 636 shares of Class A common stock. The Company sold the securities for \$9.43 per share for total proceeds of approximately \$20,000 and net proceeds of approximately \$18,700. The per share price of \$9.43 represented a premium of approximately 14.6% to the closing price of the Company's common stock on the date the purchase was completed. The net proceeds were used for general corporate purposes. The warrants issued in connection with the PIPE were five-year warrants exercisable at any time after November 10, 2006 with an exercise price of \$11.32 per share. The fair value of the warrants issued under the PIPE have been reported as equity instruments because the liquidated damages, which are capped at 10%, reasonably represent the difference between the value of a registered share and an unregistered share of the Company's common stock.

In February 2006 the Company's Board of Directors authorized the Company to purchase up to 1,000 shares of the Company's Class A common stock

in the open market or in privately negotiated transactions. The authorization did not include a specified time period in which the shares repurchase would remain in effect. During the twelve months ended December 31, 2006, the Company repurchased an aggregate of 391 shares of Class A common stock for a total of \$2,439 or \$6.23 per share. There were no shares repurchased for the twelve months ended December 31, 2009, 2008 or 2007 and the Company has no immediate plans to repurchase any additional shares under the existing authorization.

10. RELATED PARTY TRANSACTIONS

The Company entered into a lease agreement for its corporate headquarters at 11465 Sunset Hills Road, Reston, Virginia with Comstock Asset Management, L.C., and (CAM) an entity wholly owned by Christopher Clemente. In October 2007, the lease agreement was amended decreasing the total square footage from 24.1 to 17.1 and extending the term to four years through September 2011. For the twelve months ended December 31, 2009 and 2008, total payments made under this lease agreement were \$437 and \$565, respectively. During the second quarter of 2009, the Company began deferring a portion of its monthly rent payment to CAM as well as deferring a portion of the base salary payments to executive officers Chris Clemente and Greg Benson. As a result of its liquidity constraints, the Company expects to further reduce its office lease obligation to CAM.

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On or about January 15, 2010, Comstock Property Management, L.C. (“CPM”), a subsidiary of Comstock Homebuilding Companies, Inc. (the “Company”), has agreed to enter into a new three year lease with CAM, for the use of approximately 8.2 square feet of office space at the Company’s existing headquarters (the “Lease”). Pursuant to the terms of a separate early termination of Lease by and between CAM and the Company (the “Lease Termination”), the Company has agreed to surrender approximately 15.7 square feet of space to CAM in exchange for (i) CPM’s agreement to enter into the Lease for the reduced space and at a reduced rate; and (ii) the issuance of a warrant to purchase up to 55 shares of the Company’s Class A common stock at a strike price equal to the average of the closing stock price for the twenty days immediately preceding the effective date of the Lease Termination in exchange for the forgiveness of approximately \$110 in delinquent rent.

The Company is party to agreements with I-Connect, L.C. (I-Connect), a company in which Investors Management, LLC, an entity wholly owned by Gregory Benson, holds a 25% interest, for information technology and website consulting services and the right to use certain customized enterprise software developed with input from the Company. The intellectual property rights associated with the software solution developed by I-Connect, along with any improvements made thereto by the Company, remain the property of I-Connect. For the twelve months ended December 31, 2009, 2008 and 2007, total payments made under this agreement were \$86, \$253 and \$509, respectively. Although I-Connect has no obligation to do so, it has allowed us to accrue portions of our payment obligations from time to time and has reduced the amount due from us under the agreements.

Effective January 1, 2010, the Company entered into a new software license agreement with I-Connect for the use of I-Connect’s proprietary Builder’s Co-Pilot software (the “Agreement”). Pursuant to the terms of the Agreement, I-Connect has agreed to forgive approximately \$12 in delinquent payments in exchange for a warrant to purchase up to 6 shares of the Company’s Class A common stock at a strike price equal to the average of the closing stock price for the twenty days immediately preceding the effective date of the Agreement and the Company will agree to make reduced monthly payments of \$6 for the use of the software for a term of 24 months.

See the subsequent event disclosure with related party Stonehenge Funding LC at Note 18.

11. EMPLOYEE BENEFIT PLANS

The Company maintains a defined contribution retirement savings plan pursuant to Section 401(k) of the Internal Revenue Code (the “Code”). Eligible participants may contribute a portion of their compensation to their respective retirement accounts in an amount not to exceed the maximum allowed under the Code. In January 2006, the Company began matching employee contributions. The total amount matched for the twelve months 2009, 2008 and 2007, was \$17, \$64 and \$121, respectively. The Company also maintained an Employee Stock Purchase Plan in which eligible employees had the opportunity to purchase common stock of the Company at a discounted price of 85% of the fair market value of the stock on the designated dates of purchase. Under the terms of the plan, the total fair market value of the common stock that an eligible employee could purchase each year was limited to the lesser of 15% of the employee’s annual compensation or \$15. The Employee Stock Purchase Plan was discontinued in 2008. While it was active, employees of the Company purchased zero, 15,762 and 20,763 shares of Class A common stock, for the twelve months ending December 31, 2009, 2008 and 2007, respectively.

12. RESTRICTED STOCK, STOCK OPTIONS AND OTHER STOCK PLANS

Effective January 1, 2004, the Company adopted the fair value recognition provisions required in accounting for share based payments. Prior to December 14, 2004, the Company did not sponsor any stock based plans.

On December 14, 2004 the Company adopted the 2004 Long-Term Compensation Plan (“The Plan”). The plan provides for the issuance of stock options, stock appreciation rights, or SARs, restricted stock, deferred stock, dividend equivalents, bonus stock and awards in lieu of cash compensation, other stock-based awards and performance awards. Any shares issued under the Plan vest typically over service periods that range from one to five years. Stock options issued under the plan expire 10 years from the date they are granted.

The Plan provided for an initial authorization of 1,550 shares of Class A common stock for issuance thereunder, plus an additional annual authorization effective January 1, 2006 equal to the lesser of (i) 3% of the Class A common stock outstanding on the date of determination, (ii) 500 shares or (iii) such lesser amount as may be determined by the Company’s Board of Directors. In September 2007 shareholders approved an amendment to The Plan increasing the number of shares reserved and available for grant from 1,550 to 2,550 and an automatic annual increase provision that increases the number of Plan shares reserved and available for grant by the lesser of the number of shares outstanding or 750 shares.

In December 2007, the Company’s Board of Directors authorized the accelerated vesting of substantially all outstanding unvested restricted stock awards held by employees representing approximately 845 shares. As a result of the acceleration, the Company recognized approximately \$4,200 of compensation expense during the 4th quarter of 2007, thereby eliminating the need to recognize these expenses in future periods.

In December 2007, the Company’s Board of Directors authorized the cancellation of all outstanding vested and unvested stock options representing approximately 200 shares. In connection therewith, the Company recognized approximately \$176 of compensation expense associated with the subject options during the 4th quarter of 2007, thereby eliminating the need to recognize these expenses in future periods.

In December 2007, the Company’s Board of Directors authorized the granting of 647 shares in new stock option awards to certain Company employees, with a \$1.00 per share exercise price. The new stock options were issued to employees at all levels of the company (excluding the CEO) with the \$1.00 exercise price set above the then current market price in an effort to further align the interests of the workforce as a whole with the interests of shareholders. The new stock options will vest over a four year period. The Company will recognize compensation expense of approximately \$24 related to remaining options during 2010-2011.

The following equity awards were outstanding at December 31,

	<u>2009</u>	<u>2008</u>	<u>2007</u>
Stock options	248	568	647
Restricted stock grants	—	397	1,966
Total outstanding equity awards	<u>248</u>	<u>965</u>	<u>843</u>

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On December 31, 2009 the following amounts were available for issuance under the plan:

Shares available for issuance at December 31, 2008	911
Restricted stock grants and options issued	—
Restricted stock grants and options forfeited or cancelled	320
Shares issued under employee stock purchase plan	—
Shares available for issuance at December 31, 2009	<u>1,231</u>

The fair value of each option award is calculated on the date of grant using the Black-Scholes option pricing model and certain subjective assumptions. Because the Company does not have sufficient trading history, expected volatilities are based on historical volatilities of comparable companies within our industry. We estimate forfeitures using a weighted average historical forfeiture rate. Our estimates of forfeitures will be adjusted over the requisite service period based on the extent to which actual forfeitures differ, or are expected to differ, from their estimate. The risk-free rate for the periods is based on the U.S. Treasury rates in effect at the time of grant. The expected term of options is based on the simplified method which assumes that the option will be exercised midway between the vesting date and the contractual term of the option. The Company is able to use the simplified method as the options qualify as “plain vanilla” options as defined by ASC 718 - Stock Compensation. We issued no options in 2009. The following table summarizes the assumptions used to calculate the fair value of options during 2008 and 2007.

	2008	2007
Weighted average fair value of options granted	\$ 0.33	\$ 0.33
Dividend yields	N/A	N/A
Expected volatility	58.3%-60.1%	58.3%-60.1%
Weighted average expected volatility	59.31%	59.45%
Risk free interest rates	3.56%-3.87%	3.56%-3.87%
Weighted average expected term (in years)	6.25	6.26

The following table summarizes information about stock option activity:

	Shares	Weighted average exercise price
Outstanding at December 31, 2007	647	\$ 1.00
Granted	1	1.00
Exercised	—	—
Forfeited or expired	(80)	1.00
Outstanding at December 31, 2008	568	1.00
Granted	—	—
Exercised	—	—
Forfeited or expired	(320)	1.00
Outstanding at December 31, 2009	248	1.00
Exercisable at December 31, 2009	<u>124</u>	<u>\$ 1.00</u>

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A summary of the Company's restricted share activity is presented below:

	Shares	Weighted average fair value at date of grant
Restricted shares outstanding at December 31, 2006	587	\$ 6.95
Granted	1,023	4.25
Vested	(463)	(5.94)
Accelerated	(845)	(7.24)
Forfeited	(106)	5.41
Restricted shares outstanding at December 31, 2007	196	\$ 3.43
Granted	397	0.49
Vested	(196)	(3.43)
Forfeited	—	—
Restricted shares outstanding at December 31, 2008	397	\$ 0.49
Granted	—	—
Vested	(397)	(0.49)
Forfeited	—	—
Restricted shares outstanding at December 31, 2009	—	\$ —

As of December 31, 2009, there was zero unrecognized compensation cost related to non-vested restricted stock issuances granted under the Plan. Total compensation expense for share based payment arrangements for the year ended December 31, 2009 and 2008 was \$77 and \$280 respectively, of which \$0 and \$0 was capitalized to real estate held for development and sale. The total deferred tax (liability) benefit related to stock compensation as of December 31, 2009 and 2008 amounted to \$(35) and \$(82) respectively. The Company intends to issue new shares of its common stock upon vesting of restricted stock grants or the exercise of stock options.

13. COMMITMENTS AND CONTINGENCIES

Litigation

On or about June 10, 2009 a judgment of \$1,502 was entered against Parker Chandler Homes, LLC (formerly known as Comstock Homes of Atlanta, LLC), a subsidiary of the Company, as a result of an uncontested breach of contract claim related to a discontinued development project in the Atlanta area. A liability for this judgment was recorded as of June 30, 2009. On November 12, 2009, Parker Chandler Homes, LLC, filed a Chapter 7 bankruptcy petition in the United States Bankruptcy Court, Northern District of Georgia, effectively eliminating any ongoing liability associated with the judgment. See details at Note 20.

On July 29, 2008 Balfour Beatty Construction, LLC, successor in interest to Centex Construction ("Balfour"), the general contractor for a subsidiary of the Company, filed liens totaling approximately \$552 at The Eclipse on Center Park Condominium project ("Project") in connection with its claim for amounts allegedly owed under the Project contract documents. In September 2008 the Company's subsidiary filed suit against Balfour to invalidate the liens and for its actual and liquidated damages in the approximate amount of \$17,100 due to construction delays and additional costs incurred by the Company's subsidiary with respect to the Project. In October 2008 Balfour filed counterclaims in the approximate amount of \$2,800. Subsequent to an expedited hearing filed by the Company's subsidiary to determine the validity of the liens that was ultimately heard in February 2009, we received an order of the court in April 2009 invalidating the liens. The trial began on September 8, 2009 and closed on September 16, 2009. On February 23, 2010, the Company's subsidiary received a judgment against Balfour in an amount of \$11,700 plus attorney's fees to be determined at a later date. On March 3, 2010, the Company's subsidiary received notice of Balfour's intention to appeal the judgment and post a supersedeas bond in the amount of \$12,500. If the judgment amount is upheld on appeal, a significant portion is required to be applied toward principal curtailment under the Company's loan agreement with KeyBank.

On December 30, 2009, Lawyers Title Insurance Corporation filed an indemnification claim against a Company subsidiary in an amount of \$126, seeking reimbursement of fees and costs allegedly incurred as a result of mechanic's liens improperly filed by Balfour Beatty at The Eclipse on Center Park Condominium project. The Company subsidiary disputes the allegations and intends to vigorously defend the claim.

Other than the foregoing, we are not subject to any material legal proceedings. From time to time, however, we are named as a defendant in legal actions arising from our normal business activities. Although we cannot accurately predict the amount of our liability, if any, that could arise with respect to legal actions pending against us, we do not expect that any such liability will have a material adverse effect on our financial position, operating results or cash flows. We believe that we have obtained adequate insurance coverage, rights to indemnification, or where appropriate, have established reserves in connection with these legal proceedings.

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Letters of credit and performance bonds

The Company has commitments as a result of contracts entered into with certain third parties, primarily local governmental authorities, to meet certain performance criteria as outlined in such contracts. The Company is required to issue letters of credit and performance bonds to these third parties as a way of ensuring that such commitments entered into are met by the Company. The letters of credit and performance bonds issued in favor of the Company and/or its subsidiaries mature on a revolving basis, and if called into default, would be deemed material if assessed against the Company and/or its subsidiaries for the full amounts claimed. Although in some circumstances we have negotiated with our lenders in connection with foreclosure agreements for the lender to assume certain liabilities with respect to the letters of credit and performance bonds, we cannot accurately predict the amount of any liability that could be imposed upon the Company with respect to maturing or defaulted letters of credit or performance bonds and it is anticipated that any such liability would likely have a material adverse effect on our financial position, operating results or cash flows. At December 30, 2009 the Company has issued \$976 in letters of credit and \$4,355 in performance and payment bonds to these third parties. No amounts have been drawn against these letters of credit and performance bonds.

Operating leases

The Company leases office space and model homes under non-cancelable operating leases. Future minimum annual lease payments under these leases at December 31, 2009:

<u>Year Ended:</u>	<u>Amount</u>
2010	\$ 224
2011	232
2012	242
Thereafter	—
Total	<u>\$ 698</u>

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Office and model home operating lease rental expense aggregated \$649, \$1,011 and \$2,151 respectively, for years ended December 31, 2009, 2008 and 2007.

14. FAIR VALUE OF FINANCIAL INSTRUMENTS

There are three measurement input levels for determining fair value: Level 1, Level 2, and Level 3. Fair values determined by Level 1 inputs utilize quoted prices in active markets for identical assets or liabilities that the Company has the ability to access. Fair values determined by Level 2 inputs utilize inputs other than quoted prices included in Level 1 that are observable for the asset or liability, either directly or indirectly. Level 2 inputs include quoted prices for similar assets and liabilities in active markets, and inputs other than quoted prices that are observable for the asset or liability, such as interest rates and yield curves that are observable at commonly quoted intervals. Level 3 inputs are unobservable inputs for the asset or liability, and include situations where there is little, if any, market activity for the asset or liability. An asset's or liability's level within the fair value hierarchy is based on the lowest level of input that is significant to the fair value measurement.

The carrying amounts reported in the consolidated balance sheets for cash and cash equivalents, accounts receivable, accounts payable and accrued liabilities are reasonable estimates of their fair values based on their short maturities. The carrying amount of floating rate debt approximates fair value.

The fair value of fixed rate debt is based on observable market rates (level 2 inputs). The following table summarizes the fair value of fixed rate debt and the corresponding carrying value of fixed rate debt as of:

	December 31, 2009	December 31, 2008
Carrying amount	\$ 9,000	\$ 10,797
Fair value	\$ 2,000	\$ 10,542

Fair value estimates are made at a specific point in time, based on relevant market information about the financial instruments. These estimates are subjective in nature and involve uncertainties and matters of significant judgment and therefore, cannot be determined with precision. Changes in assumptions could significantly affect the estimates.

The Company may also value its real estate held for development and sale at fair value on a nonrecurring basis if it is determined that an impairment has occurred. Such fair value measurements use significant unobservable inputs and are classified as level 3. See Note 2 for a further discussion of the valuation techniques and the inputs used.

15. INCOME TAXES

Income taxes are accounted for under the asset and liability method in accordance with ASC 740, "Accounting for Income Taxes," ("ASC 740"). Deferred tax assets and liabilities are recognized for future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax basis. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on the deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date.

For the twelve months ended December 31, 2009, the Company generated a tax loss of approximately \$32.6 million for federal and state tax purposes. Therefore, an effective tax rate of zero was assumed in calculating the current income tax expense at December 31, 2009.

Income tax provision consists of the following as of December 31st :

	2009	2008	2007
Current:			
Federal	\$ —	\$ —	\$(11,251)
State	(67)	48	(1,958)
	<u>(67)</u>	<u>48</u>	<u>(13,209)</u>
Deferred:			
Federal	(9,097)	(5,855)	(17,890)
State	(1,691)	(1,089)	(3,391)
	<u>(10,788)</u>	<u>(6,944)</u>	<u>(21,281)</u>
Other			
Valuation allowance	9,926	6,944	29,209
State franchise tax refund	—	—	—
Tax shortfall related to the vesting of equity awards	—	—	2,729
Total income tax expense (benefit)	<u>\$ (929)</u>	<u>\$ 48</u>	<u>\$ (2,552)</u>

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Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Components of the Company's deferred tax assets and liabilities at December 31 are as follows:

	2009	2008
Deferred tax assets:		
Inventory	\$ 16,926	\$ 19,047
Warranty	270	308
Investment in Affiliates	38	38
Net operating loss and tax credit carryforwards	27,314	15,483
Cancellation of debt gain	2,387	2,505
Accrued expenses	(84)	(176)
Stock based compensation	(36)	(82)
	46,815	37,123
Less — valuation allowance	(46,033)	(36,107)
Net deferred tax assets	782	1,016
Deferred tax liabilities:		
Depreciation and amortization	(782)	(1,016)
Net deferred tax liabilities	—	(1,016)
Net deferred tax assets (liabilities)	\$ —	\$ —

As of December 31, 2007, the Company recorded valuation allowances for certain tax attributes and other deferred tax assets. At December 31, 2009, significant uncertainty exists regarding the future realization of these deferred tax assets through future taxable income or carry back opportunities. If in the future the Company believes that it is more likely than not that these deferred tax benefits will be realized, the valuation allowances will be reversed.

The Company's ability to use its NOLs and, in certain circumstances, future built-in losses and depreciation deductions can be negatively affected if there is an "ownership change" as defined under Section 382 of the Internal Revenue Code. In general, an ownership change occurs whenever there is a shift in ownership by more than 50 percentage points by one or more 5% shareholders over a specified time period (generally three years). Given Section 382's broad definition, an ownership change could be the unintended consequence of otherwise normal market trading in the Company's stock that is outside of the Company's control.

The Company currently has approximately \$70,000 in Federal and State NOLs with a potential value of up to \$27,000 in tax savings. If unused, these NOLs will begin expiring in 2028. Under Internal Revenue Code Section 382 rules, if a change of ownership is triggered, the Company's NOL asset and possibly certain other deferred tax assets may be impaired. We estimate that as of December 31, 2009, the cumulative shift in the Company's stock was at an approximately 28% level compared with the 50% level that would trigger impairment of our NOL asset. However, if an ownership change were to occur due to the Company's valuation allowance on its net deferred tax assets, a Section 382 limitation is not expected to materially impact the Company's financial position or results of operations as of December 31, 2009. Additionally, if an ownership change were to occur, the application of Section 382 may require the Company to reduce its gross deferred tax assets related to its NOLs and possibly other deferred tax asset balances.

As discussed in Note, 1, we adopted the provisions of ASC 740 as of January 1, 2007. As a result of this adoption, the Company recorded a benefit to the opening accumulated deficit in the amount of \$1,663. The Company recognizes interest accrued related to unrecognized tax benefits in interest expense. Penalties, if incurred, would be recognized as a component of general and administrative expense. At December 31, 2008, the Company had gross unrecognized tax benefits of \$77, which was fully reserved. The reserve was limited to interest on the net timing difference. During 2009 the Company received approval for an accounting method change from the Internal Revenue Service that effectively allows the Company to recognize the previously unrecognized tax benefit. As a result, the Company reversed the \$77 reserve in 2009. As of December 31, 2009, the Company had no unrecognized tax benefit and the Company does not expect this to change significantly over the next 12 months.

We file U.S. and state income tax returns in jurisdictions with varying statutes of limitations. The 2007 through 2009 tax years generally remain subject to examination by federal and most state tax authorities.

A reconciliation of the statutory rate and the effective tax rate follows:

	2009	2008	2007
Federal statutory rate	35.00%	35.00%	35.00%
State income taxes — net of federal benefit	3.97%	3.97%	3.97%
Permanent differences	0.0%	1.85%	0.09%
Change in effective tax rate	0.0%	0.0%	(0.02)%
Tax reserve	0.0%	0.0%	(0.75)%
Tax shortfall related to the vesting of certain equity awards	0.0%	0.0%	(3.03)%
Change in valuation allowance	(35.86)%	(40.82)%	(32.43)%
Tax benefit	3.11%	0.00%	2.83%

[Table of Contents](#)**16. QUARTERLY RESULTS (unaudited)**

Quarterly results for the years ended December 31, 2009 and 2008 follow (in thousands, except per share amounts):

	Three months ended			
	March 31, 2009	June 30, 2009	September 30, 2009	December 31, 2009
Revenues	\$ 5,523	2,965	12,624	\$ 3,954
Operating loss	(2,997)	(26,191)	(658)	(1,967)
Pretax income (loss)	(2,644)	(27,743)	2,279	425
Net income (loss)	(2,645)	(27,743)	2,279	1,356
Basic earnings (loss) per share	(0.15)	(1.58)	0.13	0.08
Diluted earnings (loss) per share	(0.15)	(1.58)	0.12	0.07

	Three months ended			
	March 31, 2008	June 30, 2008	September 30, 2008	December 31, 2008
Revenues	\$16,376	\$ 12,003	\$13,073	\$ 5,209
Operating loss	(2,970)	(17,032)	(4,663)	(8,055)
Pretax loss	6,542	(16,618)	(2,197)	(4,738)
Net loss	6,542	(16,618)	(2,202)	(4,781)
Basic loss per share	0.40	(1.00)	(0.13)	(0.27)
Diluted loss per share	0.39	(1.00)	(0.13)	(0.27)

Quarterly and year-to-date computations of per share amounts are made independently. Therefore, the sum of per share amounts for the quarters may not agree with per share amounts for the year due to rounding.

[Table of Contents](#)**17. TROUBLED DEBT RESTRUCTURING**

On July 8, 2009 the Company executed a settlement agreement with an unsecured lender with respect to approximately \$1,664 of unsecured debt plus interest due. Under the terms of the settlement agreement, the Company agreed to forfeit their \$200 land option deposit and the unsecured lender agreed to release the Company from liability under the \$1,664 unsecured note and interest accrued. This transaction was accounted for as a full settlement of debt pursuant to ASC 470-60. On both a basic and diluted income per share basis the \$1,597 gain was \$0.09 per share for the twelve months ended December 31, 2009. The gain resulting from the foreclosure agreement was calculated as follows:

Carrying amount of debt settled in full	\$1,664
Cancellation of accrued interest	133
Total consideration	<u>1,797</u>
Forfeited deposit	200
Gain on troubled debt restructuring	<u>\$1,597</u>

On September 21, 2009 the Company entered into a settlement agreement and mutual release with Comerstone Bank (“Comerstone”) with respect to approximately \$5.1 million debt secured by its Gates of Luberon project in Atlanta, Georgia. Under the terms of the agreement, Comerstone released the Company, and its subsidiary Mathis Partners, LLC, from their respective obligations and guarantees relating to \$5.1 million of debt owed by the Company to Comerstone in exchange for a non-interest bearing unsecured subordinate note in the amount of \$0.4 million with a three year term. The parties have agreed to dismiss all pending litigation against each other. This transaction was accounted for as a transfer of assets in full settlement of debt pursuant to ASC 470-60. On both a basic and diluted income per share basis the \$1,206 gain was \$0.07 per share for the twelve months ended December 31, 2009. The gain resulting from the foreclosure agreement was calculated as follows:

Carrying amount of debt and accrued interest settled in full	\$ 5,105
Fair value of foreclosed real estate assets held for development and sale	(3,449)
Unsecured deficiency note	(400)
Cash payment	(50)
Gain on troubled debt restructuring	<u>\$ 1,206</u>

On September 28, 2009 the Company entered into a series of agreements with M&T Bank under which the bank agreed to release the Company from its obligations and guarantees relating to its Belmont loan and the Company agreed to cooperate with M&T Bank with respect to its foreclosure on the remaining portion of the Belmont Bay project. The project included 19 partially completed condominium units and 84 condominium building lots. M&T Bank’s foreclosure on these assets was completed in December 2009. The Company also entered into a non-interest bearing subordinated promissory note in connection with the Belmont loan in the amount of \$496 with a three-year maturity secured by the Cascades Project. This transaction was accounted for as a troubled debt restructuring modification of terms pursuant to ASC 470. On both a basic and diluted income per share basis the \$408 gain was \$0.02 per share for the twelve months ended December 31, 2009. The gain resulting from the foreclosure agreement was calculated as follows:

Transaction costs paid in cash	\$ —
Subordinated promissory note	496
Fair value of foreclosed real estate assets held for development and sale	<u>6,294</u>
Total consideration paid	6,790
Less: carrying amount of debt released by lender	6,617
Less: carrying amount of accrued interest and property taxes released	581
Gain on troubled debt restructuring	<u>\$ 408</u>

On November 11, 2009 the Company entered into an agreement with Fifth Third Bank in which the bank agreed to release the Company and its affiliates from its obligations and guarantees relating to a \$1.3 million project loan and eliminate past due interest and other charges associated with the subject debt. The Company agreed to cooperate with Fifth Third with respect to a foreclosure on a portion of the Brookfield project. In connection with the agreement with Fifth Third the Company agreed to provide Fifth Third an unsecured, non-interest bearing three year promissory note in the original principal amount of approximately \$25 provided that Fifth Third completes the foreclosure proceeding no later than February 28, 2010, unless extended pursuant to the terms of the agreement. Fifth Third’s foreclosure on the real estate assets was completed in December 2009. This transaction was accounted for as a troubled debt restructuring full settlement of terms pursuant to ASC 470. On both a basic and diluted income per share basis the \$192 gain was \$0.01 per share for the twelve months ended December 31, 2009. The gain resulting from the foreclosure agreement was calculated as follows:

Transaction costs paid in cash	\$ —
Unsecured promissory note	25
Fair value of foreclosed real estate assets held for development and sale	<u>1,141</u>
Total consideration paid	1,166
Less: carrying amount of debt released by lender	1,328
Less: carrying amount of accrued interest and property taxes released	30
Gain on troubled debt restructuring	<u>\$ 192</u>

18. SUBSEQUENT EVENTS

On February 15, 2010 the Company entered into a Modification Agreement to modify the terms of the Company’s senior unsecured note with Stonehenge Funding, LC (“Stonehenge”), an entity wholly-owned by Christopher Clemente, the Chairman and Chief Executive Officer of the Company. On December 23, 2009 Stonehenge acquired the senior unsecured note from JP Morgan Ventures (“JPMV”) which had a \$9,000,000 principal balance as described in the Amended and Restated Indenture between the Company and JPMV dated March 14, 2008 (the “JP Morgan Debt”). The purchase of the JP Morgan Debt also resulted in the transfer to Stonehenge of a warrant previously issued to JPMV for the purchase of 1,500,000 shares of the Company’s Class A Common Stock with a strike price of \$0.70 per share (“JP Morgan Warrant”). Gregory Benson, the Company’s Chief Operating Officer and a member of the Company’s Board of Directors, subsequently purchased a participation interest in the JP Morgan Debt and the JP Morgan Warrant from the Subordinate Lender.

Under the terms of the Modification Agreement, Stonehenge has agreed to forgive \$4,500,000 of the principal balance due from the Company under the JP Morgan Debt; reducing the principal balance by 50% to \$4,500,000. Stonehenge also agreed to forgive an additional amount due from the Company of approximately \$875,000 representing all past due interest, late fees and penalties accruing through December 31, 2009 (“Interest and Loan Fees”) under the JP Morgan Debt. Stonehenge further agreed to reduce the interest rate, effective January 1, 2010, by fifty percent (50%) to 300 basis points above the one year LIBOR on a floating basis. In addition, to ensure the Company’s ability to comply with certain restrictions placed upon the Company by KeyBank and Guggenheim Corporate Funding (collectively “Secured Lenders”) in connection with previously announced loan modifications enhancing cashflow to the Company, Stonehenge agreed to allow all future interest payments due from the Company under the JP Morgan Debt to accrue until at least 90 days after the Secured Lenders have been fully repaid. In connection therewith, Stonehenge may, on a quarterly basis, elect to accept stock of the Company (or warrants for the purchase thereof) with a cumulative value equal to the value of the scheduled interest payment in lieu of accruing a future quarterly interest payment.

Further, the Modification Agreement provides for the elimination or forbearance upon the enforcement of all financial covenants contained in the JP Morgan Debt and all previously reported covenant violations by the Company. The maturity date of the JP Morgan Debt remains unchanged at March 14, 2013, provided however, the Modification Agreement provides the Company with two optional extension periods of six months each to further assist the Company with its compliance with the restrictions of the Secured Lenders.

On February 25, 2010 the Company entered into a Seventh Loan Modification Agreement with Bank of America (“BOA”) regarding the modification of the terms of one certain unsecured loan with an approximate principal balance of \$3,700,000 (“Line of Credit”). In connection therewith the Company agreed to pay an extension fee of \$100,000 and BOA agreed to delay for one year, until January 2011, the commencement of repayments of all previously unpaid interest accruing since the date of the Company’s previously reported modification of the Line of Credit in November 2008. The maturity date remains unchanged at December 28, 2018.

On March 17, 2010 the Company completed the sale of land at its Station View project located in Loudoun County, Virginia for \$2.8 million.

19. CHANGE IN ACCOUNTING ESTIMATES

The preparation of the financial statements, in conformity with accounting principles generally accepted in the United States of America, requires management to make estimates and assumptions that affect the reported amounts in the financial statements and accompanying notes. Actual results could differ from those estimates. Material estimates are utilized in the valuation of real estate held for development and sale, valuation of deferred tax assets, contingent liabilities, capitalization of costs, consolidation of variable interest entities, warranty reserves and incentive compensation accruals.

During the twelve months ended December 31, 2008, the Company recognized a reduction in selling, general and administrative expense of approximately \$1,417 related to the amount accrued at December 31, 2007 for 2007 employee incentive compensation payments. This transaction was a change in estimate due to the fact that after the completion and filing of the Company’s form 10-K for the year ended December 31, 2007, the Company’s CEO, with the approval of the Compensation Committee of the Board of Directors, determined to forgo paying 2007 performance based bonuses. Instead, the Company elected to pay bonuses to retain key employees through 2008 and executives through 2009. The new facts and circumstances that came to light subsequent to the filing of form 10-K led management to conclude that this was a change in an accounting estimate. Accordingly, management has accounted for the change in estimate in 2008 in accordance with ASC 250, *Accounting Changes and Error Corrections*.

20. DECONSOLIDATION OF SUBSIDIARIES

On November 12, 2009, Buckhead Overlook, LLC, Post Preserve, LLC and Parker Chandler Homes, LLC (collectively, “Parker Chandler Homes”), filed bankruptcy petitions (the “Petitions”) in the United States Bankruptcy Court, Northern District of Georgia. Parker Chandler Homes were all subsidiaries of Comstock Homebuilding Companies, Inc. (the “Company”) and Parker Chandler Homes, LLC was formerly known as Comstock Homes of Atlanta, LLC. On or about January 21, 2010, the United States Bankruptcy Court, Northern District of Georgia entered an order approving the trustee’s report of no distribution, discharged the trustee and closed the estate for all three subsidiary filings. The Chapter 7 petitions were filed in furtherance of the Company’s Strategic Realignment Plan that includes the liquidation of Parker Chandler Homes and the winding down of all operations in the Atlanta market.

Prior to the bankruptcy filing, the Parker Chandler Homes subsidiaries were consolidated in the financial statements of Comstock. After filing the Chapter 7 petitions with the bankruptcy court, Comstock no longer had the controlling financial interest as the subsidiaries became subject to the control of the bankruptcy court. As a result, the Company is required under ASC 810-10-55-4A to deconsolidate the subsidiaries as of the date of the bankruptcy filing. At the date of the bankruptcy filing, the Company accounted for the deconsolidation of the subsidiaries as a gain in net income, calculated in accordance with ASC 810-10-40-5 as follows:

Fair value of consideration received	\$ —
Fair value of any retained noncontrolling investment in former subsidiaries	—
Carrying amount of any noncontrolling interest in the former subsidiaries	—
Total consideration received	—
Carrying amount of former subsidiaries net liabilities	1,965
Gain on deconsolidation of subsidiaries	<u>\$1,965</u>

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SIGNATURES

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

COMSTOCK HOMEBUILDING COMPANIES, INC.

Date: March 31, 2010

By: /s/ CHRISTOPHER CLEMENTE
Christopher Clemente
Chairman and Chief Executive Officer

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

<u>Signature</u>	<u>Capacity</u>	<u>Date</u>
<u>/s/ CHRISTOPHER CLEMENTE</u> Christopher Clemente	Chairman of the Board of Directors and Chief Executive Officer (Principal Executive Officer)	March 31, 2010
<u>*</u> Gregory V. Benson	Chief Operating Officer	March 31, 2010
<u>/s/ JEFFREY R. DAUER</u> Jeffrey R. Dauer	Chief Financial Officer (Principal Financial Officer)	March 31, 2010
<u>*</u> A. Clayton Perfall	Director	March 31, 2010
<u>*</u> David M. Guernsey	Director	March 31, 2010
<u>*</u> James A. MacCutcheon	Director	March 31, 2010
<u>*</u> Norman D. Chirite	Director	March 31, 2010
<u>*</u> Robert P. Pincus	Director	March 31, 2010
<u>*</u> Socrates Verses	Director	March 31, 2010
By: <u>/s/ JEFFREY R. DAUER</u> Jeffrey R. Dauer <i>Attorney-in-Fact</i>		March 31, 2010

**FORBEARANCE AGREEMENT AND
SECOND AMENDMENT OF LOAN AGREEMENT**

THIS FORBEARANCE AGREEMENT AND SECOND AMENDMENT OF LOAN AGREEMENT (the "Forbearance Agreement"), is made as of the 27th day of January, 2009 ("Forbearance Effective Date") by and among **COMSTOCK PENDERBROOK, L.C.**, a Virginia limited liability company ("Borrower") and **COMSTOCK HOMEBUILDING COMPANIES, INC.**, a Delaware corporation ("Comstock" or "Guarantor") (Borrower and Comstock are referred to herein collectively as "Obligors"), and **GUGGENHEIM CORPORATE FUNDING, LLC**, having an address at 135 East 57th Street, New York, New York, 10022 ("Administrative Agent"), for the benefit of the several banks and other financial institutions or entities from time-to-time parties to the Loan Agreement, defined below (the "Lenders" and together with the Administrative Agent, the "Beneficiary").

RECITALS

WHEREAS, Borrower, Guarantor, the Administrative Agent and the Lenders entered into a Loan Agreement dated February 22, 2007 as amended by that certain First Amendment of Loan Documents dated April 10, 2007 (collectively the "Loan Agreement"), pursuant to which the Lenders agreed to and did make loans to the Borrower in the aggregate principal amount of \$28,000,000.00 (the "Loans") for the purposes stated in the Loan Agreement. The Loans are now secured by, among other things, (1) an Amended and Restated Deed of Trust With Absolute Assignment Of Leases And Rents, Security Agreement and Fixture Filing executed by Borrower, as Grantor, in favor of the Administrative Agent and Lenders, as Beneficiaries (the "Deed of Trust"); (2) an Environmental Indemnity Agreement executed by Borrower and Guarantor (the "Environmental Indemnity Agreement"); (3) the Limited Guaranty executed by the Guarantor (the "Guaranty"); (4) the Completion Guaranty executed by the Guarantor (the "Completion Guaranty"); (5) the Pledge Agreement executed by the Guarantor (the "Pledge"); and (6) the Collateral Assignment of Developer's Rights executed by the Borrower (the "Collateral Assignment"), each dated February 22, 2007 unless otherwise indicated (collectively the "Loan Documents"); and

WHEREAS, a number of defaults have occurred under the Loan Documents including the failure by Borrower to make payment in full of amounts due and owing under the Loan Documents, and Borrower has requested that the Administrative Agent forebear from collection of the Loans, and make certain modifications to the terms and provisions of the Loans and the Loan Agreement; and

WHEREAS, the Administrative Agent and the Lenders are willing to forebear from exercising their rights and remedies under the Loan Agreement with respect to the Existing Defaults (defined below), and to make certain modifications to the terms and provisions of the Loans and the Loan Agreement in accordance with the provisions of this Forbearance Agreement.

NOW, THEREFORE, for and in consideration of the sum of Ten and 00/100 Dollars (\$10.00) cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto stipulate and agree as follows:

1. Recitals. All of the foregoing recitals are hereby incorporated into this Forbearance Agreement. Capitalized terms that are not otherwise defined in this Forbearance Agreement shall have the same meanings herein as ascribed to such terms in the Loan Agreement.

2. Acknowledgment of Loan Balances and Default.

a) Borrower and Guarantor each acknowledge that they are in default under the Loan Documents, such Events of Default being specified in the letters to Borrower and Guarantor attached hereto as Exhibit A (“Existing Defaults”) and the Administrative Agent and the Lenders have the right to exercise all remedies set out in the Loan Documents and available at law and in equity, including but not limited to foreclosing on the Units and the Property. Borrower and Guarantor hereby represent, warrant, agree and acknowledge that the outstanding balances on the Loans as of January 27, 2009 are as follows:

<u>Tranche A Term Loan:</u>	
Principal	\$ 0.00
Interest	0.00
Total	\$ 0.00
<u>Tranche B Term Loan:</u>	
Principal	\$13,593,605.00
Interest	424,915.32
Quarterly Admin. Fee	10,000.00
Total	\$14,028,520.32

b) Borrower and Guarantor each hereby reaffirm to the Administrative Agent and the Lenders (i) the validity and enforceability of the Loan Agreement and the other Loan Documents as modified herein; (ii) that the signature of Borrower and Guarantor upon the Loan Agreement and the Loan Documents were authorized and are genuine; and (iii) neither the Borrower nor the Guarantor has any knowledge of any offsets or defenses to the enforceability of the Loan Agreement and the other Loan Documents.

c) The parties hereto acknowledge that the interest and the Quarterly Admin. Fee due and owing through January 27, 2009 on the Tranche B Term Loan are to be added to the principal balance due on the Tranche B Term Loan resulting in a principal balance due on the Tranche B Term Loan of \$14,028,520.32.

3. Payment of Past Due Amounts.

Simultaneously with the execution of this Forbearance Agreement by Borrower and Guarantor, Borrower agrees to pay, and shall pay, the following amounts:

- a) All real estate taxes presently due and owing relating to the Property and Units, including all past due taxes, penalties and interest, in the amount of \$324,643.21; and
- b) All condominium association assessments due and owing for the Units through January 31, 2009, in the amount of \$479,572.81; and
- c) To the Administrative Agent the following amounts:
 - (i) \$15,000.00 to reimburse the Administrative Agent for expenses incurred in connection with the review and audit of books and records of the Borrower by Alvarez and Marsal; and
 - (ii) \$45,000.00 to reimburse the Administrative Agent for attorney's fees and costs incurred in connection with the Loans, the defaults by the Borrower and Guarantor, the Lawsuit (as defined in Section 9 of this Forbearance Agreement) and the negotiation, preparation and implementation of this Forbearance Agreement

Borrower shall provide the Administrative Agent with proof of payment of the amounts required to be paid pursuant to Sections 3(a) and 3(b) above no later than the Forbearance Effective Date.

4. Borrower's Calculation of NOI, Interest Reserve Account, and Proof of Insurance.

a) On or before the Forbearance Effective Date, Borrower shall deliver to the Administrative Agent (i) Borrower's calculation of NOI, as required by Section 5.1 of the Loan Agreement, for the months of October, November and December, 2008, (ii) Borrower's balance sheet for December, 2008 (in a form reasonably acceptable to Administrative Agent) ("Borrower's December Balance Sheet"), and (iii) a rent roll for the Property for January, 2009 (in a form reasonably acceptable to Administrative Agent). From and after the Forbearance Effective Date, Borrower shall strictly comply with the requirements of Section 5.1 of the Loan Agreement, as modified herein.

b) Borrower and Administrative Agent hereby acknowledge that at Closing, Borrower deposited into the Interest Reserve Account established pursuant to Section 5.1 of the Loan Agreement the amount of Two Million Five Hundred Thousand Dollars and No Cents (\$2,500,000.00). Borrower and Guarantor acknowledge that the Administrative Agent had the right to and did set-off against the Interest Reserve Account and applied the funds in the Interest Reserve Account against interest and principal amounts owed on the Loans and that as of the Forbearance Effective Date there are no funds on deposit in the Interest Reserve Account.

c) Simultaneously with the execution of the Forbearance Agreement, Borrower shall pay to Administrative Agent the positive difference, if any, between (i) the net cash reflected on Borrower's December Balance Sheet, and (ii) the sum of (A) \$25,000, plus (B) the amount used to pay the items set forth in Section 3 of this Forbearance Agreement, plus (C) a \$75,000 partial reimbursement to Guarantor of expenses paid by Guarantor on behalf of the Borrower in accordance with the Loan Documents. Any amount paid to Administrative Agent pursuant to this Section 4(c) shall be applied to the outstanding principal balance of the Tranche B Term Loans.

d) On or before the Forbearance Effective Date, Borrower shall deliver to Administrative Agent proof of Insurance in compliance with Section 6.8 of the Loan Agreement.

5. Modification of Loan Agreement.

Provided that Borrower timely satisfies all of the terms, conditions and requirements set forth above in this Forbearance Agreement, the Loan Agreement from and after the Forbearance Effective Date is hereby modified as follows:

- a) Section 6.8.1(c) of the Loan Agreement is amended to reduce all insurance limits and sublimits to Two Million Dollars (\$2,000,000) in the annual aggregate and One Million Dollars (\$1,000,000) per occurrence.
- b) Section 7.4 of the Loan Agreement is amended to read as follows:

Sale Activity. Borrower shall use all commercially reasonable efforts to market and sell all Units in the Project for a Unit selling price sufficient to satisfy the requirements of Section 6.7(i) and Section 7.7(b). Borrower shall provide Administrative Agent by the tenth (10th) day of each month with a Sales Report certified by the Borrower for the preceding month. Within ten (10) days after written request from Administrative Agent, Borrower shall also provide Administrative Agent with any information reasonably requested by Administrative Agent or Lenders regarding sales activity at the Project.

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- c) Section 7.5 of the Loan Agreement and Exhibit E of the Loan Agreement are deleted.
- d) Section 7.1(c) of the Loan Agreement is deleted.
- e) Section 6.7(i) of the Loan Agreement entitled “Unit Selling Price” is amended to read as follows:
Unit Selling Price. From and after the Forbearance Effective Date, Units shall be sold for no less than a minimum unit selling price set by the Borrower necessary to satisfy the payment requirements to the Administrative Agent set forth in Section 7.7(b), unless otherwise approved by the Administrative Agent, in writing.
- f) Section 7.1(f) of the Loan Agreement is deleted.
- g) The first sentence of Section 7.7(a) of the Loan Agreement is amended to read as follows:
Condominium Closings. No less than three (3) Business Days prior to the closing of each Residential Unit or Parking Unit pursuant to an Approved Condominium Contract, Borrower shall deliver notice to Administrative Agent (a “Closing Notice”) which Closing Notice shall: (i) specifically identify the Residential Unit(s) and Parking Units to be conveyed; (ii) state the purchase price to be paid therefore, specifically identifying the portion thereof applicable to the Residential Unit, Upgrades, if any, and the Parking Units, if any; and (iii) be accompanied by the form of the partial release to be executed by the Administrative Agent on behalf of the Lenders in order to release its security interest under the Deed of Trust in the applicable Residential Unit and/or Parking Units to be sold and containing a description of the applicable Residential Unit and/or Parking Units to be released, which partial release shall be prepared by Borrower at Borrower’s sole cost and expense (“Unit Releases”).
- h) Section 7.7(b) of the Loan Agreement is amended to read as follows:
Release of Units. Upon receipt of a Closing Notice and satisfaction of all conditions precedent set forth in Section 7.7(a) and this Section 7.7(b), and upon the confirmation of the closing of a Residential Unit and/or Parking Units pursuant to an Approved Condominium Contract (such confirmation to be satisfied through the delivery of a fully executed HUD-1 from the settlement agent coordinating the closing, and written confirmation from the settlement agent coordinating the closing of such agent’s receipt of immediately available funds sufficient to fully fund the closing in

accordance with the fully executed HUD-1 for the closing), Administrative Agent shall authorize in writing recordation of the deed transferring title to the Unit pursuant to the Approved Condominium Contract and agrees to release the applicable Residential Unit, Parking Units and its appurtenant undivided interest in the common elements from the lien of the Deed of Trust and the other Loan Documents upon receipt of the Unit Release Payment for each Unit so sold. As used herein, "Unit Release Payment" means 90% of the Net Sales Price for such Residential Unit and its Parking Units, but in no event not less than \$135,000, other than with the prior written consent of the Administrative Agent. Borrower shall cause the Title Insurer, as escrowee, to pay the proceeds of sale in an amount of not less than the Unit Release Payment directly to Administrative Agent by wire-transfer of immediately available funds. The proceeds of sale shall be applied to the outstanding principal balance of the Tranche B Term Loans.

- i) Exhibit F of the Loan Agreement is replaced with Exhibit F attached to this Forbearance Agreement.
- j) Section 6.7(j) of the Loan Agreement is amended to read as follows:

Number of Units Sold. (i) From and after the Forbearance Effective Date and continuing through December, 2010, prior to the end of each calendar quarter that all or any part of the Loans are outstanding, Borrower, on an ongoing cumulative basis, shall have closed on the Minimum Unit Settlements as set forth below:

Q1 2009: 0
Q2 2009: 0
Q3 2009: 1
Q4 2009: 6
Q1 2010: 8
Q2 2010: 10
Q3 2010: 16
Q4 2010: 24

Borrower's failure to close on the required Minimum Unit Settlements by the end of any of the above referenced calendar quarters shall be an Event of Default under this Agreement unless, (a) within twenty-five (25) days of the end of such calendar quarter, the Borrower provides Administrative Agent with written notice that it will either: (i) affect a Unit Deficiency Reduction Payment as defined in Section 6.7(j)(ii) below, or (ii) affect a

Deed-in-Lieu Cure as defined in Section 6.7(j)(iii) below, and in such notice specify which option has been chosen by Borrower, and (b) if such notice is timely delivered, the Borrower delivers the Unit Deficiency Reduction Payment or the Cure Deed (together with all applicable recording costs for the Cure Deed and all affidavits and documents reasonably required for the Administrative Agent to obtain owner's title insurance for the conveyed Units), as the case may be, to Administrative Agent within thirty (30) days of the end of such calendar quarter.

(ii) A "Unit Deficiency Reduction Payment" occurs when the Borrower makes a release payment to the Administrative Agent for the number of Residential Units representing the difference between the Minimum Unit Settlements required for such calendar quarter under Section 6.7(j)(i) herein and the actual cumulative number of Residential Units closed by the end of such calendar quarter. The Residential Units shall be released under this provision in accordance with the order and priority set forth in Section 6.7(j)(iii) until sufficient Residential Units have been released to satisfy the Event of Default. Each Unit Deficiency Reduction Payment will be an amount equal to the then Average Debt Per Unit multiplied by the following in accordance with the applicable Residential Unit type:

<u>Unit Type</u>	<u>Multiple</u>
Penderbrook	1.40x
McLean	1.30x
Fairfax	1.20x
Clifton	1.10x

Upon receipt of the Unit Deficiency Reduction Payment, Administrative Agent will release such Residential Units from the lien of the Deed of Trust. Residential Units released through a Unit Deficiency Reduction Payment shall be deemed closed Units for the purpose of: (i) satisfying the Minimum Unit Settlement requirements set forth in Section 6.7(j)(i); (ii) extending the Maturity Date in accordance with Section 2.2(f)(ii); and (iii) calculating and re-computing PIK Interest in accordance with Section 2.6(g).

(iii) A "Deed-in-Lieu Cure" occurs when the Borrower delivers to the Administrative Agent a deed in the form attached hereto as Exhibit F ("Cure Deed") for a total number of Residential Units (and their corresponding Parking Units and appurtenant undivided interest in the common elements) representing the difference between the Minimum Unit Settlements required for such calendar quarter under Section 6.7(j)(i)

herein and the actual cumulative Residential Units closed by the end of such calendar quarter. The Residential Units shall be conveyed “as-is” and alternating between unrenovated and renovated Residential Units in the following order: (A) unrenovated, vacant and not leased, (B) renovated, vacant and not leased, and once all Residential Units falling into categories (A) and (B) have been conveyed, then (C) unrenovated, leased, and (D) renovated, leased; all in accordance with the following sentence. Residential Units shall be conveyed on a rotating basis in the following order, subject to the renovation status and availability of each Residential Unit as provided in this Section 6.7(j)(iii) above: (w) Penderbrook, (x) McLean, (y) Fairfax, and (z) Clifton. For each Residential Unit conveyed pursuant to this Section 6.7(j)(iii), the Loan balance will be reduced by an amount equal to the then Average Debt Per Unit conveyed, multiplied by the following in accordance with the applicable Residential Unit type:

<u>Unit Type</u>	<u>Multiple</u>
Penderbrook	1.22x
McLean	1.05x
Fairfax	0.94x
Clifton	0.78x

(iv) Residential Units conveyed to Lender by Cure Deed pursuant to Section 6.7(j)(iii) shall not be considered closed Units for purposes of (a) satisfying the requirements for extending the Maturity Date in accordance with Section 2.2(f)(ii); and (b) calculating and re-computing PIK Interest in accordance with Section 2.6(g).

(v) In no event shall the Borrower convey to Administrative Agent pursuant to the provisions of Section 6.7(j)(iii) more than that number of Residential Units required to satisfy the Event of Default.

k) Section 2.6(b) of the Loan Agreement is amended to read as follows:

Interest (“Interest”) shall accrue and be payable in cash on the outstanding principal balance of each of the Tranche B Term Loans at the rate (the “Tranche B Term Loan Interest Rate”) from time to time which is equal to the Index Rate (as defined in Section 2.6(c)) then in effect plus 200 basis points.

l) The following is added to Section 2.6 of the Loan Agreement:

(g) (i) Commencing on the Forbearance Effective Date, additional paid in kind interest (“PIK Interest”) shall accrue on a monthly basis on the Loans. The PIK Interest rate charged shall depend upon the cumulative number of Residential Units closed as of the last day of the previous calendar quarter according to the following schedules:

Schedule A: For Calendar Year 2009:

<u>Cumulative Residential Units Closed</u>	<u>PIK Interest Rate (basis points per annum)</u>
0-9	1200
10	700
11	650
12	600
13	550
14	500
15	450
16	400
17	350
18	300
19	250
20 or more	200

Schedule B: For Calendar Year 2010:

<u>Cumulative Residential Units Closed</u>	<u>PIK Interest Rate (basis points per annum)</u>
0-15	1200
16	700
17	650
18	600
19	550
20	500
21	450
22	400
23	350
24	300
25	250
26 or more	200

Schedule C: For the Calendar Year 2011:

From January 1, 2011 through the Maturity Date the PIK Interest Rate (basis points per annum) shall be determined based on the rate in effect on Schedule B herein as of December 31, 2010.

Notwithstanding the above schedules to the contrary, PIK Interest commencing on the Forbearance Effective Date through March 31, 2009 and PIK Interest commencing on January 1, 2010 through March 31, 2010 shall accrue at the rate of 1200 basis points per annum (12.0%), subject to adjustment as provided in Section 2.6(g)(ii). Otherwise, PIK Interest shall accrue at the rates set forth in the above schedules based on the cumulative number of Residential Units closed as of the last day of the previous calendar quarter. PIK Interest shall accrue and be added to the principal amounts owing on the Loans at the end of each month.

(ii) On each of December 31, 2009 and December 31, 2010, PIK Interest charged for the preceding twelve (12) month period shall be recomputed based upon the rates shown on the schedules in Section 2.6(g)(i) corresponding to the cumulative Residential Units closed during the preceding twelve (12) month period, and the principal balance due on the Loans shall be adjusted to take into account this recomputation. By way of example, the PIK Interest rate for Q1 2009 is 1200. If there are five (5) Residential Units closed during Q1 2009, based upon the number of Units closed, PIK Interest for Q2 2009 will accrue at a rate of 1200 basis points. If there are then eight (8) additional Residential Units closed during Q2 2009, based upon the cumulative number of Residential Units closed for Q1 2009 and Q2 2009 (which is 13), PIK Interest for Q3 2009 will accrue at a rate of 550 basis points. If two (2) additional Residential Units closed during Q3 2009, based upon the cumulative number of Residential Units closed for Q1 2009, Q2 2009 and Q3 2009 (which is 15), PIK Interest for Q4 2009 will accrue at a rate of 450 basis points. If two (2) additional Residential Units closed during Q4 2009, based upon the cumulative number of Residential Units closed for the calendar year 2009 (which is 17), PIK Interest for the entire calendar year 2009 is recomputed based upon a rate of 350 basis points, and the amount of PIK Interest for the calendar year 2009 added to the principal balance of the Loans would be adjusted accordingly. The PIK Interest for Q1 2010 would then begin to accrue at a rate of 1200 basis points.

(iii) If the Loans are refinanced or paid in full prior to the Maturity Date, PIK Interest charged for the calendar year in which the Loans are refinanced or paid in full (“Payoff Year”) shall be at a rate of 200 basis points, retroactive to January 1 of the Payoff Year.

m) Section 2.6(e) of the Loan Agreement is amended to read as follows:

Interest accruing through and including the last day of each calendar month (exclusive of PIK Interest) shall be payable in arrears on each Interest Payment Date, provided that interest accruing pursuant to Section 2.6(d) shall be payable from time-to-time on demand.

n) Section 5.1 of the Loan Agreement is amended to read as follows:

On the fifteenth day of each calendar month, beginning February 15, 2009, Borrower shall submit to Administrative Agent Borrower’s calculation of NOI for the preceding month, a balance sheet for Borrower in form acceptable to Administrative Agent for the preceding month, and a rent roll for the Project in form acceptable to Administrative Agent for the current month. Borrower shall have the right to retain NOI not to exceed \$100,000 in each calendar year. All NOI in excess of \$100,000 in each calendar year shall be paid to the Administrative Agent on each Interest Payment Date and applied to the outstanding principal balance of the Tranche B Term Loans.

o) The following shall be added to Section 2.2 of the Loan Agreement:

(f) (i) For purposes of this Agreement, the term “Maturity Date” shall mean March 6, 2011 (“Modified Maturity Date”), subject to the provisions of Section 2.2(f)(ii).

(ii) The Borrower shall be entitled to extend the Modified Maturity Date (such date being an “Extended Maturity Date”) or the current Extended Maturity Date based on the cumulative number of Residential Units closed between the Forbearance Effective Date and the date which is fourteen (14) calendar days prior to the Modified Maturity Date or then current Extended Maturity Date (“Sales Period”) as follows:

<u>Number of Residential Units Closed</u>	<u>Extended Maturity Date</u>
45	July 6, 2011
51	September 6, 2011
57	November 6, 2011
63	January 6, 2012
69 or more	March 6, 2012

(iii) If the Modified Maturity Date is extended, the “Maturity Date” shall mean the then current Extended Maturity Date.

(iv) In the event Borrower has not closed on the number of Residential Units required in Section 2.2(f)(ii) during the Sales Period to qualify for an Extended Maturity Date, Borrower (or Borrower’s affiliate acting for the Borrower) shall have the option of extending the Modified Maturity Date or the then current Extended Maturity Date by making a release payment for the number of Residential Units representing the difference between the number of Residential Units required to be closed under Section 2.2(f)(ii) to qualify for an Extended Maturity Date and the actual number of Residential Units closed during the Sales Period (“Borrower Release Payment Option”). Residential Units shall be released under this provision in accordance with the order and priority set forth in Section 7.6(j)(iii) until sufficient Residential Units have been released to meet the required number of Residential Units closed to qualify for an Extended Maturity Date. Each Residential Unit release payment will be an amount equal to then outstanding Average Debt Per Unit multiplied by the following in accordance with the applicable Residential Unit type:

<u>Unit Type</u>	<u>Multiple</u>
Penderbrook	1.40x
McLean	1.30x
Fairfax	1.20x
Clifton	1.10x

Borrower shall provide Administrative Agent with written notice no later than fourteen (14) calendar days prior to the Modified Maturity Date or then current Extended Maturity Date that it will be exercising the Borrower Release Payment Option. If Borrower timely exercises the Borrower Release Payment Option, payment for the Residential Units (calculated in accordance with this Section 2.2(f)(iv)) (“Borrower Release Payment”) shall be delivered to Administrative Agent no later than the Modified Maturity Date or the then current Extended Maturity Date. Upon receipt of the Borrower Release Payment, Administrative Agent will release such Residential Units from the lien of the Deed of Trust. Residential Units released pursuant to a Borrower Release Payment Option will be counted toward the calculation of the number of Residential Units required to be closed under Section 2.2(f)(ii) with respect to qualifying for additional Extended Maturity Dates.

(v) If Borrower shall not have closed on the number of Residential Units required in Section 2.2(f)(ii) to qualify for an extension of the Modified Maturity Date or the then current Extended Maturity Date during the Sales Period, and (A) does not exercise the Borrower Release Payment Option set forth in Section 2.2(f)(iv), or (B) does not refinance or pay the Loans in full by the Modified Maturity Date or the then current Extended Maturity Date, such shall be an Event of Default and Administrative Agent and the Lenders may exercise any or all of the remedies set forth in Article X of the Agreement. If Borrower does not refinance or pay the Loans in full by any final Extended Maturity Date, such shall be an Event of Default and Administrative Agent and Lenders may exercise any or all of the remedies set forth in Article X of the Agreement.

p) Section 5.2 of the Loan Agreement is amended to read as follows:

Deposits for Real Estate Taxes, HOA Fees and Insurance Premiums. (a) At the election of Administrative Agent, Administrative Agent shall establish a Tax, HOA and Insurance Reserve Account with a bank or financial institution selected by Administrative Agent, and Borrower shall on the Interest Payment Date deposit with Administrative Agent an amount equal to (i) one-twelfth (1/12) of 100% of the annual Real Estate Taxes next to become due upon the Property for the payment of Real Estate Taxes when due, (b) one-twelfth (1/12) of 100% of the HOA Fees next to become due upon the Property for the payment of HOA Fees when due, and (c) one-twelfth (1/12) of the Insurance Premiums that Administrative Agent estimates will be payable during the next ensuing twelve (12) months for the renewal of the coverage afforded by the Insurance Policies upon the expiration thereof or such higher amount necessary to accumulate with Administrative Agent sufficient funds to pay all such Insurance Premiums at least thirty (30) days prior to the expiration of the Insurance Policies, which payments shall be deposited by Administrative Agent into the Tax, HOA and Insurance Reserve Account; provided that in the case of the first such deposit there shall be deposited by Borrower, in addition, an amount which, when added to the aggregate amount of monthly sums next payable under this Section 5.2, will result in a sufficient reserve to pay the Real Estate Taxes, HOA Fees and Insurance Premiums next becoming due one month prior to the date when such Real Estate Taxes, HOA Fees and Insurance Premiums are, in fact, due and payable. If Administrative Agent determines at any time that the monthly payments are not adequate to fund the next installment of Real Estate

Taxes, HOA Fees and Insurance Premiums due, Borrower shall make an additional deposit in an amount equal to the expected deficiency. The amount of the deposits described in this Section 5.2(a) (herein generally called “Tax, HOA and Insurance Reserve Funds”) shall be based upon Administrative Agent’s reasonable estimate as to the amount of Real Estate Taxes, HOA Fees and Insurance Premiums next to be payable. Failure of Borrower to make the monthly deposits required by this Section 5.2 shall constitute an Event of Default.

(b) It shall be the responsibility of Borrower to furnish Administrative Agent with the bills for the Real Estate Taxes, HOA Fees and Insurance Premiums not later than the date that is thirty (30) days (or such later date if Borrower does not receive the bills from the billing party by such date) prior to the date on which the same are due and payable without penalty or premium of any kind. If the total Tax, HOA and Insurance Reserve Funds on hand shall not be sufficient to pay all of the Real Estate Taxes, HOA Fees and Insurance Premiums when the same shall become due, then Borrower shall deliver to Administrative Agent at the time of the submission of the bills to Administrative Agent as described above an amount equal to the deficiency. If the total of such Tax, HOA and Insurance Reserve Funds exceeds the amount required to pay the Real Estate Taxes, HOA Fees and Insurance Premiums, such excess shall be credited against subsequent payments to be made for such deposits.

(c) Provided Administrative Agent has required Borrower to deposit funds into the Tax, HOA and Interest Reserve Account for the payment of Real Estate Taxes, HOA Fees and Insurance Premiums, and provided Borrower complies with the provisions of Sections 5.2(a) and (b), Administrative Agent shall timely submit payment to the proper entities for the amount of Real Estate Taxes, HOA Fees or Insurance Premiums for which such funds were escrowed. If Borrower has complied with the provisions of Sections 5.2(a) and (b) and Administrative Agent fails to timely pay the Real Estate Taxes, HOA Fees or Insurance Premiums, Administrative Agent shall be solely responsible for payment of all applicable late fees and costs associated with the late payment of the Real Estate Taxes, HOA Fees and Insurance Premiums. If Borrower fails to comply with the provisions of Sections 5.2(a) and (b), Administrative Agent shall have no obligation to submit payment for the Real Estate Taxes, HOA Fees and Insurance Premiums to the proper entities.

(d) Administrative Agent hereby elects, and Borrower and Guarantor hereby acknowledge such election, to establish as of the Forbearance Effective Date the Tax, HOA and Insurance Reserve Account pursuant to Section 5.2(a) and Borrower shall make payments into the Tax, HOA and

Insurance Reserve Account only for Real Estate Taxes and HOA Fees in accordance with Section 5.2(a) beginning on February 15, 2009. Administrative Agent further agrees it shall not elect to collect Insurance Premiums so long as it is provided with a current certificate of insurance evidencing the coverage set forth in Section 6.8.1.

- q) All references in Section 5.3 to the “Tax and Insurance Reserve Account” shall be replaced with “Tax, HOA and Interest Reserve Account”.
- r) Section 9.1(f) of the Loan Agreement is amended to read as follows:

Bankruptcy, Insolvency, etc. Borrower shall: (i) become insolvent or generally fail to pay, or admit in writing its inability or unwillingness to pay, debts as they become due; (ii) apply for, consent to, or acquiesce in, the appointment of a trustee, receiver, sequestrator or other custodian for itself or a substantial part of its property, or make a general assignment for the benefit of creditors; (iii) in the absence of such application, consent or acquiesce, permit or suffer to exist the appointment of a trustee, receiver, sequestrator or other custodian for itself or for a substantial part of its property, and such trustee, receiver, sequestrator or other custodian shall not be discharged within 60 days, provided that Administrative Agent is hereby expressly authorized to appear in any court conducting any relevant proceeding during such 60-day period to preserve, protect and defend its rights and the rights of Lenders under the Loan Documents; (iv) permit or suffer to exist the commencement of any bankruptcy, reorganization, debt arrangement or other case or proceeding under any bankruptcy or insolvency law, or any dissolution, winding up or liquidation proceeding, in respect of any of Borrower, and, if any such case or proceeding is not commenced by Borrower, such case or proceeding shall be consented to or acquiesced in by Borrower, or shall result in the entry of an order for relief or shall remain for 60 days undismissed, provided that Administrative Agent is hereby expressly authorized to appear in any court conducting any such case or proceeding during such 60-day period to preserve, protect and defend its rights and the rights of the Lenders under the Loan Documents; or (v) take any corporate, partnership, trust or other similar action authorizing or in furtherance of any of the foregoing;

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- s) Section 9.1(g) of the Loan Agreement is amended to read as follows:
Attachment. There is an attachment, execution or other judicial seizure of any portion of Borrower's assets or any assets of Guarantor pledged pursuant to the Pledge Agreement, and such seizure is not discharged within thirty (30) days of such attachment, execution or other judicial seizure, as the case may be;
- t) Section 9.1(o) of the Loan Agreement is deleted.
- u) Section 9.1(p) of the Loan Agreement is amended to read as follows:
Judgments. Any judgment or judicial decree (collectively "Adverse Judgment") for the payment of money in excess of \$75,000.00 not otherwise covered by insurance (with deductibles not to exceed \$75,000) shall be rendered against Borrower unless such Adverse Judgment is bonded off of the Property within thirty (30) days of such Adverse Judgment becoming final.
- v) The last paragraph of Section 9.1 of the Loan Agreement is amended to read as follows:
provided, however, (i) an item of Default listed in Section 9.1(a) shall not be deemed an Event of Default (except as provided below) until such default continues for five (5) days after Borrower or Guarantor, as applicable, has been provided with notice of such default ("Default Notice") by Administrative Agent and/or Lenders in accordance with Section 12.2 below; (ii) any item of Default listed in Sections 9.1(b), (h), (j), (l), (n) and (q) shall not be deemed an Event of Default (except as provided below) until such default continues for thirty (30) days after Borrower or Guarantor, as applicable, has been provided a Default Notice by Administrative Agent and/or Lenders in accordance with Section 12.2 below; and (iii) any item of Default listed in Sections 9.1(e), (g), (i), (k), (m), (p) and (r) shall not be deemed an Event of Default (except as provided below) until such default continues for thirty (30) days after Borrower or Guarantor, as applicable, has been provided a Default Notice by Administrative Agent and/or Lenders in accordance with Section 12.2 below. If two (2) Default Notices have been given by Administrative Agent and/or Lenders in the twelve (12) month period after the Forbearance Effective Date preceding an item of Default listed in Sections 9.1(a)-(e) and (g)-(r), then there shall be no notice or cure period applicable to such item of Default.
- w) Exhibit H attached to this Forbearance Agreement is added to the Loan Agreement as Exhibit H.

x) The following is added to Article X of the Loan Agreement:

10.6 Deed in Lieu of Foreclosure. (i) On the Forbearance Effective Date, Borrower shall execute and deliver to the Administrative Agent a deed in the form attached hereto as Exhibit H (“Deed in Lieu of Foreclosure”). Upon an Event of Default and acceleration of the Loans pursuant to Section 10.1, Administrative Agent and Lenders may, and Borrower hereby authorizes Administrative Agent and Lenders to, attach to the Deed in Lieu of Foreclosure the legal description(s) for all Residential Units and their corresponding Parking Units and appurtenant common elements comprising the Project against which the Deed of Trust is a lien, date the Deed in Lieu of Foreclosure effective the date of default and make any other additions to the Deed in Lieu of Foreclosure necessary to comply with recording requirements then in effect in the County of Fairfax, Virginia, and record the Deed in Lieu of Foreclosure. If requested by the Administrative Agent, Borrower shall promptly (a) re-execute the Deed in Lieu of Foreclosure and immediately deliver it to Administrative Agent; and/or (b) any affidavits and documents reasonably required for the Administrative Agent to obtain owner’s title insurance for the conveyed Units, and immediately deliver such affidavits and documents to the Administrative Agent. Provided Borrower has not (x) applied for, consented to, or acquiesced in, the appointment of a trustee, receiver, sequestrator or other custodian for itself or a substantial part of its property, or made a general assignment for the benefit of creditors, (y) filed for, permitted or suffered to exist the commencement of any bankruptcy, reorganization, debt arrangement or other case or proceeding under any bankruptcy or insolvency law, or any dissolution, winding up or liquidation proceeding, or (z) consented to or acquiesced in any such involuntary case or proceeding, or provided that if any involuntary case or proceeding described in Section 10.6(i)(y) is filed, it is dismissed within sixty (60) days of filing, the recordation of the Deed in Lieu of Foreclosure shall be deemed full satisfaction and payment of the Loans and Guarantor shall be deemed automatically released from the Guaranty.

(ii) In the event the Administrative Agent exercises the remedy set forth in Section 10.6(i) and the Borrower becomes a debtor in any bankruptcy commenced under Title 11 of the U. S. Code prior to the recording of the Deed in Lieu of Foreclosure, the Borrower, as debtor, shall promptly file a motion in the bankruptcy proceeding to approve the transfer of the Units pursuant to Section 10.6(i) (or such higher offer received for the Units), or consent to a motion filed by the Administrative Agent or the Lenders to approve such transfer.

(iii) The Administrative Agent may refuse to exercise the remedy set forth in Section 10.6(i) only in the event the Borrower is unable to deliver clear title to the Units to be transferred by the Deed in Lieu of Foreclosure, as determined by the Administrative Agent in its reasonable discretion. In such an event, the Administrative Agent may promptly proceed to initiate foreclosure of the Units and Property pursuant to the Deed of Trust, or exercise any other remedies available to Administrative Agent and Lenders under the Loan Documents or at law or in equity. Borrower and Guarantor acknowledge and agree that pursuant to the terms of the Loan Documents, the Administrative Agent has the right to foreclose on the Units and Property and under applicable law, the Administrative Agent and the Lenders have the right to bid on the Units and Property at the foreclosure sale and purchase the Units and Property at the foreclosure sale. Borrower and Guarantor agree fully to cooperate with the Administrative Agent and the substitute trustee in foreclosing on the Units and Property, including without limitation by: (1) providing and/or making available to the Administrative Agent all appropriate data, records and documents in the possession, custody or control of the Borrower and Guarantor, pertaining to the Units and Property; and (2) responding promptly to all reasonable inquiries and requests from the Administrative Agent.

(iv) Borrower and Guarantor hereby grant authority to the Administrative Agent, its agents, employees, officers, attorneys, consultants and affiliates to disseminate, discuss and/or communicate with and contact any and all prospective purchasers at the foreclosure sale and to engage in such discussions, communications and other dialogues with such prospective purchasers as the Administrative Agent in its sole discretion deems appropriate. In connection with such discussions, communications and dialogues, the Administrative Agent is authorized, without limitation: (1) to disclose to prospective purchasers any and all information that the Administrative Agent in its sole judgment and discretion deems appropriate regarding the Loans including, but not limited to, any and all information regarding the existing balance of each Loan, the interest rate of each Loan, and other related information concerning the Loans; (2) to disclose to prospective purchasers any and all information relating to the Units and the Property; and (3) to take such other actions as the Administrative Agent may deem necessary or desirable to facilitate the sale of the Units and Property including, without limitation, contacting real estate brokers and prospective purchasers, preparing and disseminating advertising materials relating to the Units and Property, operating statements and financial information, and entering upon the Property for any purpose reasonably related to sale, including, without limitation, showing the Property to prospective purchasers or interested parties.

(v) Borrower and Guarantor covenant and agree not to oppose any foreclosure of the Units and Property, covenant and agree not to interpose any defenses to the Administrative Agent's efforts to foreclose pursuant to this Article X and applicable law, and waive any defenses to foreclosure that they have or may have pursuant to applicable law and/or the Loan documents. Provided Borrower and Guarantor comply with the above provisions of this Section 10.6(v), and provided Borrower has not (x) applied for, consented to, or acquiesced in, the appointment of a trustee, receiver, sequestrator or other custodian for itself or a substantial part of its property, or made a general assignment for the benefit of creditors, (y) filed for, permitted or suffered to exist the commencement of any bankruptcy, reorganization, debt arrangement or other case or proceeding under any bankruptcy or insolvency law, or any dissolution, winding up or liquidation proceeding, or (z) consented to or acquiesced in any such involuntary case or proceeding, or provided that if any involuntary case or proceeding described in Section 10.6(v)(y) is filed, it is dismissed within sixty (60) days of filing, the foreclosure of the Units and the Property shall be deemed full satisfaction and payment of the Loans and Guarantor shall be deemed automatically released from the Guaranty.

y) The first sentence of Section 12.6(c) of the Loan Agreement is amended to read as follows:

Any Lender (an "Assignor") may, in accordance with applicable Law and upon written notice to the Administrative Agent, at any time and from time-to-time assign to any Eligible Assignee or, with the consent of the Administrative Agent (which, in each case, shall not be unreasonably withheld or delayed), to an additional bank, financial institution or other entity (each, an "Assignee") all or any part of its rights and obligations under this Agreement pursuant to an Assignment and Acceptance, in form acceptable to Assignor and Assignee (an "Assignment and Acceptance"), executed by such Assignee and such Assignor (and, where the consent of the Administrative Agent is required pursuant to the foregoing provisions, by the Administrative Agent) and delivered to the Administrative Agent for its acceptance and recording in the Register; provided that no such assignment to an Assignee (other than any Lender or any Affiliate, Related Fund or Control Investment Affiliate thereof) shall be in an aggregate principal amount of less than \$1,000,000 (other than in the case of an assignment of all of a Lender's interests under this Agreement), unless otherwise agreed by the Administrative Agent. In the event an assignment results in a party other than the Administrative Agent administering the Loan, the Administrative Agent shall provide notice of the Assignment and Acceptance, along with proper contact information, to the Borrower and Guarantor within three (3) business days of the Assignment and Acceptance.

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- z) Section 3.4 of the Loan Agreement is amended to read as follows:
Pending Litigation. Except as disclosed on Exhibit C attached to this Agreement, no actions, suits, or proceedings (including condemnation or eminent domain proceedings) are pending or, to Borrower's or Guarantor's knowledge, threatened against or affecting Borrower, the Property, the Membership Interests, or any other assets subject to the Loan Documents. None of the items (if any) listed on Exhibit C will have a Material Adverse Effect.
- aa) Exhibit C of the Loan Agreement is replaced with Exhibit C attached to this Forbearance Agreement.
- bb) Section 3.5 of the Loan Agreement is amended to read as follows:
No Violation. There exists no violation, or default with respect to any of the Basic Agreements or of any mortgage, deed of trust, indenture or any other material contract, agreement or instrument applicable to Borrower, Guarantor, the Property, or the Membership Interests, or by which any of the foregoing is bound. The execution, delivery and performance of the Loan Documents will not result in any such violation, conflict or default, or result in the creation of any Lien on any of the assets of Borrower or Guarantor, other than the Permitted Exceptions and Liens in favor of Lenders.
- cc) Section 3.8 of the Loan Agreement is amended to read as follows:
Truth of Financial Statements: Financial Condition Warranty. Any Financial Statements delivered to Administrative Agent and/or Lenders by Borrower or Guarantor prior to or after the date of this Agreement: (a) are materially true, correct and complete and (b) fairly present in a manner internally consistent and consistent with prior statements submitted to Administrative Agent and/or Lenders the respective financial conditions of the subjects thereof and for the periods referenced therein. Borrower further warrants that except as disclosed to Administrative Agent in writing, Borrower is not currently a party to any material pending litigation or administrative proceedings, or subject to any judicial or non-judicial orders or consent agreements, except as set forth on Exhibit C. All financial statements, including the related schedules and notes thereto, have been prepared in accordance with GAAP applied consistently throughout the periods involved.

dd) The Table of Exhibits to the Loan Agreement is amended to read as follows:

Appendix A – Definitions and Interpretation

Exhibit A – The Property

Exhibit B – The Note

Exhibit C – Pending Litigation

Exhibit D – Ownership Chart

Exhibit E – Intentionally Deleted

Exhibit F – Cure Deed

Exhibit G – Form of Condominium Contract

Exhibit H – Deed in Lieu of Foreclosure

ee) The following definitions in Appendix A of the Loan Agreement shall be amended to read as follows:

“Maturity Date” shall have the meaning set forth in Section 2.2(f).

“Minimum Unit Settlements” means with respect to each calendar quarter during which the Loans are outstanding, the minimum cumulative number of Residential Units closed by the end of each calendar quarter as set forth in Section 6.7(j).

“Loan Documents” means this Agreement, any Note, the Deed of Trust, the Environmental Indemnity Agreement, the Limited Guaranty, the Completion Guaranty, the Pledge Agreement, the Collateral Assignment of Developer’s Rights, the UCC Financing Statements, any forbearance agreement entered into by Borrower, Guarantor and Administrative Agent relating to the Loans, and any other document evidencing, pertaining to or securing the Loans which Administrative Agent or Lenders may require to be executed and delivered by Borrower, Guarantor or any Affiliate thereof from time to time, as each of the same shall be amended, restated, modified, replaced or supplemented from time to time.

“Material Adverse Effect” means an event occurring subsequent to the Closing Date which has the effect of impairing the validity of the security interest in the Property.

“Net Sales Price” means with respect to the sale of any Unit (A) the Base Purchase Price for such Unit plus Upgrades and any costs associated with the purchase of a Parking Unit, less (B) customary closing costs both paid by Borrower and paid by the Borrower on behalf of the Unit buyer, reasonable warranty reserves (not to exceed \$750.00), brokerage commissions (including a 1.5% internal sales commissions paid to Borrower’s sales agent), expenses and prorations paid by Borrower as shown on the RESPA statement for such sale and approved by Administrative Agent, and the costs to convert the Unit.

“NOI” means, for any applicable period, Gross Operating Income minus Interest to be paid pursuant to the Agreement, all amounts to be paid pursuant to Section 5.2, and Operating Expenses.

“Tax and Insurance Reserve Account” shall be renamed “Tax, HOA and Insurance Reserve Account” and shall mean an account for the payment of Real Estate Taxes, HOA Fees and Insurance Premiums to be established and applied as set forth in Section 5.2.

“Tax and Insurance Reserve Fund” shall be renamed “Tax, HOA and Insurance Reserve Fund” and shall have the meaning ascribed thereto in Section 5.2(a).

ff) The following definitions shall be added to Appendix A of the Loan Agreement:

“Average Debt Per Unit” shall mean the then current balance due under the Loans including all accrued PIK Interest divided by the total number of Residential Units then subject to the lien of the Deed of Trust.

“closed” or “settled” shall mean with respect to a Unit, that settlement has occurred, title to the Unit has been transferred and funds disbursed by the settlement agent in accordance with the applicable fully executed HUD-1.

“Forbearance Effective Date” shall mean January 27, 2009.

“HOA Fees” means all fees, dues and annual assessments, regular or special, which are levied, assessed, made, imposed or charged on or against the Property by the condominium association for the Project.

6. Modification of Guarantys.

Provided the Borrower timely satisfies all of the terms, conditions and requirements set forth in Sections 1-4 of this Forbearance Agreement, the Guaranty from and after the Forbearance Effective Date is hereby modified as follows:

a) Section 2(b)(i) of the Guaranty is amended to read as follows:

if Borrower files a voluntary bankruptcy petition under any section or chapter of the Bankruptcy Code or any similar law or regulation or is a party to a collusive involuntary bankruptcy petition or any receivership proceedings in which Borrower is the debtor, or the making of an assignment for the benefit of its creditors by Borrower, or the filing of a case or proceeding by Borrower for its dissolution or liquidation;

b) Provided the Borrower timely satisfies all of the terms, conditions and requirements set forth in Sections 1-4 of this Forbearance Agreement, the Completion Guaranty from and after the Forbearance Effective Date is of no further force and effect.

7. Additional Guarantor Obligations. Guarantor hereby absolutely, irrevocably, and unconditionally guarantees, as a principal obligor and not as a surety, to the Administrative Agent and the Lenders (i) the payment of all costs incurred in connection with all construction and improvements undertaken by Borrower at the Property, and (ii) to keep the Property free and clear of all claims for mechanic's and materialmen's liens.

8. Forbearance.

Conditioned upon Borrower's full, faithful and timely performance under this Forbearance Agreement and the Loan Documents, the Administrative Agent and Lenders hereby agree that so long as the Borrower and Guarantor comply with the terms of this Forbearance Agreement and the Loan Documents, for the period commencing on the Forbearance Effective Date and continuing until the Maturity Date under the Loan Agreement (the "Forbearance Period"), and except as provided below, Lender will not, solely with respect to the Existing Defaults:

- a) Institute foreclosure proceedings against any property pledged as security for the Loans; or
- b) Pursue or institute any other remedies, legal and/or equitable, against the Borrower or the Guarantor in connection with the Loans.

On or after the Maturity Date (without further notice to the Borrower or the Guarantor) or upon the occurrence of any Event of Default under this Forbearance Agreement, or any of the Loan Documents (whichever occurs first), the Forbearance Period will terminate, and the Administrative Agent, in its sole discretion, may declare any or all of the Loans to be in default, institute foreclosure proceedings against any encumbered property and/or pursue its remedies legal and equitable, against the Borrower and Guarantor.

9. Dismissal of Litigation/Cancellation of Foreclosure Sale. On the Forbearance Effective Date, Borrower and Guarantor shall endorse an order in the form attached hereto as Exhibit B (“Order”) dismissing with prejudice that certain action filed by Borrower and Guarantor against Administrative Agent in the Circuit Court of Fairfax County, Virginia (“Court”), Case No. 200816874 (“Lawsuit”) and immediately submit the Order to the Court for entry and take all such further action as may be required for the dismissal of the Lawsuit with prejudice. On the Forbearance Effective Date, Administrative Agent and Lenders shall cancel the foreclosure sale originally noticed for January 22, 2009 and thereafter continued for a period of thirty days, and provide Borrower and Guarantor with such evidence of the cancellation as their attorneys shall reasonably request.

[Remainder of page intentionally left blank. Document continues on the following page]

10. Discounted Payoff. Borrower may, at Borrower’s sole option, pay off the Loans through a cash payment (“Discounted Payoff”), which Lenders and Administrative Agent hereby acknowledge and deem acceptable, as set forth below:

<u>Number of Days from the Forbearance Effective Date in which to Make the Discounted Payoff</u>	<u>Amount of Discounted Payoff</u>
0-60	\$ 11,700,000
61-90	12,200,000
91-120	12,500,000

In the event that Borrower makes the required Discounted Payoff in a timely manner, all rights and interests of the Lenders and Administrative Agent in the Residential Units and to the Property shall cease, and all rights and obligations of the Borrower, Guarantor, Lenders, and Administrative Agent under this Forbearance Agreement and under the Loan Documents shall be released and deemed satisfied. In such event, Administrative Agent and Lenders shall execute a deed of release for recordation prepared by Borrower and to be recorded by Borrower, at Borrower’s sole cost and expense, in form reasonably acceptable to Administrative Agent.

11. No Waiver by Lender.

Borrower and Guarantor each represent, warrant and agree that:

- a) Administrative Agent and Lenders have not waived and, by entering into this Forbearance Agreement, do not waive any existing default or any default which may occur subsequent to execution of this Forbearance Agreement; and
- b) Administrative Agent and Lenders have not waived and, by entering into this Forbearance Agreement, do not waive any of their respective remedies against the Borrower or the Guarantor.

12. General Release of Claims.

a) For any time in the past up to and including the Forbearance Effective Date hereof, Borrower and Guarantor each represent and warrant that they, individually and/or collectively, have no claims, defenses, actions or causes of action or set offs of any kind or nature which they, individually and/or collectively can assert against the Administrative Agent or any Lender in connection with the Loans, this Forbearance Agreement, the Loan Agreement or any other Loan Document .

b) IN THE EVENT BORROWER OR THE GUARANTOR, INDIVIDUALLY AND/OR COLLECTIVELY HAVE ANY CLAIMS, DEFENSES, ACTIONS OR CAUSES OF ACTION OR SET OFFS OF ANY KIND OR NATURE, KNOWN OR UNKNOWN, FOR ANY TIME IN THE PAST UP TO AND INCLUDING THE FORBEARANCE EFFECTIVE DATE HEREOF, WHICH THEY INDIVIDUALLY AND/OR COLLECTIVELY NOW OR HEREAFTER MAY ASSERT AGAINST THE ADMINISTRATIVE AGENT OR ANY LENDER, IN CONNECTION WITH THE LOAN AGREEMENT, DEED OF TRUST OR ANY OTHER LOAN DOCUMENT AND/OR THE ENFORCEMENT BY THE ADMINISTRATIVE AGENT OR ANY LENDER OF THIS FORBEARANCE AGREEMENT, THE LOAN AGREEMENT, DEED OF TRUST OR ANY OTHER LOAN DOCUMENT, THEN BY EXECUTING THIS FORBEARANCE AGREEMENT, THEY FOREVER WAIVE AND RELINQUISH THEM.

13. Default.

The following shall constitute Events of Default:

- a) Failure by Borrower to make any payments on the Loans in accordance with the terms of this Forbearance Agreement and the Loan Documents;

b) Failure by Borrower or Guarantor to perform any term, covenant or agreement in this Forbearance Agreement that continues uncured for three (3) business days after Borrower or Guarantor, as applicable, has been provided notice by Administrative Agent and/or Lenders in accordance with Section 25 hereof.;

c) Failure by Borrower or Guarantor to perform any term, covenant or agreement in the Loan Documents that constitutes an Event of Default thereunder;

d) Failure by any Borrower or Guarantor to perform any term, covenant or agreement contained in any of the Loan Documents that constitutes an Event of Default thereunder not modified by this Forbearance Agreement.

If an Event of Default shall occur, the Administrative Agent may declare the Loans to be in default and declare the entire amount then outstanding, including all interest, late charges and all other amounts owing, to be immediately due and payable without regard to any previously agreed maturity date or the Forbearance Period. Upon the occurrence of an Event of Default, and at any time thereafter, the Administrative Agent and the Lenders shall have the right to institute foreclosure proceedings under the Deed of Trust and to sell and dispose of any collateral given to secure the Loans, upon such terms and in such manner as the Administrative Agent or the Lenders deems advisable, consistent with the Loan Documents. Such action by the Administrative Agent or the Lenders shall not be exclusive of any other remedy available to them.

14. Conflict Between Documents.

In the event that there is any conflict between the terms and provisions of the Loan Documents and any one or more of the terms and conditions of this Forbearance Agreement or of any documents executed pursuant hereto, the terms and conditions of this Forbearance Agreement and the documents executed pursuant hereto shall supersede and control the terms of the Loan Document in conflict herewith.

15. Time is of the Essence.

Time is of the essence as to all of the obligations of the parties under this Forbearance Agreement and the Loan Documents.

16. Applicable Law.

This Forbearance Agreement shall be construed, performed and enforced in accordance with the laws of the Commonwealth of Virginia.

17. Further Assurances.

The parties hereto agree to execute, acknowledge and deliver such other documents and to provide such other information as may be reasonably necessary and/or required in order to fully consummate the transactions which are the subject hereof. The Borrower and Guarantor agree to promptly execute and deliver any documents the Administrative Agent or the Lenders may reasonably believe to be necessary or required to fully perfect Lender's interests in any and all collateral provided for in any of the Loan Documents.

18. Binding Effect.

This Forbearance Agreement and the respective covenants, provisions, terms, conditions and agreements herein contained together with the Loan Documents, shall inure to the benefit of, and be binding upon, the parties hereto and their respective legal successors and assigns.

19. Entire Agreement.

This Forbearance Agreement and the documents to be executed pursuant hereto and the Loan Documents constitute the entire agreement between the parties hereto with regard to the subject matter addressed herein. Borrower and Guarantor acknowledge and agree that all prior discussions, negotiations and correspondence between the parties relating to the subject matter hereof are hereby merged into this Forbearance Agreement and that there are no other oral, written or other agreements of any nature whatsoever between the parties with respect to the subject matter hereof other than those documents specifically referred to in this Forbearance Agreement, the Exhibits hereto and in the Loan Documents.

20. Modifications and Waiver.

No modification or waiver of any of the provisions of this Forbearance Agreement or the Loan Documents, and no consent by any party to any departure therefrom shall be effective unless such modification or waiver shall be in writing and signed by a duly authorized representative of all parties, and the same shall then be effective only for the period and on the conditions and for the specific instance and purposes specified in such writing. No waiver of any breach or default shall be deemed to be a waiver of any breach or default thereafter occurring. No omission or delay by any party in exercising any right or power hereunder or under any Loan Document shall impair such right or power or be construed to be a waiver of any default or any acquiescence therein.

21. Severability.

Should any one or more of the provisions contained in this Forbearance Agreement or the Loan Documents be declared invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of any of the remaining provisions contained therein shall not in any way be affected or impaired thereby.

22. Successors and Assigns.

This Forbearance Agreement and the respective covenants, provisions, terms, conditions and agreements herein contained shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, legal representatives, successors and assigns. Whenever in this Forbearance Agreement one of the parties hereto is named or referred to, the heirs, legal representatives, successors and assigns of such parties shall be included, and all covenants and conditions contained in this Forbearance Agreement by or on behalf of a party shall bind and inure to the benefit of their respective heirs, legal representatives, successors and assigns, whether so expressed or not. This paragraph shall in no manner be construed to confer upon Borrower or Guarantor any right to assign any of their rights and obligations hereunder.

23. Number and Gender.

Words which import one gender shall be applied to any gender where appropriate or whenever the context of this Forbearance Agreement requires, words of the singular number shall include the plural and vice versa.

24. Counterparts.

This Forbearance Agreement may be executed in one or more counterparts, and all such executed counterparts shall contain one agreement, binding on all the parties hereto, notwithstanding that all the parties are not signators to the original or the same counterpart.

25. Notices.

All notices, requests, demands or other communications provided for herein shall be made pursuant to the Loan Documents.

26. Agreement to Lifting of Automatic Stay.

Borrower and Guarantor agree that in the event Borrower shall (a) file with any bankruptcy court of competent jurisdiction or be the subject of any petition under Title 11 of the U.S. Code, as amended; (b) be the subject of any order for relief issued under Title 11 of the U.S. Code, as amended; (c) file or be the subject of any petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency or other relief for debtors; (d) have sought or consented to or acquiesced in the appointment of any trustee, receiver, conservator, or liquidator; (e) be the subject of any order, judgment or decree entered by any court of competent jurisdiction approving a petition filed against such party for any

reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or relief for debtors, Lender immediately shall be entitled to relief from any automatic stay imposed by Section 362 of Title 11 of the U.S. Code, as amended, or otherwise, on or against the exercise of the rights and remedies available to it under the Loan Documents and Borrower and Guarantor each waive any right to object and agree not to object to any motion by the Administrative Agent and/or the Lenders for relief from the automatic stay. It is understood and agreed by the Borrower and Guarantor that this provision was a negotiated and bargained for condition of the Administrative Agent and the Lenders and that they would not have agreed to the terms of this Forbearance Agreement if this provision had not been included.

27. WAIVER OF JURY TRIAL/SUBMISSION TO JURISDICTION.

a) TO THE MAXIMUM EXTENT PERMITTED BY LAW, BORROWER, GUARANTOR, THE ADMINISTRATIVE AGENT AND LENDERS HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS FORBEARANCE AGREEMENT, ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF ANY PARTY OR ANY EXERCISE BY ANY PARTY OF THEIR RESPECTIVE RIGHTS UNDER THE LOAN DOCUMENTS OR IN ANY WAY RELATING TO THE LOANS OR THE PROJECT (INCLUDING, WITHOUT LIMITATION, ANY CLAIM OR DEFENSE ASSERTING THAT THIS FORBEARANCE AGREEMENT WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE). THIS WAIVER IS A MATERIAL INDUCEMENT FOR THE ADMINISTRATIVE AGENT AND THE LENDERS TO ENTER INTO THIS FORBEARANCE AGREEMENT.

b) IN ADDITION TO ANY OTHER PROPER JURISDICTION AND VENUE PROVIDED FOR IN THE LOAN DOCUMENTS, BORROWER AND GUARANTOR, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, CONSENT TO AND SUBMIT TO PERSONAL JURISDICTION AND VENUE OF ANY LITIGATION CONCERNING OR RELATING TO THIS FORBEARANCE AGREEMENT IN THE CIRCUIT COURT OF FAIRFAX COUNTY AND/OR THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, AND BORROWER AND GUARANTOR AGREE THAT SUCH JURISDICTION AND VENUE ARE PROPER.

28. Power and Authority.

Each of the parties to this Forbearance Agreement warrants that it has full power and authority to enter into, execute, deliver and perform this Forbearance Agreement, and that no consent, license, approval, authorization, registration or declaration with any court, governmental authority or any other person or entity is required in connection with the execution, delivery, performance, validity and enforceability of this Forbearance Agreement or the documents to be executed in connection herewith.

29. Representation by Counsel.

BORROWER AND GUARANTOR EACH ACKNOWLEDGE AND AGREE THAT THEY HAVE HAD THE OPPORTUNITY TO BE REPRESENTED BY COUNSEL OF THEIR CHOICE AND HAVE BEEN ADVISED TO SEEK INDEPENDENT LEGAL COUNSEL, THEY HAVE REVIEWED THIS FORBEARANCE AGREEMENT AND HAVE BEEN FULLY ADVISED OF ITS CONTENTS AND THE MEANING THEREOF. BORROWER AND GUARANTOR FURTHER REPRESENT THAT THEY ARE SIGNING THIS FORBEARANCE AGREEMENT VOLUNTARILY AND WITH FULL UNDERSTAND OF ITS CONTENTS AND MEANING.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

WITNESS the following signatures and seals as of the date first above written.

BORROWER:

COMSTOCK PENDERBROOK, L.C.,
a Virginia limited liability company

By: Comstock Homebuilding Companies, Inc.,
a Delaware corporation,
Its Manager

By: _____ (SEAL)
Name: _____
Title: _____

STATE OF _____

CITY/COUNTY OF _____, to-wit:

I, _____, a Notary Public in and for the City/County and Sate aforesaid, do hereby certify that _____,
_____ of Comstock Homebuilding Companies, Inc., the Manager of Comstock Penderbrook, L.C., whose name as such is signed to the foregoing
instrument bearing date on the 27th day of January, 2009, has acknowledged the same before me in my City/County and State aforesaid.

GIVEN under my hand and seal this _____ day of January, 2009.

Notary Public

My Commission Expires: _____

Notary No. _____

[signatures continue on the following page]

GUARANTOR:

COMSTOCK HOMEBUILDING COMPANIES, INC.
a Delaware corporation

By: _____ (SEAL)
Name: _____
Title: _____

STATE OF _____

CITY/COUNTY OF _____, to-wit:

I, _____, a Notary Public in and for the City/County and State aforesaid, do hereby certify that _____ of Comstock Homebuilding Companies, Inc., whose name as such is signed to the foregoing instrument bearing date on the 27th day of January, 2009, has acknowledged the same before me in my City/County and State aforesaid.

GIVEN under my hand and seal this _____ day of January, 2009.

Notary Public

My Commission Expires: _____

Notary No. _____

[signatures continue on the following page]

ADMINISTRATIVE AGENT:

GUGGENHEIM CORPORATE FUNDING, LLC,
as Administrative Agent

By: _____ (SEAL)
Name: _____
Title: _____

STATE OF _____

CITY/COUNTY OF _____, to-wit:

I, _____, a Notary Public in and for the City/County and State aforesaid, do hereby certify that _____,
_____ of Guggenheim Corporate Funding, LLC, whose name as such is signed to the foregoing instrument bearing date on the 27th day of
January, 2009, has acknowledged the same before me in my City/County and State aforesaid.

GIVEN under my hand and seal this _____ day of January, 2009.

Notary Public

My Commission Expires: _____

Notary No. _____

[signatures continue on the following page]

LENDER:

ORPHEUS FUNDING LLC

By: Guggenheim Investment Management, LLC,
its Manager

By: _____ (SEAL)
Name: _____
Title: _____

STATE OF _____

CITY/COUNTY OF _____, to-wit:

I, _____, a Notary Public in and for the City/County and State aforesaid, do hereby certify that _____, _____ of Guggenheim Investment Management, LLC., the Manager of Orpheus Funding LLC, whose name as such is signed to the foregoing instrument bearing date on the 27th day of January, 2009, has acknowledged the same before me in my City/County and State aforesaid.

GIVEN under my hand and seal this _____ day of January, 2009.

Notary Public

My Commission Expires: _____

Notary No. _____

EXHIBIT A

See attached four (4) letters from LeClairRyan to Comstock Penderbrook, L.C. dated August 20, 2008, October 1, 2008, October 15, 2008 and November 19, 2008.

EXHIBIT B

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMSTOCK PENDERBROOK, L.C.,)	
ET. AL.)	
Plaintiffs,)	
)	
v.)	Case No. 2008-16874
)	
GUGGENHEIM CORPORATE FUNDING,)	
LLC)	
Defendant.)	

FINAL ORDER OF DISMISSAL

THIS CAUSE came before this Court upon the joint representations of counsel for Plaintiffs Comstock Penderbrook, L.C. and Comstock Homebuilding Companies, Inc. ("Plaintiffs") and counsel for Defendant Guggenheim Corporate Funding, LLC, ("Defendant") that the matters at issue between them as expressed in Plaintiff's Complaint filed in this case have been compromised, agreed and settled.

UPON CONSIDERATION WHEREOF, it appearing to the Court that the claims set forth in Plaintiff's Complaint filed herein against Defendant have been settled, compromised and agreed, and that Plaintiffs' Complaint should be dismissed with prejudice, all as evidenced by the signatures below, it is therefore

ORDERED, that Plaintiff's Complaint be and is hereby DISMISSED WITH PREJUDICE.

THIS CAUSE IS ENDED.

Entered this ____ day of January, 2009.

WE ASK FOR THIS:

Rodney H. Glover (VSB# 17780)
Brian Walsh (VSB # 73508)
WILEY REIN LLP
1776 K Street, N.W.
Washington, D.C. 20006
(202) 719-7381/7469
(202) 719-7049 (facsimile)
*Counsel for Plaintiffs, Comstock Penderbrook, L.C.
And Comstock Homebuilding Companies, Inc.*

R. Scott Caulkins (VSB #23584)
LeCLAIR RYAN, A Professional Corporation
225 Reinekers Lane, Suite 700
Alexandria, Virginia 22314
703-684-8007
703-684-8075 (facsimile)

Ray W. King (VSB#22253)
LeCLAIR RYAN, A Professional Corporation
999 Waterside Drive, Suite 2525
Norfolk, Virginia 23510
757-441-8929
757-624-3773 (facsimile)
Counsel for Defendant, Guggenheim Corporate Funding, LLC

EXHIBIT C

Pending or Potential Litigation as of the Forbearance Effective Date

Network Multifamily Security Corporation. v. Comstock Penderbrook, L.C. (“Comstock”)

Jurisdiction: General District Court of Fairfax County, Virginia served on or about January 15, 2009

Amount in Controversy: \$66,659.04

Plaintiff, a company previously providing security monitoring service for the Penderbrook Condominium owned by Comstock, has filed a claim for breach of contract for failure to pay for security monitoring services. The vendor was replaced by a competing vendor due to inadequate performance. Comstock intends to defend this claim.

EXHIBIT F

Prepared By:
[insert firm name and address]

Consideration: _____

Tax ID/GPIN: _____

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED is made as of this ____ day of _____ 200_, by and between **COMSTOCK PENDERBROOK, L.C.**, a Virginia limited liability company (“Grantor”), and **GUGGENHEIM CORPORATE FUNDING, LLC**, as Administrative Agent (“Grantee”), having a mailing address of 135 East 57th Street, New York, New York, 10022.

WITNESSETH:

That for and in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Grantor does hereby grant and convey, with SPECIAL WARRANTY OF TITLE unto Grantee the property located in the County of Fairfax, Virginia as described on Exhibit A attached hereto and made a part hereof (the “Property”).

This conveyance is made subject to all easements, conditions and restrictions of record insofar as they may lawfully affect the Property.

WITNESS the following signature and seal.

GRANTOR:

COMSTOCK PENDERBROOK, L.C.,
a Virginia limited liability company

By: Comstock Homebuilding Companies, Inc.,
a Delaware corporation,
its Manager

By: _____ (SEAL)
Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, in his capacity as _____ of Comstock Homebuilding Companies, Inc., a Delaware corporation, the manager of Comstock Penderbrook, L.C., a Virginia limited liability company, on behalf of said limited liability company. _____ is personally known to me or has produced his driver's license as identification.

Notary Public

My Commission Expires: _____

Notary Registration No.: _____

[affix seal]

EXHIBIT A

LEGAL DESCRIPTION

(Blanks to be completed upon determination of Units to be conveyed)

Units _____, and Limited Common Element Parking Spaces _____, Phase _____. *[if there are Units in more than one Phase, repeat the previous line]*, all a part of PENDERBROOK SQUARE, A CONDOMINIUM, as shown on the plat attached to the Declaration recorded in Deed Book 17380 at page 948, as amended by Amendment to Condominium Instruments recorded in Deed Book 17380 at page 1989, corrected in Corrective Amendment to Condominium Instruments recorded in Deed Book 17401 at page 1895 and further corrected in Deed Book 17450 at page 1600, all among the land records of Fairfax County, Virginia.

TOGETHER WITH an undivided percentage interest appurtenant to the Unit in all Common Elements of said Project, as described in said Declaration and subsequent amendments.

TOGETHER WITH the right of ingress and egress from said property and right to use, for all proper purposes in common with Declarant, its successors and assigns, and all other occupants from time to time, any and all portions of the Condominium designated by statute and the Declaration as General Common Elements.

SUBJECT TO the reservations, restrictions on use and all covenants and obligations set forth in said Declaration recorded in Deed Book 17380 at page 948, among the said land records, and set forth in the By-Laws of the Unit Owners Association attached thereto, as it may be amended from time to time; all of which restrictions, conditions, assessments and all other covenants are incorporated herein by reference, and which shall be binding on each grantee and their successors, heirs and assigns.

EXHIBIT H

Prepared by and after
recording return to:
[insert firm name and address]

Consideration: [insert amount]

Tax Parcel Id. Nos: [insert numbers]

THIS DEED, made and entered into effective this _____ day of _____, 20____, by and between **COMSTOCK PENDERBROOK, L.C.**, a Virginia limited liability company, GRANTOR, and **GUGGENHEIM CORPORATE FUNDING, LLC**, as Administrative Agent, GRANTEE, whose mailing address is 135 East 57th Street, New York, New York, 10022.

WITNESSETH:

WHEREAS, the title to the real property described on Exhibit "A" attached hereto ("the Property") is vested in fee simple in the Grantor; and

WHEREAS, the Property is subject to a lien of that certain Amended and Restated Deed of Trust With Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing recorded in the Clerk's Office of the Circuit Court of the County of Fairfax, Virginia, in Deed Book 19143, at Page 257 ("Deed of Trust"); and

WHEREAS, the loan agreement ("Loan Agreement") evidencing the obligations secured by said Deed of Trust is owned and held by the Grantee, as Administrative Agent; and

WHEREAS, the Grantor, being unable to pay the obligations set forth in the Loan Agreement, has requested the Grantee accept this Deed in satisfaction of said obligations and the underlying Deed of Trust, and the Grantee, as evidenced by its signing this Deed, has acceded to said request.

NOW, THEREFORE, in consideration of the premises and the sum of Ten Dollars (\$10.00) cash in hand paid, and other good and valuable consideration the receipt of which is hereby acknowledged, and except as set forth below, the Grantor grants and conveys with SPECIAL WARRANTY OF TITLE unto the Grantee the Property.

This Deed is given as an absolute conveyance of legal and beneficial title to the Property to the Grantee and of all redemption rights which the Grantor may have therein, and not as a deed of trust or security interest of any kind, the Grantor having sold the Property to the Grantee for a fair and adequate consideration, such consideration being full satisfaction of the obligations set forth in the Loan Agreement, the Grantor's obligations under the Deed of Trust, and the release of certain parties heretofore guaranteeing the Grantor's obligations under the Loan Agreement and Deed of Trust.

In executing this Deed, the Grantor is not acting under any misapprehension as to the effect thereof, any duress, any undue influence, or any misrepresentation by the Grantee or its representatives, agents or attorneys; and the Grantee acknowledges that this Deed is not given as a preference over other creditors of the Grantor, but rather in lieu of foreclosure of the Deed of Trust.

This conveyance is made subject to the conditions, restrictions, easements and reservations of record, if any, affecting the Property and constituting constructive notice.

[Remainder of page intentionally left blank. Signature pages follow.]

[Signature page to Deed from Comstock Penderbrook, L.C. to
Guggenheim Corporate Funding, LLC, as Administrative Agent]

WITNESS the following signatures and seals:

GRANTOR:

COMSTOCK PENDERBROOK, L.C.,
a Virginia limited liability company

By: Comstock Homebuilding Companies, Inc., a Delaware
corporation,
its Manager

By: _____ (SEAL)
Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, in his capacity as _____ of Comstock Homebuilding Companies, Inc., a Delaware corporation, the manager of Comstock Penderbrook, L.C., a Virginia limited liability company, on behalf of said limited liability company. _____ is personally known to me or has produced his driver's license as identification.

Notary Public

My Commission Expires: _____

Notary Registration No.: _____

[affix seal]

[Signatures continue on the following page.]

[Signature page to Deed from Comstock Penderbrook, L.C. to
Guggenheim Corporate Funding, LLC, as Administrative Agent]

ACCEDED TO BY:

GUGGENHEIM CORPORATE FUNDING, LLC

By: _____ (SEAL)

Name: _____

Title: _____

STATE OF NEW YORK
CITY/COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 20__ by _____ in his capacity as _____ of Guggenheim Corporate Funding, LLC, on behalf of said limited liability company. _____ is personally known to me or has produced his driver's license as identification.

Notary Public

My Commission Expires: _____

[affix seal]

EXHIBIT "A"

LEGAL DESCRIPTION

(Blanks to be completed upon determination of Units to be conveyed)

Units _____, and Limited Common Element Parking Spaces _____, Phase _____, *[if there are Units in more than one Phase, repeat the previous line]*, all a part of PENDERBROOK SQUARE, A CONDOMINIUM, as shown on the plat attached to the Declaration recorded in Deed Book 17380 at page 948, as amended by Amendment to Condominium Instruments recorded in Deed Book 17380 at page 1989, corrected in Corrective Amendment to Condominium Instruments recorded in Deed Book 17401 at page 1895 and further corrected in Deed Book 17450 at page 1600, all among the land records of Fairfax County, Virginia.

TOGETHER WITH an undivided percentage interest appurtenant to the Unit in all Common Elements of said Project, as described in said Declaration and subsequent amendments.

TOGETHER WITH the right of ingress and egress from said property and right to use, for all proper purposes in common with Declarant, its successors and assigns, and all other occupants from time to time, any and all portions of the Condominium designated by statute and the Declaration as General Common Elements.

SUBJECT TO the reservations, restrictions on use and all covenants and obligations set forth in said Declaration recorded in Deed Book 17380 at page 948, among the said land records, and set forth in the By-Laws of the Unit Owners Association attached thereto, as it may be amended from time to time; all of which restrictions, conditions, assessments and all other covenants are incorporated herein by reference, and which shall be binding on each grantee and their successors, heirs and assigns.

FOURTH AMENDMENT TO SUBLEASE AGREEMENT

THIS FOURTH AMENDMENT TO SUBLEASE AGREEMENT (this “Fourth Amendment”) is made and entered into this __ day of February, 2009, by and between **COMSTOCK ASSET MANAGEMENT, L.C.**, a Virginia limited liability company (hereinafter referred to as “Sublandlord”); and **COMSTOCK HOMES OF WASHINGTON, L.C.**, a Virginia limited liability company (hereinafter referred to as “Subtenant”).

WHEREAS, Sublandlord and Subtenant are parties to an Agreement of Sublease dated October 1, 2004 (the “Original Sublease”), as amended by a certain First Amendment to Sublease Agreement dated August 1, 2005, and further amended by a certain Second Amendment to Sublease Agreement dated April 12, 2007, and further amended by a certain Third Amendment to Sublease Agreement dated October 31, 2007, for the sublease of certain Sublease Premises as defined in the Original Sublease, as amended. The Original Sublease as amended is hereby referred to as the “Sublease.”

WHEREAS, Subtenant has requested to surrender certain space and to modify certain other terms of the Sublease.

WHEREAS, the Sublandlord has agreed to Subtenant’s request, subject to the terms and conditions contained herein.

WHEREAS, the parties desire otherwise to further amend certain terms and conditions of the Sublease, and have agreed to the terms contained herein.

NOW, THEREFORE, for and in consideration of the mutual promises of the parties herein contained, the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree to amend the Sublease as follows:

1. **Vacated Premises.** No later than February 20, 2009, Subtenant shall promptly vacate and surrender that portion of the Sublease Premises located on the 6th floor of the Building and consisting of 1,377 rentable square feet of office space, previously identified as in the Third Amendment as the Additional Premises (herein, the “Vacated Premises”) in accordance with the requirements set forth in Section 9.D of the Original Sublease. The date of such surrender shall be confirmed in writing by the Sublandlord (“Surrender Date”). As of the Surrender Date, (i) Subtenant shall be relieved of all obligations and liabilities for the Vacated Premises, including payment of Basic Rent and all expense pass throughs, except that Subtenant shall pay (a) the Base Rent for March 2009, and (b) a termination fee of Fifty Thousand Dollars (\$50,000) (“Termination Fee”), which shall be payable in monthly installments of Five Thousand Dollars (\$5,000) each due as and when payments of Base Rent are due under the Sublease, for the next ten (10) calendar months (“Termination Fee Installment”) beginning March 1, 2009 (i.e., through December 2009); (ii) the “Sublease Premises” shall thereafter be defined as the 15,714 rentable square feet of office space located on the 5th floor of the Building; and (iii) Subtenant shall be responsible for Seventeen and 61/100ths percent (17.61%) (15,714 rentable square feet of the Sublease Premises divided by 89,221 rentable square feet in the Building) of any operating expense pass-throughs for the Building, subject to and in accordance with Section 7 of the Original Sublease and Section 3(b) of the Prime Lease.

2. **Rent.** As of April 1, 2009, the rent calculation tables contained in the Existing Sublease shall be deleted in their entirety and in lieu thereof the following shall be inserted:

Total Basic Rent Under Comstock Sublease - 15,714 RSF

<u>Monthly Rent</u>	<u>Annual Rent</u>	<u>Rent/SF</u>	<u>Starts</u>	<u>Ends</u>
\$ 41,812.34	\$ 501,748.02	\$ 31.93	4/1/09	9/30/09
\$ 43,069.46	\$ 516,833.46	\$ 32.89	10/1/09	9/30/10
\$ 44,365.86	\$ 532,390.32	\$ 33.88	10/1/10	9/30/11

Provided, however, that if Subtenant has not timely vacated and surrendered the Vacated Premises in accordance with Section 1 above, then this rent calculation table will not be effective until the first day of the calendar month next following vacation and surrender of the Vacated Premises.

3. Parking. As of April 1, 2009, "Exhibit D" to the Existing Sublease shall be deleted in its entirety and replaced with Exhibit D attached hereto and incorporated herein, showing the number of parking spaces and the location of reserved parking spaces, if any, available for Subtenant's use under the current parking program for the Building.

4. Services Agreement. Subtenant and Sublandlord are concurrently entering into a certain "Services Agreement" attached hereto and incorporated herein as Exhibit A whereby Subtenant will provide, or cause to be provided, to Sublandlord certain development, property management and other services in accordance with the terms and conditions set forth therein and Sublandlord will pay to Subtenant a "Management Fee" (as defined therein). The Management Fee due by Sublandlord under the Services Agreement to Subtenant is intended to and shall offset the monthly Termination Fee Installment; provided, that if the Services Agreement is terminated before the entire Termination Fee is paid, then Subtenant shall pay the remaining balance of the Termination Fee in accordance with Section 1 above. The parties agree that execution of the Services Agreement is a material inducement for entering into this Fourth Amendment.

5. Ratification. The Sublease is otherwise ratified and reaffirmed in all respects, and all terms and conditions thereof unless otherwise modified by this Fourth Amendment are in full force and effect. If there are any conflicts between the terms of the Sublease and this Fourth Amendment, then this Fourth Amendment shall control.

[Remainder of this page intentionally blank.]

6. Miscellaneous. Unless otherwise stated herein, all terms defined in the Existing Sublease shall have the same meaning when used in this Fourth Amendment. This Fourth Amendment may be executed in counterparts all of which when taken together shall constitute one instrument binding upon all parties thereto.

WITNESS the following signatures and seals:

SUBLANDLORD:
COMSTOCK ASSET MANAGEMENT, L.C.
a Virginia limited liability company

WITNESS

By: _____ (SEAL)
Christopher D. Clemente
Managing Member

_____, 2009
DATE

SUBTENANT:
COMSTOCK HOMES OF WASHINGTON, L.C.
By: **Comstock Homebuilding Companies, Inc.**

WITNESS

By: _____ (SEAL)
Bruce Labovitz
Chief Financial Officer

_____, 2009
DATE

CAM - 4th Am to CHW Sublease

3 of 12

11465 SH I, LC as Landlord under the Prime Lease, hereby consents to the foregoing Fourth Amendment to Sublease Agreement between Comstock Asset Management, L.C. and Comstock Homes of Washington, L.C. and the terms and conditions hereunder. Landlord's consent herein shall not modify or affect the Prime Lease or relieve Sublandlord from any liability hereunder.

LANDLORD:
11465 SH I, LC

WITNESS

By: _____ (SEAL)
Christopher D. Clemente
Managing Member

_____, 2009
DATE

Attachments

- Exhibit A Services Agreement
- Exhibit C Office Furniture and/or Equipment
- Exhibit D Number and Location of Parking Spaces

CAM - 4th Am to CHW Sublease

4 of 12

EXHIBIT A
SERVICES AGREEMENT

[attached]

CAM - 4th Am to CHW Sublease

5 of 12

SERVICES AGREEMENT

THIS SERVICES AGREEMENT (the "Agreement") is made as of the __ day of February, 2009 ("Effective Date"), by and between COMSTOCK HOMES OF WASHINGTON, L.C., a Virginia limited liability company ("Comstock"), and COMSTOCK ASSET MANAGEMENT, L.C., a Virginia limited liability company ("CAM").

WITNESSETH:

WHEREAS, Comstock and CAM are parties to an Agreement of Sublease dated October 1, 2004 (the "Original Sublease"), as amended by a certain First Amendment to Sublease Agreement dated August 1, 2005, and further amended by a certain Second Amendment to Sublease Agreement dated April 12, 2007, and further amended by a certain Third Amendment to Sublease Agreement dated October 31, 2007, for the sublease of certain Sublease Premises as defined in the Original Sublease, as amended. The Original Sublease as amended is hereby referred to as the "Sublease";

WHEREAS, in accordance with a certain Fourth Amendment to Sublease Agreement ("Fourth Amendment"), executed simultaneously herewith, Comstock has agreed to pay a "Termination Fee" in monthly installments, known as the "Termination Fee Installments", as those terms are defined in the Fourth Amendment, over ten (10) calendar months to CAM for surrender of certain property under the Sublease;

WHEREAS, as a material inducement to enter into the Fourth Amendment, Comstock and CAM agreed to enter into a services agreement as set forth herein;

WHEREAS, CAM is agent for, or has contracted to provide development and property management services to, the owner(s) of certain real properties in the Washington, DC metropolitan area (each, a "Property");

WHEREAS, Comstock is experienced in providing development and property management services, as well as IT and similar office support services;

WHEREAS, CAM desires to hire Comstock to perform such services on its behalf, subject to the terms and conditions contained herein; and

WHEREAS, Comstock desires to perform such services for CAM, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, for and in consideration of the premises and mutual covenants and agreement of the parties contained herein, and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

ARTICLE I
Scope of the Work

1.01 Acting as a consultant for CAM and at its written request, Comstock will undertake and perform for CAM, subject to staffing and workload availability, any or all the following responsibilities set forth in this Section 1.01 which CAM in its discretion may delegate or assign to Comstock by written request with respect to any Property (or with respect to CAM's offices), as applicable (the "Work"):

A. Plan/Product Design and Management. In conjunction with land planners, architects and engineers, Comstock shall review and comment upon any and all design drawings, product specifications and shop drawings submitted by such professionals and by other contractors for a Property or portions thereof.

B. Governmental Approvals. Based on conceptual plans approved by CAM, Comstock shall coordinate and submit engineering plans for a Property or portions thereof, monitor the approval processes with the applicable governmental authority in order to seek final approvals for lot or unit yield and F.A.R. densities, provide for vested rights regarding the intended uses of a Property and prepare and submit bonding applications required as a prerequisite to development of a Property.

C. Solicit and Evaluate Development Bids. Comstock shall solicit and evaluate bids for the development and/or improvement of a Property or portions thereof (including without limitation tenant improvements of individual suites therein), as applicable, from qualified contractors and make recommendations to CAM regarding the selection of the contractors.

D. Development and Improvement of a Property. Comstock agrees to perform and complete all functions attendant to the management of the following items for a Property: (i) installation of all road infrastructure over time required to service the Property; (ii) installation of all utilities over time reasonably necessary to commence construction of improvements on the Property; (iii) installation of all tenant improvements within individual suites or elsewhere within the Property, as directed by CAM.

E. Legal, Accounting Marketing Services. If expressly directed by CAM, Comstock, on behalf of CAM, shall assist in the performance of requisite legal, accounting and/or marketing services required as a result of the prosecution of the Work unless such legal work would constitute a conflict of interest for either party. If a conflict of interest exists, such conflict of interest may be waived upon request by either party and receipt by both parties of a written waiver of such conflict.

F. IT Services & Support. Comstock shall provide CAM's voice and data technology services and such other similar office services and support as may be reasonably requested by CAM.

Notwithstanding the foregoing or any other mutually-agreed upon description of the Work, it is expressly agreed by the parties hereto that (x) Comstock shall not be responsible for any out-of-pocket or third party costs associated with the Work being performed, (y) Comstock is not guaranteeing the Work and is not guaranteeing that the Work will be prosecuted within any particular timelines that may be established as part of the Work, and (z) CAM shall have approval authority over all Work prior to submission to a third party or governmental agency.

ARTICLE II
Exclusions from Scope of the Work

2.01 The scope of the Work listed in Article I is not an exhaustive list, but the Work shall in no event include the following items:

A. Procurement of leasing agreements related to the retail or commercial space for any Property or the administration of any such agreements;

B. Management duties associated with a master or neighborhood property owners associations for any Property; or

C. Management duties associated with completed commercial or investment properties within any Property (which shall not include duties relating to the fit out of tenant spaces within a Property, which is expressly contemplated herein).

ARTICLE III
Term

3.01. Term. This Agreement shall remain in effect for ten (10) full calendar months from the Effective Date of this Agreement (i.e., through December 31, 2009) (“Initial Term”), unless terminated earlier as provided herein. If this Agreement is not terminated prior to the expiration of the Initial Term, this Agreement shall automatically renew on a month-to-month basis until terminated as provided herein.

ARTICLE IV
Compensation

4.01 Management Fee. In consideration for the performance of the Work under this Agreement, CAM agrees to pay to Comstock, or any designated affiliate, and Comstock agrees to accept from CAM, the amount of Five Thousand Dollars (\$5,000) per month as a management fee (the “Management Fee”). The Management Fee shall be due and payable by the fifth day of each month during the Initial Term, beginning on March 1, 2009, and shall continue on a monthly basis thereafter until termination of the Agreement in accordance with the terms hereof. If Comstock believes that it will perform work exceeding the Management Fee in any one-month period, Comstock shall so advise CAM and CAM shall either (y) authorize in writing Comstock to perform Work in excess of the Management Fee, or (z) notify Comstock to cease any further Work for that month. Notwithstanding any provision hereof to the contrary, in no event shall Comstock perform any Work in excess of the Management Fee that is not authorized by CAM. Work exceeding the Management Fee in any one month period, as authorized by CAM, shall be performed on an hourly basis of 125% of the hourly salary of such employee(s) utilized to perform the Work (“Hourly Fee”). Hourly Fees shall be paid to Comstock by CAM in the same manner as Vendor fees (pursuant to Section 4.04 below) or, upon written agreement of the parties, shall be set off against the Termination Fee. Hourly Fees shall also be due in the event a new employee(s) is hired for the prosecution of the Work hereunder.

4.02 Responsibility of Employees. Comstock shall be responsible for all staffing decisions and the payment of the salaries of its officers and employees performing the Work, subject to Paragraph 4.01 herein. In its sole discretion, Comstock may increase or maintain its staff to service CAM. In the case where CAM desires a particular employee of Comstock to perform Work for CAM’s benefit, CAM may make a written request to Gregory Benson, President of Comstock, for assignment of such employee to perform Work for CAM; however, such request may be accepted or rejected by Comstock in its sole discretion.

4.03 Setoff of Management Fee. As provided in Paragraph 4.01 herein, the Management Fee shall be payable on a monthly basis; provided, however, that CAM shall be entitled to set off against each monthly payment of the Management Fee coming due a corresponding amount of the Termination Fee until such Termination Fee is fully applied to payment of the Management Fee due hereunder. If either party terminates this Agreement prior to the expiration of the Initial Term, all Management Fees and Hourly Fees due to Comstock shall be applied to the Termination Fee, whether paid or unpaid.

4.04 Third Party Vendors and Reimbursements.

A. Certain services related to a Property may be provided by third party vendors (“Vendors”) under the management of Comstock. Comstock shall obtain prior written approval from CAM before engaging Vendors to perform services totaling over Five Hundred Dollars (\$500). Vendor fees shall be billed to

and payable by CAM, and in no event shall the Vendor fees be deducted from the Management Fee. The Vendors shall include, but are not limited to, land planners, civil engineers, architects, consultants, contractors and sub-contractors.

B. CAM shall be responsible for the reimbursement of all of Comstock's out-of-pocket expenses actually incurred and submitted to CAM in the prosecution of the Work, including without limitation, fees of Vendors in cases where Comstock pays a Vendor and seeks reimbursement from CAM, payment of which shall occur within fifteen (15) days from the end of the month in which an expense report is received by CAM, accompanied by copies of paid invoices and such other documentation as CAM may reasonably request.

ARTICLE V
Termination

5.01. Either CAM or Comstock may terminate this Agreement, with or without cause, upon ten (10) days written notice to the other party during the Initial Term or any time thereafter ("Termination Notice"). CAM shall be responsible for payment of the Management Fee (subject to setoff pursuant to Section 4.03) and Vendor fees for Work performed through the date of termination of this Agreement. If Comstock terminates this Agreement prior to the expiration of the Initial Term, Comstock shall pay to CAM the remaining Termination Fee Installments as provided in the Fourth Amendment. Until the effective date of termination set forth in a Termination Notice, Comstock shall continue to perform the Work under this Agreement. Upon termination, neither party shall have any liability to each other related to the Work or any provisions of this Agreement.

ARTICLE VI
Assignment and Sub-Contracting

6.01 Comstock may assign or transfer this Agreement to a parent or affiliated entity provided all rights and obligations are transferred therewith and notwithstanding CAM's acceptance of performance hereunder by such assignee or transferee, such assignment or transfer will not relieve Comstock of its primary liability hereunder.

ARTICLE VII
Independent Contractor Status

7.01 The parties to this Agreement agree that the relationship of Comstock to CAM is that of independent contractor. Except as otherwise stated in this Agreement, no agency is created by this Agreement, and the employees and agents of Comstock are not to be considered as employees or agents of CAM, and shall not enter into any vendor agreements without the prior consent of CAM.

ARTICLE VIII
Compliance with Non-Discrimination Laws; Employment

8.01 Comstock shall comply with all federal, State and County laws, codes, ordinances and regulations requiring non-discrimination in employment and in the provision of services.

8.02 Without the prior written consent of Comstock, CAM shall not offer employment to any employee of Comstock prior to Comstock's termination of the employment of such person.

ARTICLE IX
Entire Agreement

9.01 Except as otherwise stated in this Agreement, this Agreement constitutes the entire agreement of the parties with respect to the matters dealt with herein.

ARTICLE X
Indemnification

10.01 Comstock shall hold CAM harmless from, and indemnify CAM against loss, personal injury or death resulting from the gross negligence or willful act of any employee or agent or Contractor of Comstock, but not from the gross negligence or willful act of any employee, agent or Contractor of CAM. CAM shall hold Comstock harmless from, and indemnify Comstock against, any claims made by third parties under any agreements with CAM. The protections agreed to under this section shall include, without limitation, all costs of litigation, including court costs, arbitration and mediation costs and attorneys' fees.

ARTICLE XI
Notices

11.01 All notices, demands and requests which may be given or which are required to be given by either party to the other must be in writing. Notices, demands or requests shall be deemed to have been properly given for all purposes if (i) delivered against a written receipt of delivery, (ii) mailed by express, registered or certified mail of the United States Postal Service, return receipt requested, postage prepaid, or (iii) delivered to a nationally recognized overnight courier service for next business day delivery to the receiving party's address as set forth above or (iv) delivered via telecopier or facsimile transmission to the facsimile number listed below, with an original counterpart of such communication sent concurrently as specified in subsection (ii) or (iii) above and with written confirmation of receipt of transmission provided. Each such notice, demand or request shall be deemed to have been received upon the earlier of the actual receipt or refusal by the addressee or three (3) business days after deposit thereof at any main or branch United States post office if sent in accordance with subsection (ii) above, and the next business day after deposit thereof with the courier if sent pursuant to subsection (iii) above. Notices shall be sent to the following addresses:

To CAM:	c/o Comstock Partners 1 1465 Sunset Hills Road Suite 620 Reston, Virginia 20190 Attention: Beau Schweikert
To Comstock:	c/o Comstock Homebuilding Companies, Inc. 1 1465 Sunset Hills Road, Suite 500 Reston, Virginia 20190 Attention: Gregory Benson

Notwithstanding the foregoing, written requests with respect to requests for performance of and/or staffing of the Work contemplated hereunder, including without limitation in Sections 1.01 and 4.02, may be made by email to Gregory Benson.

[Remainder of this page intentionally blank.]

ARTICLE XII
Law and Jurisdiction

12.01 This Agreement shall be construed by the laws of the Commonwealth of Virginia. Jurisdiction shall be proper in the Circuit Court of Fairfax County, Virginia, and the parties consent to such jurisdiction and venue.

IN WITNESS WHEREOF, CAM and Comstock have executed this Agreement as of the Effective Date.

CAM:

COMSTOCK ASSET MANAGEMENT, L.C., a Virginia limited liability company

By: _____
Beau Schweikert, Senior VP & CFO

COMSTOCK:

COMSTOCK HOMES OF WASHINGTON, L.C., a Virginia limited liability company

By: COMSTOCK HOMEBUILDING COMPANIES, INC., a Delaware corporation

By: _____
Gregory Benson, President

EXHIBIT D

Number and Location of Parking Spaces

<u>Category/Type of Space</u>	<u>Number of Spaces</u>
Reserved and Assigned to Tenant:	10
Reserved for Tenants Only, but Unassigned:	19
Unreserved and Unassigned:	15
Total Spaces:	44
Reserved Spaces:	To be assigned by Landlord

Landlord reserves the right to reconfigure the parking for the Property by establishing or relocating reserved parking spaces, subject to and in accordance with the Lease.

NORTH CAROLINA

MUTUAL RELEASE AND SETTLEMENT AGREEMENT

WAKE COUNTY

This MUTUAL RELEASE AND SETTLEMENT AGREEMENT ("Agreement") is made by and between COMSTOCK HOMES OF RALEIGH, LLC, a North Carolina limited liability company ("Plaintiff"), PROVIDENCE DEVELOPMENT OF RALEIGH, LLC, a North limited liability company ("Defendant") and MANNING FULTON & SKINNER, PA, a North Carolina professional association ("Escrow Agent"). The parties to this Agreement other than Escrow Agent may be collectively referred to herein as "the parties."

WHEREAS, the parties executed an Agreement for the purchase and Sale of Subdivision Lots and Option Agreement dated December 16, 2005, as amended ("Contract"), for the sale and purchase of approximately 80 townhome lots and 148 single family lots in the subdivision known as Providence (the "Development");

WHEREAS, Providence of Raleigh Subdivision is a planned community of more than 20 residential lots created within this State on or after January 1, 1999, and is therefore a "planned community" as that term is defined in Chapter 47F of the North Carolina General Statutes, commonly known as the "North Carolina Planned Community Act" (hereinafter, the "Planned Community Act" or the "Act");

WHEREAS, Defendant is the Declarant under that certain Declaration of Covenants, Conditions and Restrictions for Providence of Raleigh Subdivision recorded in Book 12053, page 2419, Wake County Registry, as supplemented by that certain Annexation Declaration recorded in Book 12451, page 2197, re-recorded in Book 12623, page 2662, both of the Wake County Registry (the "Subdivision Declaration") and that certain Declaration of Covenants, Conditions and Restrictions for Providence Subdivision, Phase 2 Townhouses recorded in Book 12451, page 2202, Wake County Registry (the "Townhouse Declaration");

WHEREAS, a dispute has arisen between the parties pertaining to the Contract and other action taken by the parties as described in Civil Action No. 07 CVS 15940 filed in Wake County, North Carolina Superior Court (the "Lawsuit") and in the related Civil Action No. 08 SP 6183 filed in Wake County, North Carolina Superior Court (the "TOA Foreclosure Action");

WHEREAS, the Initial Escrow Deposit posted by Plaintiff under the Contract has been released by the Escrow Agent to Defendant;

WHEREAS, Section 47F-2-117(a) of the Act provides that the Subdivision Declaration and the Townhouse Declaration may be amended by affirmative vote or written agreement signed by lot owners of lots to which at least sixty-seven percent (67%) of the votes in each respective association are allocated, or any larger majority the declaration for such association specifies;

WHEREAS, Article IX, Section 4 of the Subdivision Declaration and Article IX, Section 4 of the Townhouse Declaration provide respectively that each such declaration may be amended during the first twenty-year period by an instrument signed by not less than seventy-five percent (75%) of the lot owners subject to such declaration;

WHEREAS, at this time, Plaintiff is the owner of fifty-two (52) lots and Defendant is the owner of thirty-one (31) lots, and together the parties are the owners of eighty-three (83) of the one hundred and seven (107) lots subject to the Subdivision Declaration, and Plaintiff is the owner of eighteen (18) of the eighteen (18) townhouse lots subject to the Townhouse Declaration;

WHEREAS, the parties to this Agreement wish to revise and amend the Subdivision Declaration and/or the Townhouse Declaration (and, to the extent necessary to accomplish the same results, the Bylaws for each association), in the following respects: (1) to allow vinyl siding to be used within the Development ; (2) to change the side yard setbacks as provided in the Subdivision Declaration to conform with those provided in the Raleigh City Code; (3) to remove the blanket prohibition of wooden fences, to increase the maximum height limitation for fences to six feet (6.0'), and to allow the Architectural Review Board the discretion to approve all proposed fences on a case-by-case basis; and (4) to allow the regular association dues payable by the Declarant under the Declarations to accrue and become payable by Declarant at the time of closing on the sale of any lot to a builder and to allow the regular association dues payable by any builder to accrue and become payable by any builder at the time of closing of a completed dwelling to the owner-occupant; and (5) to clarify that the Declarant has the right to make amendments to the Subdivision Declaration and the Townhouse Declaration, in its sole discretion, without the approval of the lot owners, in the course of exercising the Declarant's "development rights" as provided in the Subdivision Declaration and the Townhouse Declaration and the Act;

WHEREAS, the parties to this Agreement desire to settle all controversies between them;

NOW, THEREFORE, in consideration of the mutual covenants set forth below and other good and valuable consideration, the parties hereto represent and agree:

1. Nature of Agreement. This Agreement is a mutual release and settlement agreement that completely resolves the Lawsuit, the TOA Foreclosure Action, and any other disputes between and among Plaintiff and Defendant.

2. Exchanges of Consideration. In consideration for the releases and other obligations contained in this Agreement, the sufficiency of which is hereby acknowledged:

(a) Plaintiff waives all claims for reimbursement of costs incurred incidental to construction of an amenity package consisting of an entrance monument and associated landscaping and irrigation at the entrance to the Development;

(b) Defendant, as Declarant under the recorded Subdivision Declaration and Townhouse Declaration applicable to single-family lots and townhouse lots for the Development (together, the "Covenants"), shall continue to be responsible to fund any shortfall on the operations of the HOA or TOA;

(c) Upon execution of this Agreement, Escrow Agent shall close a transaction and three escrow accounts established on behalf of the parties, as further described below, with the following material terms and on the following conditions (“the Closing”):

(1) The Defendant shall: (i) pay all fines, penalties, costs, liens, claims and other remedies arising from or relating to the TOA Foreclosure Action and any and all alleged violations of the Covenants by Plaintiff, whether known or unknown, occurring prior to the date of this Agreement in consideration for Plaintiff's waiver of any claims, whether known or unknown, arising from Defendant and any affiliates' alleged acts and omissions as Declarant or other role as controlling party of the TOA; (ii) provide Plaintiff with the current budget, income statements and balance sheets for the HOA at Closing; (iii) release all claims of lien against any property to be conveyed by Plaintiff pursuant to this Agreement in a form acceptable for filing; (iv) irrevocably approve Plaintiff's current house plans in existing and future homes in the Development as requested and shown in the letters attached hereto as Exhibit E; and (v) deposit \$19,450.00 in escrow with the Escrow Agent representing the difference in values of the lots being conveyed by each party (“Reconciliation Payment”), which is further described below, provided, however, that all closing costs incurred by Plaintiff in connection with the closing contemplated herein shall be paid out of the escrowed Reconciliation Payment. It is further provided that any portion of the escrowed Reconciliation Payment that remains after payment of Plaintiff's closing costs shall remain in escrow until such time as Plaintiff is able to convey to Defendant, or Defendant's assign(s), Single Family Lots 2 and 3. At such time as Plaintiff conveys Single Family Lots 2 and 3 to Defendant, or Defendant's assign(s), the balance of the escrowed Reconciliation Payment shall be paid by Escrow Agent to Plaintiff. However, in the event Plaintiff has not conveyed Single Family Lots 2 and 3 to Defendant, or Defendant's assign(s), for any reason, within six (6) months of the full execution of this Agreement, the balance of the escrowed Reconciliation Payment shall be released by Escrow Agent back to Defendant;

(2) The parties acknowledge and agree that Plaintiff shall no longer be obligated to pay assessments for its townhome pads as stipulated in the Covenants and are hereby deemed satisfied and released. Plaintiff and Defendant agree to sign and record an amendment to the Covenants in the form attached hereto as Exhibit B, revising and amending the Covenants as set forth therein and hereinabove;

(3) Defendant shall upon execution of this Agreement convey to Plaintiff, through means of special warranty deeds, the form of which is attached hereto as Exhibit C, Single Family Lots 49, 71, 64, 65, 66, 67, 81, 82, 83 and 84 within the Development (the “Defendant's Conveyed Properties”), which are more particularly identified on Exhibit A hereto. The special warranty deeds shall be held in escrow by Escrow Agent pending completion of all conditions precedent to the Closing as described in this Paragraph 2(c) (“the Comstock Escrow Deposit”). In addition, at such time as Plaintiff conveys Single Family Lots 2 and 3 to Defendant, or Defendant's assign, Defendant shall convey to Plaintiff, through means of special warranty deeds, Single Family Lots 50 and 51;

(4) Defendant shall, upon execution of this Agreement, deposit \$16,757.34 in escrow with the Escrow Agent representing Plaintiff's accrued, but currently unpaid, TOA and HOA dues in the amounts of \$15,340.74 and \$1,416.60, respectively, as required under the Covenants. Defendant shall instruct the Escrow Agent to disburse \$15,340.74 to the TOA and \$1,416.60 to the HOA at the Closing described herein.

(5) Plaintiff shall upon execution of this Agreement, convey to Defendant, through means of special warranty deeds, the form of which is attached hereto as Exhibit D, the 18 townhouse pads known as Townhome Lots 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177 and 178 which Plaintiff owns and are part of the Development (the "Plaintiff's Conveyed Properties"), which are more particularly identified on Exhibit A hereto. The special warranty deeds shall be held in escrow by Escrow Agent pending completion of all conditions precedent to the Closing as described in this Paragraph 2(c) ("the PDR Escrow Deposit"). In addition, at such time as Plaintiff is able to obtain a release of all liens on Single Family Lots 2 and 3 from its lender, Plaintiff shall convey Single Family Lots 2 and 3 to Defendant, at which time the provisions of paragraph 2(c)(1) concerning the Reconciliation Payment shall control. In the event Plaintiff has not conveyed Single Family Lots 2 and 3 to Defendant, or Defendant's assign(s), for any reason, within six (6) months of the full execution of this Agreement, the balance of the escrowed Reconciliation Payment shall be released by Escrow Agent back to Defendant and the parties shall have no further liability to each other;

(6) The Escrow Agent shall receive releases from the parties suitable for the recordation of all encumbrances, including lien releases and releases of deeds of trust in favor of Wachovia, SunTrust or any other lender on Plaintiff's Conveyed Properties or Defendant's Conveyed Properties;

(7) The parties shall, upon execution of this Agreement, execute a written termination of any remaining option or obligation to purchase or obligation to sell lots under the Contract, provided, however, the parties expressly acknowledge that Plaintiff will continue to attempt to obtain a release of liens from its lender on Single Family Lots 2 and 3 for purposes of conveying said lots to Defendant, or Defendant's assign, in exchange for Single Family Lots 50 and 51 (as well as receipt of the balance of the escrowed Reconciliation Payment);

(8) Each party shall bear its transfer costs incidental to this transaction and shall be responsible for depositing with the Escrow Agent sums deemed sufficient by the Escrow Agent in its reasonable discretion to cover all of the party's closing costs;

(9) The parties shall file dismissals with prejudice of all claims in the Lawsuit and the TOA Foreclosure Action and cancel the Notice of *Lis Pendens* related to the Lawsuit upon full execution of this Agreement;

(10) The releases contemplated by this Agreement shall be effective upon full execution of this Agreement;

(11) The parties agree and specifically direct the Escrow Agent to withhold from recordation of any deeds and making any disbursements of funds or otherwise closing the contemplated transaction until such time that all deliverables, including, but not limited to, deeds, releases, and covenant modifications, are in the Escrow Agent's possession; and

(12) Notwithstanding the foregoing, in the event that any third party, including any creditors, lenders or obligees of Plaintiff or Defendant, takes title to or exercises its right to foreclose on any land owned by Plaintiff or Defendant in the Providence Subdivision that is to be conveyed to Plaintiff or Defendant under the terms of this Agreement, each party shall forfeit all rights to the other's deposits with the Escrow Agent under the Agreement, and each party's Escrow Deposit shall revert back and be delivered to the party that tendered the Escrow Deposit under this Agreement;

(13) The parties understand that agree that timely completion of the Closing is of the essence. The parties acknowledge that each other will incur substantial damages if the Closing does not occur as provided herein, and that such damages are not readily ascertainable. If any party to this Agreement fails to provide Escrow Agent with any of the necessary documents, monies or information within thirty (30) days as required by Paragraph 2(c) herein, the non-breaching party shall be entitled to liquidated damages of \$25,000, and the parties agree that such amount is sufficient for damages that would occur, as well as any additional remedies being sought by the parties in the Lawsuit. Upon any such failure described herein, Escrow Agent shall disburse and deliver the HOA Escrow Deposit, Comstock Escrow Deposit, and PDR Escrow Deposit back to the party that tendered such escrow deposit under this Agreement;

(14) The parties shall execute and deliver to Escrow Agent a settlement statement acknowledging the Closing and the actions to occur therein contemporaneous with the execution of this Agreement;

(15) Except as otherwise stated herein, the parties shall bear their own costs and expenses incidental to the matters addressed by this Agreement; and

(16) The parties shall cooperate with each other on development requirements, provided such assistance shall be at no cost to the other. By way of example and not limitation, the parties expect to cooperate in accommodating the reasonable requests of the other concerning easements, utilities, and construction items.

(d) Upon Escrow Agent's receipt of the items required in Paragraph 2(c) herein, including all documents, as necessary, executed and in recordable form, Escrow Agent is authorized and directed to effectuate the Closing contemplated herein.

(e) Upon Closing, the parties hereby agree to terminate and cancel the Contract, and the parties shall not have any further options, obligations, or rights under the Contract, other than as set forth in this Agreement.

3. Releases by Plaintiff. Plaintiff, for itself, its successors and assigns, hereby releases Defendant from any and all claims, causes of action, actions, suits, debts, dues, demands, bonds, costs, attorney fees or interests recoverable, and any and all damages recoverable which Plaintiff or any of its officers or agents have, or may have either at law or equity, by reason of, arising out of, or relating to the Lawsuit, the TOA Foreclosure Action and the disputes underlying the same, including but not limited to, any and all claims which were or could have been raised in the Lawsuit ("Plaintiff's Released Claims"). Plaintiff forever discharges Defendant and their successors, assigns, affiliates, agents, employees, managers, members, officers, board members, shareholders, representatives, insurers and legal representatives, from Plaintiff's Released Claims. Plaintiff covenants and agrees that no assignment, transfer or conveyance in any manner of all or part of any legal right relating to Plaintiff's Released Claims has been made. This release is binding upon Plaintiff and its successors and assigns, and shall inure to the benefit of Defendant and its successors, assigns, affiliates, agents, employees and legal representatives.

Notwithstanding the foregoing, Plaintiff does not release Defendant from its obligations under this Agreement. All other obligations under the Contract are waived and released.

4. Releases by Defendant. Defendant, for themselves, their successors and assigns, hereby release Plaintiff from any and all claims, causes of action, actions, suits, debts, dues, demands, bonds, costs, attorney fees or interests recoverable, and any and all damages recoverable which Defendant or any of its officers or agents have, or may have either at law or equity, by reason of, arising out of, or relating to the Lawsuit and the disputes underlying the same, including but not limited to, any and all claims which were or could have been raised in the Lawsuit ("Defendant's Released Claims"). Defendant forever discharges Plaintiff and its predecessors in interest, successors, assigns, affiliates, agents, employees, managers, members, representatives, insurers and legal representatives, from Defendant's Released Claims. Defendant covenants and agrees that no assignment, transfer or conveyance in any manner of all or part of any legal right relating to Defendant's Released Claims has been made. This release is binding upon Defendant and its successors and assigns, and shall inure to the benefit of Plaintiff and its successors, assigns, affiliates, agents, employees and legal representatives.

Notwithstanding the foregoing, Defendant does not release Plaintiff from its obligations under this Agreement. All other obligations under the Contract are waived and released.

5. Representations. The parties hereby represent and agree as follows:

- (a) All real estate taxes have been or will be paid on or before the date of conveyance of the lots described in Paragraph 2(c) herein.

(b) Subject to the release of the liens described in Paragraph 2(c) herein, the parties represent that the lots being conveyed pursuant to Paragraphs 2(c) shall be conveyed free and clear of any liens, claims, notices, actions or causes of action, whether known or threatened. If any lien, claim, notice, action, or cause of action exists pertaining to any of the lots being conveyed pursuant to Paragraphs 2(c), the party transferring such lot shall be responsible for payment or satisfaction of such claim.

6. Duties Are Administrative. The duties of the Escrow Agent hereunder shall be entirely administrative and not discretionary. The Escrow Agent shall have no duties other than as set forth herein. The Escrow Agent shall have no liability or responsibility hereunder for any act or omission to act except for its own gross negligence or bad faith.

7. Waiver, Indemnification. The parties agree to and hereby do waive any suit, claim, demand, or cause of action of any kind which either may have or may assert against the Escrow Agent arising out of or relating to Escrow Agent's performance hereunder, unless such suit, claim, demand, or cause of action is based entirely upon Escrow Agent's gross negligence or bad faith. The parties do hereby agree to indemnify and hold Escrow Agent harmless from and against any and all liabilities, actions, claims, demands, damages, and expenses of every type and kind, including reasonable attorneys' fees, asserted against or incurred by Escrow Agent as a result of or in connection with its serving as the Escrow Agent hereunder, excepting only such claims and expenses as may result from Escrow Agent's gross negligence or bad faith.

8. Dispute and Representation. If Escrow Agent shall be unable to determine at any time to whom the Comstock Escrow Deposit, the HOA Escrow Deposit or the PDR Escrow Deposit (collectively, the "Escrow Deposits") should be delivered or if a dispute should develop between the parties concerning the disposition of the their Escrow Deposits, then in any such event, Escrow Agent shall deliver the aforementioned Escrow Deposits in accordance with the joint (or consistent) written instructions of the parties. In the event that such joint (or consistent) written instructions shall not be received by Escrow Agent within ten (10) days after Escrow Agent has served written requests for such joint (or consistent) written instructions upon the parties, Escrow Agent shall have the right to deliver all of the Escrow Deposits to a title insurance company of Escrow Agent's choice; and, thereafter, Escrow Agent shall be discharged of any further or continuing obligations in connection with this Agreement.

If costs and expenses (including attorneys' fees) are incurred by Escrow Agent because of litigation or any dispute between the parties arising out of the holding of the Escrow Deposits, the non-prevailing party shall reimburse Escrow Agent for such reasonable costs and expenses incurred. The parties hereby agree and acknowledge that Escrow Agent assumes no liability in connection with the holding or investment of the Escrow Deposits pursuant hereto, except for the negligence or willful misconduct of Escrow Agent and its employees and agents. Escrow Agent shall not be responsible for the validity, correctness or genuineness of any document or notice referred to herein; and, in the event of any dispute under this Agreement relating to the delivery of the Escrow Deposits, Escrow Agent may seek advice from its own counsel and shall be fully protected in any action taken in good faith in accordance with the opinion of Escrow Agent's counsel.

9. Joinder of Escrow Agent. Escrow Agent enters into this Agreement for the purpose of acknowledging its agreement to serve as the Escrow Agent hereunder. The parties agree that Escrow Agent may resign as Escrow Agent hereunder and may designate as a successor escrow agent having the same duties and responsibilities as the Escrow Agent any of the following title insurance companies or the North Carolina agencies thereof: First American Title Insurance Company, Chicago Title Insurance Company or Investors Title Insurance Company.

10. Right to Review; Intent to Release. The parties acknowledge that: (a) they have been advised to consult an attorney prior to signing this Agreement; (b) they have read carefully and had sufficient time to consider this Agreement and to consult with their attorney concerning its contents and effect; (c) they understand the terms of this Agreement; (d) they knowingly and voluntarily waived the rights identified herein; and (e) they have determined that entering into this Agreement is in their best interest.

11. No Admissions. The settlement contemplated by this Agreement is in compromise of disputed claims, and the compromises are not to be construed as admissions of liability on the part of any party. The parties deny liability and intend merely to avoid litigation and buy their peace.

12. Enforceability; Authority of Parties and Signators. The parties hereby represent and warrant to each other that they have the power and authority to execute and deliver this Agreement and that they have obtained all necessary authorizations to enter into this Agreement, that the execution of this Agreement does not violate any agreement to which it is a party and that this Agreement constitutes a legal, valid and binding obligation enforceable upon the parties in accordance with its terms, regardless of the adequacy of consideration. By his or her signature, each signator executing this Agreement on behalf of an entity covenants and warrants to the other parties that he has the authority to do so as a binding and legally enforceable act of such entity.

13. Entire Agreement; No Oral Modifications. This Agreement is not based upon any factual, legal, or other representation or promise made by or on behalf of either of the parties not contained in this Agreement. The parties acknowledge and agree that if the facts or law with respect to which this Agreement as executed are, or may be found hereafter to be, other than or different from the facts or law in that connection now believed by either of the parties to be true, the parties expressly accept and assume the risk of such possible difference and agree that all provisions of this Agreement shall be and remain effective notwithstanding any such difference. This Agreement contains the entire understanding between the parties regarding the subject matter hereof and supersedes any prior understanding or agreement between the parties respecting such subject matter. There are no representations, warranties, arrangements, understandings, or agreements, oral or written, relating to the subject matter of this Agreement, except as fully expressed herein. The terms of this Agreement are contractual and not a mere recital. This Agreement may not be altered, amended, modified or rescinded in any way except by written instrument duly executed by the parties.

14. Legal Representation. The parties acknowledge, represent and agree, each with the other, that (i) each has consulted with an attorney of their choice regarding this Agreement prior to the execution hereof, or had the opportunity to consult with an attorney; (ii) each attorney or party has been afforded a full opportunity to read, review and consider this Agreement; (iii) each attorney or party has had the opportunity to and has negotiated the terms of this Agreement; and (iv) neither Plaintiff nor Defendant shall be deemed the drafter hereof.

15. Governing Law. All questions concerning this Agreement and performance hereunder shall be governed by and resolved in accordance with the laws of the State of North Carolina.

16. Execution Under Seal. This Agreement has been executed under seal in express contemplation of the parties' continuing duties to perform and to be bound as contemplated by its terms for a period in excess of three years.

17. Counterparts. This Agreement may be executed in facsimile or PDF counterparts at different times and locations, each of which shall be deemed an original and all of which shall constitute the same instrument.

[THIS SPACE INTENTIONALLY LEFT BLANK – SIGNATURES APPEAR ON NEXT PAGE]

Agreed, effective the __ day of June, 2009.

COMSTOCK HOMES OF RALEIGH, LLC,
a North Carolina limited liability company (“SEAL”)

By: COMSTOCK HOMEBUILDING COMPANIES, INC.,
Its Manager

By: _____

Title: _____

Date: _____

PROVIDENCE DEVELOPMENT OF RALEIGH, LLC,
a North Carolina limited liability company (“SEAL”)

By: _____

Title: _____

Date: _____

ESCROW AGENT:

By: _____

Title: _____

Date: _____

[NOTARY ACKNOWLEDGEMENTS ATTACHED]

STATE OF NORTH CAROLINA
COUNTY OF WAKE

I, a Notary Public of the County and State aforesaid, certify that _____, an authorized representative of PROVIDENCE DEVELOPMENT OF RALEIGH, LLC, a North Carolina limited liability company, personally appeared before me this day and, having provided satisfactory evidence of his identity in the form of a state issued driver's license, signed the foregoing instrument under seal for the purpose stated therein on behalf of the corporation, under authority duly given, on this the __ day of June, 2009.

(SEAL)

_____, Notary Public
My commission expires: _____

STATE OF _____
COUNTY OF _____

I, a Notary Public of the County and State aforesaid, certify that _____, an authorized representative of COMSTOCK HOMES OF RALEIGH, LLC, a North Carolina limited liability company, personally appeared before me this day and, having provided satisfactory evidence of his identity in the form of a state issued driver's license, signed the foregoing instrument under seal for the purpose stated therein on behalf of the corporation, under authority duly given, on this the __ day of June, 2009.

(SEAL)

_____, Notary Public
My commission expires: _____

STATE OF NORTH CAROLINA
COUNTY OF WAKE

I, a Notary Public of the County and State aforesaid, certify that _____, an authorized representative of MANNING, FULTON & SKINNER, PA, a North Carolina professional association, personally appeared before me this day and, having provided satisfactory evidence of his identity in the form of a state issued driver's license, signed the foregoing instrument under seal for the purpose stated therein on behalf of the corporation, under authority duly given, on this the __ day of June , 2009.

(SEAL)

_____, Notary Public

My commission expires: _____

EXHIBIT A
DESCRIPTION OF LOTS

Lots Conveyed by Defendant:

Single Family Lots: Being Lots 49, 71, 64, 65, 66, 67, 81, 82, 83 and 84, Providence of Raleigh Subdivision, Phase 2, as shown on plat of survey entitled "SUBDIVISION PLAT OF PROVIDENCE – PHASE 2" prepared by Elingburg Land Surveying Co., P.A. and recorded in Book of Maps 2007, pages 657 and 658, Wake County Registry.

Together with all rights, privileges, and easements appurtenant to the above-described property as set forth in that certain Declaration of Covenants, Conditions and Restrictions for Providence of Raleigh Subdivision recorded in Book 12053, page 2419, Wake County Registry, as supplemented by that certain Annexation Declaration recorded in Book 12451, page 2197, re-recorded in Book 12623, page 2662, both of the Wake County Registry.

Lots Conveyed by Plaintiff:

Townhouse Lots: Being all of Townhouse Lots 161-178, inclusive, Providence of Raleigh Subdivision, Phase 2, as shown on plat of survey entitled "SUBDIVISION PLAT OF PROVIDENCE – PHASE 2" prepared by Elingburg Land Surveying Co., P.A. and recorded in Book of Maps 2007, pages 657 and 658, Wake County Registry.

Together with all rights, privileges, and easements appurtenant to the above-described property as set forth in (i) that certain Declaration of Covenants, Conditions and Restrictions for Providence of Raleigh Subdivision recorded in Book 12053, page 2419, Wake County Registry, as supplemented by that certain Annexation Declaration recorded in Book 12451, page 2197, re-recorded in Book 12623, page 2662, both of the Wake County Registry, and (ii) that certain Declaration of Covenants, Conditions and Restrictions for Providence Subdivision, Phase 2 Townhouses recorded in Book 12451, page 2202, Wake County Registry.

EXHIBIT B
Covenant Modification

- 14 -

EXHIBIT C
FORM OF SPECIAL WARRANTY DEED FOR DEFENDANT'S CONVEYANCE

- 15 -

EXHIBIT D
FORM OF SPECIAL WARRANTY DEED FOR PLAINTIFF'S CONVEYANCE

- 16 -

EXHIBIT E
HOUSE PLAN SUBMISSION AND APPROVAL

SUBORDINATED DEFICIENCY NOTE

\$400,000.00

September ____, 2009

FOR VALUE RECEIVED, the undersigned, **COMSTOCK HOMEBUILDING COMPANIES, INC.**, a Delaware corporation (the "Borrower"), promises to pay to the order of CORNERSTONE BANK ("Noteholder" or "Lender"), the sum of Four Hundred Thousand Dollars and No/cents (\$400,000.00) (the "Subordinated Deficiency Note"), or so much thereof as shall remain unpaid; this Note being non-interest bearing. This Subordinated Deficiency Note is being issued pursuant to and shall be administered in accordance with that certain Settlement Agreement of even date herewith (the "Agreement"). Borrower hereby agrees to pay Noteholder in full on the Maturity Date (as defined herein). As consideration for the entry into this Subordinated Deficiency Note and payment by Borrower hereunder, Noteholder has executed the release contained in the Agreement.

1. Maturity. The unpaid principal amount of this Subordinated Deficiency Note shall mature and become due and payable in full on the date that is three (3) years from the date hereof (the "Maturity Date").

2. Notices. Any notice, request, or demand to be given to the Borrower under this Subordinated Deficiency Note shall be in writing and shall be deemed to have been given if delivered to the Borrower at 11465 Sunset Hills Road, Suite 500, Reston, Virginia 20190, Attention: Mr. Christopher Clemente, with a copy to Mr. Jubal R. Thompson either (i) on the date of delivery of the notice to the Borrower by hand, or (ii) the next business day following the day on which the same shall have been placed in the hands of a nationally recognized courier service for overnight delivery to the Borrower, with all charges prepaid and tracking information retained, addressed to the Borrower at the address provided herein.

3. Purpose of Loan. The Borrower hereby represents and warrants that the loan evidenced hereby was made and transacted solely for the purpose of carrying on a business.

4. Prepayment. Subject to Paragraph 7 below, this Subordinated Deficiency Note may be prepaid, in whole or in part, at any time without penalty or premium.

5. Choice of Law. The validity and construction of this Subordinated Deficiency Note and all matters pertaining thereto are to be determined according to the laws of the State of Georgia.

6. Enforceability. In the event any provision of this Subordinated Deficiency Note (or any part of any provision) is held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision (or remaining part of the affected provision) of this Subordinated Deficiency Note; but this Subordinated Deficiency Note shall be construed as if such invalid, illegal or unenforceable provision (or part thereof) had not been contained in this Subordinated Deficiency Note, but only to the extent it is invalid, illegal or unenforceable. This Subordinated Deficiency Note may not be changed orally, but only by an agreement in writing signed by the parties against whom enforcement of any waiver, change, modification or discharge is sought.

7. Subordination. By acceptance of this Subordinated Deficiency Note, Holder of the Subordinated Indebtedness (as defined below) agrees to each of the following provisions:

(a) As used in this Paragraph 7, the following terms have the following respective meanings:

“Agents” means the Guggenheim Agent and the KeyBank Agent.

“Bankruptcy Code” means 11 U.S.C. §101 et seq., as from time to time hereafter amended, and any successor or similar statute.

“Collateral” means the Guggenheim Collateral and the KeyBank Collateral.

“Enforcement Action” means the commencement of any litigation or proceeding at law or in equity, the commencement of any foreclosure proceeding, the exercise of any statutory or non-judicial power of sale, the taking of a deed or assignment in lieu of foreclosure, seeking to obtain a judgment, seeking the appointment of or the obtaining of a receiver or the taking of any other enforcement action against, or the taking of possession or control of, or the exercise of any rights or remedies with respect to, any Obligor or the Collateral, any other property or assets of any Obligor or any portion thereof.

“Guggenheim Agent” means Guggenheim Corporate Funding, LLC, in its capacity as the administrative agent under the Guggenheim Senior Loan Documents, or any successor administrative agent under the Guggenheim Senior Loan Documents.

“Guggenheim Collateral” means all of the real, personal and other property owned by the Guggenheim Obligors now or hereafter encumbered by or securing the Guggenheim Senior Note, the Guggenheim Senior Loan Agreement, the Guggenheim Senior Security Documents, or the Guggenheim Senior Guaranty, or any documents now or hereafter entered into or delivered in connection with any of them, and all of each Guggenheim Obligor’s right, title and interest in and to such property, whether existing or future, and all security interests, security titles, liens, claims, pledges, encumbrances, conveyances, endorsements and guaranties of whatever nature now or hereafter securing any Guggenheim Obligor’s obligations under the Guggenheim Senior Loan Documents or any part thereof, and all products and proceeds of the foregoing. The Guggenheim Collateral shall not include the pledges by Borrower to KeyBank Agent of its equity interests in Potomac and Station View pursuant the KeyBank Senior Assignment of Interests.

“Guggenheim Obligors” means Comstock Penderbrook, L.C. and Borrower.

“Guggenheim Senior Debt” means (i) principal of, premium, if any, and interest on, the Guggenheim Senior Note or pursuant to the Guggenheim Senior Loan Agreement (whether payable under the Guggenheim Senior Note, the Guggenheim Senior Loan Agreement, the Guggenheim Senior Guaranty, or any other Guggenheim Senior Loan Document), (ii)

prepayment fees, yield maintenance charges, breakage costs, late charges, default interest, agent's fees, costs of collection, protective advances, advances to cure defaults, and indemnities, and (iii) any other amount or obligations (including any fee or expense) due or payable with respect to the Guggenheim Senior Loan or any of the Guggenheim Senior Loan Documents (including interest and any other of the foregoing amounts accruing after the commencement of any Insolvency Proceeding, and any other interest that would have accrued but for the commencement of such Insolvency Proceeding, whether or not any such interest is allowed as an enforceable claim in such Insolvency Proceeding and regardless of the value of the Guggenheim Collateral at the time of such accrual), whether outstanding on the date of this Subordinated Deficiency Note or hereafter incurred, whether as a secured claim, undersecured claim, unsecured claim, deficiency claim or otherwise, and all renewals, modifications, amendments, supplements, consolidations, restatements, extensions, refinances, and refundings of any thereof; provided, however, that notwithstanding anything herein to the contrary, "Guggenheim Senior Debt" shall not include (a) any funds loaned or advanced by the Guggenheim Senior Lenders for any purpose unrelated to the Fair Lakes (Penderbrook) Condominium conversion project in Fairfax County, VA, or (b) any of items described in (i), (ii), (iii) of this definition that are related to any of the purposes set forth in (a).

"Guggenheim Senior Guaranty" means that certain Carve-Out Guaranty dated as of February 27, 2007 executed by Borrower in favor of the Guggenheim Agent for the benefit of the Guggenheim Senior Lenders, as the same may be from time to time amended, extended, supplemented, consolidated, renewed, restated or otherwise modified.

"Guggenheim Senior Lenders" means financial institutions or designated entities from time to time as defined in the Guggenheim Senior Loan Agreement.

"Guggenheim Senior Loan" means the up to Twenty Eight Million Dollars and No/Cents (\$28,000,000) credit facility provided pursuant to the Guggenheim Senior Loan Agreement, as the same may be amended, modified, increased, consolidated, restated, or replaced.

"Guggenheim Senior Loan Agreement" means that certain Loan Agreement dated as of February 22, 2007 executed by Comstock Penderbrook, L.C. and Guggenheim Corporate Funding, LLC, individually and as Administrative Agent for the Guggenheim Senior Lenders, and certain other parties now or hereafter a party thereto, as modified by that certain First Amendment to Loan Agreement dated April 10, 2007, and as further modified by Forbearance Agreement and Second Amendment to Loan Agreement dated January 27, 2009, and as further modified by Third Amendment to Loan Agreement dated on or near the date hereof, and as the same may be further amended, modified, increased, consolidated, restated or replaced.

"Guggenheim Senior Loan Documents" means the Guggenheim Senior Security Documents, the Guggenheim Senior Note, the Guggenheim Senior Loan Agreement, the Guggenheim Senior Guaranty, and any other documents, agreements or instruments now or hereafter executed and delivered by or on behalf of any Guggenheim Obligor or any other person or entity in connection with the Guggenheim Senior Loan, and any documents, agreements or instruments hereafter executed and delivered by or on behalf of any Guggenheim Obligor or any other person or entity in connection with any refinancing of the Guggenheim Senior Loan, as any of the same may be from time to time amended, extended, supplemented, consolidated, renewed, restated, or otherwise modified.

“Guggenheim Senior Note” means that certain Promissory Note dated February 22, 2007 executed by Comstock Penderbrook, L.C. in favor of the Guggenheim Corporate Funding, LLC, as originally executed, or if varied, extended, supplemented, consolidated, amended, replaced, renewed, modified, or restated from time to time as so varied, extended, supplemented, consolidated, amended, replaced, renewed, modified, or restated.

“Guggenheim Senior Security Documents” means the “Security Documents” as defined in the Guggenheim Senior Loan Agreement, and each other Guggenheim Senior Loan Document securing any or all of the Guggenheim Senior Loan, together with any and all acknowledgments, powers, certificates, UCC financing statements, or other documents or instruments executed and delivered in connection therewith.

“Insolvency Proceeding” means any proceeding, whether voluntary or involuntary, under the Bankruptcy Code, or any other bankruptcy, insolvency, liquidation, reorganization, composition, extension, arrangement, adjustment or other similar proceeding concerning any Obligor, any action for the winding-up or dissolution of any Obligor, any proceeding (judicial or otherwise) concerning the application of the assets of any Obligor for the benefit of its creditors, the appointment of or any proceeding seeking the appointment of a trustee, receiver or other similar custodian for all or any substantial part of the assets of any Obligor, a general assignment for the benefit of creditors or any proceeding or action seeking the marshaling of the assets and liabilities of any Obligor, or any other action concerning the adjustment of the debts of any Obligor or the cessation of business by any Obligor, in each case under any applicable domestic or foreign federal or state law. For the purposes hereof, an “Insolvency Proceeding” shall also include the taking, seeking or approving of any action in any proceeding described in the foregoing sentence by, against or concerning any other person or entity that could adversely affect any Obligor, any other obligor with respect to the Subordinated Indebtedness, the Collateral, the Senior Loan Documents, the Agents, the Senior Lenders or any Judicial Proceeding under the Senior Security Documents or any other Senior Loan Document.

“Judicial Proceeding” means one or more proceedings by one or more holders of Senior Debt before a state or federal court (having jurisdiction with respect thereto) to collect the Senior Debt following an acceleration of the maturity thereof as a result of a default.

“KeyBank Agent” means KeyBank National Association, in its capacity as the agent under the KeyBank Senior Loan Documents, or any successor agent under the KeyBank Senior Loan Documents.

“KeyBank Cash Collateral Agreement” means that certain Cash Collateral Agreement dated on or near the date herewith executed by Borrower in favor of the KeyBank Agent for the benefit of the KeyBank Senior Lenders, and as may be further amended, modified, increased, consolidated, restated or replaced.

“KeyBank Collateral” means all of the real, personal and other property owned by the KeyBank Obligors now or hereafter encumbered by or securing the KeyBank Senior Note, the KeyBank Senior Loan Agreement, the KeyBank Senior Security Documents, the KeyBank Cash Collateral Agreement, the pledges by Borrower to KeyBank Agent of its

equity interests in Potomac and Station View pursuant the KeyBank Senior Assignment of Interests, or the KeyBank Senior Guaranty, or any documents now or hereafter entered into or delivered in connection with any of them, and all of each KeyBank Obligor's right, title and interest in and to such property, whether existing or future, and all security interests, security titles, liens, claims, pledges, encumbrances, conveyances, endorsements and guaranties of whatever nature now or hereafter securing any KeyBank Obligor's obligations under the KeyBank Senior Loan Documents or any part thereof, and all products and proceeds of the foregoing.

“KeyBank Obligors” means Comstock Station View, L.C., a Virginia limited liability company, Comstock Potomac Yard, L.C., a Virginia limited liability company, and Borrower.

“KeyBank Senior Assignment of Interests” means that certain Assignment of Interests dated March 14, 2008 executed by Borrower in favor of KeyBank Agent for the benefit of the KeyBank Senior Lenders, as the same may be from time to time amended, extended, supplemented, consolidated, renewed, restated or otherwise modified.

“KeyBank Senior Debt” means the (i) principal of, premium, if any, and interest on, the KeyBank Senior Note or pursuant to the KeyBank Senior Loan Agreement (whether payable under the KeyBank Senior Note, the KeyBank Senior Loan Agreement, the KeyBank Senior Guaranty, or any other KeyBank Senior Loan Document), (ii) prepayment fees, yield maintenance charges, breakage costs, late charges, default interest, agent's fees, costs of collection, protective advances, advances to cure defaults, and indemnities, and (iii) any other amount or obligations (including any fee or expense) due or payable with respect to the KeyBank Senior Loan or any of the KeyBank Senior Loan Documents (including interest and any other of the foregoing amounts accruing after the commencement of any Insolvency Proceeding, and any other interest that would have accrued but for the commencement of such Insolvency Proceeding, whether or not any such interest is allowed as an enforceable claim in such Insolvency Proceeding and regardless of the value of the KeyBank Collateral at the time of such accrual), whether outstanding on the date of this Subordinated Deficiency Note or hereafter incurred, whether as a secured claim, undersecured claim, unsecured claim, deficiency claim or otherwise, and all renewals, modifications, amendments, supplements, consolidations, restatements, extensions, refinances, and refundings of any thereof; provided, however, that notwithstanding anything herein to the contrary, “KeyBank Senior Debt” shall not include (a) any funds loaned or advanced by the KeyBank Senior Lenders after the date of this Subordinated Deficiency Note for any purpose unrelated to the Eclipse on Center Park Condominium high rise project in Arlington County, VA, referred to as the Potomac Project in the Key Bank Senior Loan Agreement, and the townhouse development project known as Station View in Loudoun County, Virginia referred to as the Station View Project in the Key Bank Senior Loan Agreement, or (b) any of the items described in (i), (ii), (iii) of this definition that are related to any of the purposes set forth in (a); provided, further, however, that Lender acknowledges that all amounts currently outstanding under the KeyBank Senior Loan Documents shall be deemed KeyBank Senior Debt.

“KeyBank Senior Guaranty” means that certain Unconditional Guaranty of Payment and Performance dated as of March 14, 2008 executed by Borrower in favor of the KeyBank Agent for the benefit of the KeyBank Senior Lenders, as the same may be from time to time amended, extended, supplemented, consolidated, renewed, restated or otherwise modified.

“KeyBank Senior Lenders” means “Lenders” as defined in the KeyBank Senior Loan Agreement.

“KeyBank Senior Loan” means the up to \$40,391,200.00 credit facility provided pursuant to the KeyBank Senior Loan Agreement, as the same may be amended, modified, increased, consolidated, restated, or replaced.

“KeyBank Senior Loan Agreement” means that certain Loan Agreement dated as of March 14, 2008 executed by Comstock Station View, L.C., a Virginia limited liability company, and Comstock Potomac Yard, L.C., a Virginia limited liability company, and KeyBank National Association, individually and as Agent for the KeyBank Senior Lenders, and certain other parties now or hereafter a party thereto, as modified by that certain First Amendment to Loan Agreement dated on or near the date hereof, and as the same may be further amended, modified, increased, consolidated, restated or replaced.

“KeyBank Senior Loan Documents” means the KeyBank Senior Security Documents, the KeyBank Senior Note, the KeyBank Senior Loan Agreement, the KeyBank Senior Guaranty, the KeyBank Senior Assignment of Interests and any other documents, agreements or instruments now or hereafter executed and delivered by or on behalf of any KeyBank Obligor or any other person or entity in connection with the KeyBank Senior Loan, and any documents, agreements or instruments hereafter executed and delivered by or on behalf of any KeyBank Obligor or any other person or entity in connection with any refinancing of the KeyBank Senior Loan, as any of the same may be from time to time amended, extended, supplemented, consolidated, renewed, restated, or otherwise modified.

“KeyBank Senior Note” means that certain Amended and Restated Note dated March 14, 2008 executed by Comstock Station View, L.C., a Virginia limited liability company, and Comstock Potomac Yard, L.C., a Virginia limited liability company in favor of KeyBank National Association, as originally executed, or if varied, extended, supplemented, consolidated, amended, replaced, renewed, modified, or restated from time to time as so varied, extended, supplemented, consolidated, amended, replaced, renewed, modified, or restated.

“KeyBank Senior Security Documents” means the “Security Documents” as defined in the KeyBank Senior Loan Agreement, the KeyBank Cash Collateral Agreement, and each other KeyBank Senior Loan Document securing any or all of the KeyBank Senior Loan, together with any and all acknowledgments, powers, certificates, UCC financing statements, or other documents or instruments executed and delivered in connection therewith.

“Obligors” means the Guggenheim Obligors and the KeyBank Obligors.

“Potomac” means Comstock Potomac Yard, L.C., a Virginia limited liability company.

“Senior Debt” means the Guggenheim Senior Debt and the KeyBank Senior Debt.

“Senior Lender Sharing Ratio” means as of the date of determination thereof, with respect to the Guggenheim Senior Debt, the outstanding principal amount due on the Guggenheim Senior Guaranty divided by the total outstanding principal balance of the KeyBank Senior Debt plus the outstanding principal amount due on the Guggenheim Senior Guaranty, and means, with respect to the KeyBank Senior Debt, the outstanding principal balance of the KeyBank Senior Debt divided by the total outstanding principal balance of the KeyBank Senior Debt plus the outstanding principal amount due on the Guggenheim Senior Guaranty.

“Senior Lenders” means the KeyBank Senior Lenders and the Guggenheim Senior Lenders.

“Senior Loan Documents” means the Guggenheim Senior Loan Documents and the KeyBank Senior Loan Documents.

“Senior Security Documents” means the Guggenheim Senior Security Documents and the KeyBank Senior Security Documents.

“Station View” means Comstock Station View, L.C., a Virginia limited liability company.

“Subordinated Indebtedness” means the principal amount of the indebtedness evidenced by this Subordinated Deficiency Note, together with interest, breakage or other amount, if any, due thereon or payable with respect thereto, whether the same is payable by Borrower or any other Obligor.

“Subsidiary” means any corporation, association, partnership, trust, or other business entity of which the designated parent shall at any time own directly or indirectly through a Subsidiary or Subsidiaries at least a majority (by number of votes or controlling interests) of the outstanding Voting Interests.

“Voting Interests” means stock or similar ownership interests, of any class or classes (however designated), the holders of which are at the time entitled, as such holders, (a) to vote for the election of a majority of the directors (or persons performing similar functions) of the corporation, association, partnership, trust or other business entity involved, or (b) to control, manage, or conduct the business of the corporation, partnership, association, trust or other business entity involved.

(b) Upon any distribution of the assets of Borrower in any Insolvency Proceeding relating to Borrower, or to its respective creditors as such, then and in any such event:

(i) the holders of the Senior Debt shall be entitled to receive payment in full of all amounts due or to become due on or in respect of all Senior Debt, before any payment, whether in cash, property, or securities is made on account of or applied to the Subordinated Indebtedness; and

(ii) any payment, whether in cash, property or securities, to which the holders of the Subordinated Indebtedness would be entitled except for the provisions of this Paragraph 7, shall be paid or delivered, to the extent permitted by law, by any debtor, custodian,

liquidating trustee, agent, or other person making such payment, directly to the holders of the Senior Debt, or their representative or representatives, in amounts computed in accordance with each applicable Senior Lender Sharing Ratio, for application to the payment thereof, to the extent necessary to pay all such Senior Debt in full, after giving effect to any concurrent payment or distribution, or provision therefor, to the holders of such Senior Debt.

(c) By acceptance of this Subordinated Deficiency Note, each holder of the Subordinated Indebtedness hereby expressly waives any rights to require or request that the Agents, or either of them, or the Senior Lenders marshal the Collateral in favor of the holder of the Subordinated Indebtedness or to equitably subordinate the rights, liens or security interests of the Agents, or either of them, or the Senior Lenders, or any of them, under the Senior Loan Documents, whether pursuant to the Bankruptcy Code or otherwise. The Agents, or either of them, and the Senior Lenders, or any of them, shall have the right at any and all times to determine the order in which, or whether, (i) recourse is sought against any Obligor or any other obligor with respect to the Senior Debt, or (ii) any or all of the Collateral shall be enforced. Each holder of the Subordinated Indebtedness hereby waives any and all rights to require that the Agents, or either of them, and/or the Senior Lenders, or any of them, pursue or exhaust any rights or remedies with respect to any Obligor or any other party prior to exercising their rights and remedies with respect to the Collateral or any other property or assets of the Obligors. The Agents, or either of them, and the Senior Lenders, or any of them, may forbear collection, grant indulgences, release, compromise or settle the Senior Debt, or sell, take, exchange, surrender or release collateral or security therefor, consent to or waive any breach of, or any act, omission or default under, any of the Senior Loan Documents, apply any sums received by or realized upon by the Agents, or either of them, and the Senior Lenders, or any of them, against liabilities of the Obligors to the Agents, or either of them, and the Senior Lenders, or any of them, in such order as the Agents, or either of them, and the Senior Lenders, or any of them, shall determine in their sole discretion, and otherwise deal with any and all parties and the Collateral or other property or assets of the Obligors as they deem appropriate. The Agents and the Senior Lenders shall have no liability to the holder of the Subordinated Indebtedness for, and each holder of the Subordinated Indebtedness hereby waives any claim, right, action or cause of action which it may now or hereafter have against the Agents, or either of them, and the Senior Lenders, or any of them, arising out of, any waiver, consent, release, indulgence, extension, delay or other action or omission, any release of any Obligor, release of any of the Collateral, the failure to realize upon any Collateral or other property or assets of any Obligor, or the failure to exercise any rights or remedies of the Agents, or either of them, and the Senior Lenders, or any of them, under the Senior Loan Documents.

(d) Each holder of the Subordinated Indebtedness hereby expressly consents to and authorizes, at the option of each Agent, the amendment, extension, restatement, consolidation, increase, renewal, refinance or other modification, in whole or in part, of all or any of the Senior Loan Documents, including, without limitation, increasing or decreasing the stated principal amount of either Senior Loan, extending or shortening the term of either Senior Loan, increasing or decreasing the interest rate payable as provided in any of the Senior Loan Documents or altering any other payment terms under any of the Senior Loan Documents.

(e) By acceptance of this Subordinated Deficiency Note, each holder of the Subordinated Indebtedness acknowledges that no Agent and no Senior Lender has made nor do any of them now make any representations or warranties, express or implied, nor do they assume any liability to any holder of the Subordinated Indebtedness, with respect to the creditworthiness or financial condition of any Obligor or any other person. Each holder of the Subordinated Indebtedness acknowledges that it has, independently and without reliance upon the Agents, or either of them, or the Senior Lenders, or any of them, and based upon such information and documents as it has deemed appropriate, made its own credit analysis and decision to accept this Subordinated Deficiency Note and the Subordinated Indebtedness. Each holder of the Subordinated Indebtedness will, independently and without reliance upon the Agents, or either of them, or the Senior Lenders, or any of them, based upon such information and documents as it deems appropriate at the time, continue to make its own credit analysis and decisions in taking or not taking action under this Subordinated Deficiency Note. No Agent and no Senior Lender shall have any duty or responsibility, either initially or on a continuing basis, to provide any holder of the Subordinated Indebtedness with any credit or other information with respect to any Obligor, whether coming into its possession before the making of any Senior Loan or at any time or times thereafter. Each holder of the Subordinated Indebtedness agrees that no Agent and no Senior Lender owes any fiduciary duty to the holder of the Subordinated Indebtedness in connection with the administration of any Senior Loan or any Senior Loan Document and the holder of the Subordinated Indebtedness agrees not to assert any such claim.

(f) The provisions of this Paragraph 7 shall be applicable both before and after the commencement, whether voluntary or involuntary, of any Insolvency Proceeding by or against any Obligor and all references herein to any Obligor shall be deemed to apply to any such Obligor as a debtor-in-possession and to any trustee in bankruptcy for the estate of any such Obligor. Furthermore, this Paragraph 7 and the subordinations contained herein shall apply notwithstanding the fact that all or any part of the Senior Debt or any claim for or with respect to all of any part of the Senior Debt is subordinated, avoided or disallowed, in whole or in part, in any Insolvency Proceeding or other applicable federal, state or foreign law. Without limiting the foregoing, by acceptance of this Subordinated Deficiency Note, each holder of the Subordinated Indebtedness expressly covenants and agrees that this Subordinated Deficiency Note is enforceable under applicable bankruptcy law and should be enforced under Section 510(a) of the Bankruptcy Code. Until such time as the Senior Debt has been indefeasibly paid in full in cash and Senior Lenders have no further obligation to make any advances which would constitute Senior Debt, the holders of the Subordinated Indebtedness shall not, and shall not solicit any person or entity to: (i) seek, commence, file, institute, consent to or acquiesce in any Involuntary Proceeding with respect to any Obligor or the Collateral; (ii) seek to consolidate any Obligor with any other person or entity in any Insolvency Proceeding; or (iii) take any action in furtherance of any of the foregoing.

(g) Each holder of the Subordinated Indebtedness hereby agrees that it shall not challenge the validity or amount of any claim submitted in such Insolvency Proceeding by the Agents, or either of them, or the Senior Lenders, or any of them, or any valuations of the Collateral submitted by the Agents, or either of them, or the Senior Lenders, or any of them, in such Insolvency Proceeding or take any other action in such Insolvency Proceeding, which is adverse to their enforcement of any claim or receipt of adequate protection (as that term is defined in the Bankruptcy Code).

(h) To the extent any transfer, payment or distribution of assets with respect to all or any portion of the Senior Debt (whether in cash, property or securities and whether by or on behalf of any Obligor as proceeds of security or enforcement of any right of setoff or otherwise) is declared to be fraudulent or preferential, set aside or required to be paid to any Obligor, the estate in bankruptcy thereof, any third party, or a trustee, receiver or other similar party under any bankruptcy, insolvency, receivership or similar law, then if such payment is recovered by, or paid over to, any Obligor, the estate in bankruptcy thereof, any third party, or such trustee, receiver or other similar party, the Senior Debt or part thereof originally intended to be satisfied shall be deemed to be reinstated and outstanding as if such payment or distribution had not occurred, and this Paragraph 7 and the agreements and subordination contained herein shall be reinstated with respect to any such transfer, payment or distribution. No Agent shall be required to contest any such declaration or obligation to return such payment or distribution.

(i) Each holder of the Subordinated Indebtedness intentionally and unconditionally waives and relinquishes any right to challenge the validity, enforceability and binding effect of any of the Senior Security Documents or the other Senior Loan Documents, and any lien, encumbrance, claim or security interest now or hereafter created thereunder, or the attachment, perfection or priority thereof, regardless of the order of recording or filing of any thereof, or compliance by the Agents, or either of them, or the Senior Lenders, or any of them, with the terms of any of the Senior Security Documents or any of the other Senior Loan Documents, by reason of any matter, cause or thing now or hereafter occurring, nor shall the holder of the Subordinated Indebtedness raise any such matter, cause or thing as a defense to the enforcement thereof.

(j) Each holder of the Subordinate Debt agrees that it will not in any manner challenge, oppose, object to, interfere with or delay (i) the validity or enforceability of this Subordinated Deficiency Note, including without limitation, any provisions regarding the relative priority of the rights and duties of the Agents, or either of them, and Senior Lenders, or any of them, and the holder of the Subordinated Indebtedness, or (ii) any Agent's or any Senior Lender's security interest in, liens on and rights as to the Obligors, and any Collateral or any other property or assets of any Obligor, or any Enforcement Actions of the Agents, or either of them, or the Senior Lenders, or any of them, (including, without limitation, any efforts by the Agents, or either of them, to obtain relief from the automatic stay under Section 362 of the Bankruptcy Code).

IN WITNESS WHEREOF, the Borrower has executed and sealed, or caused to be executed and sealed, this Note on the date first above written.

BORROWER:

Comstock Homebuilding Companies, Inc.

By: _____ (SEAL)
Name: Christopher Clemente
Title: CEO

AMENDED AND RESTATED SUBORDINATED DEFICIENCY NOTE

\$205,488.23

November 5, 2009

FOR VALUE RECEIVED, the undersigned, **COMSTOCK HOMEBUILDING COMPANIES, INC.**, a Delaware corporation (the "Borrower"), promises to pay to the order of **WACHOVIA BANK, NATIONAL ASSOCIATION**, a national banking association (the "Noteholder" or "Wachovia"), the sum of Two Hundred and Five Thousand, Four Hundred Eighty-Eight and 23/100 Dollars (\$205,488.23) (the "Subordinated Deficiency Note"), or so much thereof as shall remain unpaid; this Note being non-interest bearing provided that Borrower is not in default of its obligations hereunder. This Subordinated Deficiency Note is issued pursuant to that certain Consensual Foreclosure and Settlement Agreement dated August 17, 2009 (the "Agreement"), and shall restate in full and supersede that certain Subordinated Deficiency Note dated August 17, 2009 in the original principal amount of \$1,805,243.00. Borrower hereby agrees to pay Noteholder in full on the Maturity Date (as defined herein). As consideration for the entry into this Subordinated Deficiency Note and payment by Borrower hereunder, Noteholder has executed the release contained in the Agreement.

1. Maturity. The unpaid principal amount of this Subordinated Deficiency Note shall mature and become due and payable in full on August 17, 2012 (the "Maturity Date").

2. Default. In addition to all other rights contained in this Subordinated Deficiency Note, the Borrower hereby expressly agrees that if there is a default in the payment of any amount due under this Subordinated Deficiency Note and if such default shall continue uncorrected for a period of fifteen (15) days after notice of such default is given by the Noteholder to the Borrower (a "Default"), then in such event this Subordinated Deficiency Note shall bear interest at the rate of three percent (3%) per annum (the "Default Rate") from and after the Maturity Date.

3. Notices. Any notice, request, or demand to be given to the Borrower under this Subordinated Deficiency Note shall be in writing and shall be deemed to have been given if delivered to the Borrower at 11465 Sunset Hills Road, Suite 500, Reston, Virginia 20190, Attention: Mr. Christopher Clemente, copy to Mr. Jubal Thompson by e-mail to jthompson@comstockhomebuilding.com, either (i) on the date of delivery of the notice to the Borrower by hand, or (ii) the next business day following the day on which the same shall have been placed in the hands of a nationally recognized courier service for overnight delivery to the Borrower, with all charges prepaid and tracking information retained, addressed to the Borrower at the address provided herein.

4. Purpose of Loan. The Borrower hereby represents and warrants that the loan evidenced hereby was made and transacted solely for the purpose of carrying on a business.

5. Prepayment. Subject to Paragraph 8 below, this Subordinated Deficiency Note may be prepaid, in whole or in part, at any time without penalty or premium.

6. Choice of Law. The validity and construction of this Subordinated Deficiency Note and all matters pertaining thereto are to be determined according to the laws of the State of North Carolina.

7. Enforceability. In the event any provision of this Subordinated Deficiency Note (or any part of any provision) is held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision (or remaining part of the affected provision) of this Subordinated Deficiency Note; but this Subordinated Deficiency Note shall be construed as if such invalid, illegal or unenforceable provision (or part thereof) had not been contained in this Subordinated Deficiency Note, but only to the extent it is invalid, illegal or unenforceable. This Subordinated Deficiency Note may not be changed orally, but only by an agreement in writing signed by the parties against whom enforcement of any waiver, change, modification or discharge is sought.

8. Subordination. By acceptance of this Subordinated Deficiency Note, each holder of the Subordinated Indebtedness (as defined below) agrees to each of the following provisions:

(a) As used in this Paragraph 8, the following terms have the following respective meanings:

“Agents” means the Guggenheim Agent and the KeyBank Agent.

“Bankruptcy Code” means 11 U.S.C. §101 et seq., as from time to time hereafter amended, and any successor or similar statute.

“Collateral” means the Guggenheim Collateral and the KeyBank Collateral.

“Enforcement Action” means the commencement of any litigation or proceeding at law or in equity, the commencement of any foreclosure proceeding, the exercise of any statutory or non-judicial power of sale, the taking of a deed or assignment in lieu of foreclosure, seeking to obtain a judgment, seeking the appointment of or the obtaining of a receiver or the taking of any other enforcement action against, or the taking of possession or control of, or the exercise of any rights or remedies with respect to, any Obligor or the Collateral, any other property or assets of any Obligor or any portion thereof.

“Guggenheim Agent” means Guggenheim Corporate Funding, LLC, in its capacity as the administrative agent under the Guggenheim Senior Loan Documents, or any successor administrative agent under the Guggenheim Senior Loan Documents.

“Guggenheim Collateral” means all of the real, personal and other property owned by the Guggenheim Obligors now or hereafter encumbered by or securing the Guggenheim Senior Note, the Guggenheim Senior Loan Agreement, the Guggenheim Senior Security Documents, or the Guggenheim Senior Guaranty, or any documents now or hereafter entered into or delivered in connection with any of them, and all of each Guggenheim Obligor’s right, title and interest in and to such property, whether existing or future, and all security interests, security titles, liens, claims, pledges, encumbrances, conveyances, endorsements and guaranties of whatever nature now or hereafter securing any Guggenheim Obligor’s obligations under the Guggenheim Senior Loan Documents or any part thereof, and all products and proceeds of the foregoing. The Guggenheim Collateral shall not include the pledges by Borrower to KeyBank Agent of its equity interests in Potomac and Station View pursuant the KeyBank Senior Assignment of Interests.

“Guggenheim Obligors” means Comstock Penderbrook, L.C. and Borrower.

“Guggenheim Senior Debt” means (i) principal of, premium, if any, and interest on, the Guggenheim Senior Note or pursuant to the Guggenheim Senior Loan Agreement (whether payable under the Guggenheim Senior Note, the Guggenheim Senior Loan Agreement, the Guggenheim Senior Guaranty, or any other Guggenheim Senior Loan Document), (ii) prepayment fees, yield maintenance charges, breakage costs, late charges, default interest, agent’s fees, costs of collection, protective advances, advances to cure defaults, and indemnities, and (iii) any other amount or obligations (including any fee or expense) due or payable with respect to the Guggenheim Senior Loan or any of the Guggenheim Senior Loan Documents (including interest and any other of the foregoing amounts accruing after the commencement of any Insolvency Proceeding, and any other interest that would have accrued but for the commencement of such Insolvency Proceeding, whether or not any such interest is allowed as an enforceable claim in such Insolvency Proceeding and regardless of the value of the Guggenheim Collateral at the time of such accrual), whether outstanding on the date of this Subordinated Deficiency Note or hereafter incurred, whether as a secured claim, undersecured claim, unsecured claim, deficiency claim or otherwise, and all renewals, modifications, amendments, supplements, consolidations, restatements, extensions, refinances, and refundings of any thereof; provided, however, that notwithstanding anything herein to the contrary, “Guggenheim Senior Debt” shall not include (a) any funds loaned or advanced by the Guggenheim Senior Lenders for any purpose unrelated to the Fair Lakes (Penderbrook) Condominium conversion project in Fairfax County, VA, or (b) any of items described in (i), (ii), (iii) of this definition that are related to any of the purposes set forth in (a).

“Guggenheim Senior Guaranty” means that certain Carve-Out Guaranty dated as of February 27, 2007 executed by Borrower in favor of the Guggenheim Agent for the benefit of the Guggenheim Senior Lenders, as the same may be from time to time amended, extended, supplemented, consolidated, renewed, restated or otherwise modified.

“Guggenheim Senior Lenders” means financial institutions or designated entities from time to time as defined in the Guggenheim Senior Loan Agreement.

“Guggenheim Senior Loan” means the up to Twenty Eight Million Dollars and No/Cents (\$28,000,000) credit facility provided pursuant to the Guggenheim Senior Loan Agreement, as the same may be amended, modified, increased, consolidated, restated, or replaced.

“Guggenheim Senior Loan Agreement” means that certain Loan Agreement dated as of February 22, 2007 executed by Comstock Penderbrook, L.C. and Guggenheim Corporate Funding, LLC, individually and as Administrative Agent for the Guggenheim Senior Lenders, and certain other parties now or hereafter a party thereto, as modified by that certain First Amendment to Loan Agreement dated April 10, 2007, and as further modified by Forbearance Agreement and Second Amendment to Loan Agreement dated January 27, 2009, and as further modified by Third Amendment to Loan Agreement dated on or near the date hereof, and as the same may be further amended, modified, increased, consolidated, restated or replaced.

“Guggenheim Senior Loan Documents” means the Guggenheim Senior Security Documents, the Guggenheim Senior Note, the Guggenheim Senior Loan Agreement, the Guggenheim Senior Guaranty, and any other documents, agreements or instruments now or hereafter executed and delivered by or on behalf of any Guggenheim Obligor or any other person or entity in connection with the Guggenheim Senior Loan, and any documents, agreements or instruments hereafter executed and delivered by or on behalf of any Guggenheim Obligor or any other person or entity in connection with any refinancing of the Guggenheim Senior Loan, as any of the same may be from time to time amended, extended, supplemented, consolidated, renewed, restated, or otherwise modified.

“Guggenheim Senior Note” means that certain Promissory Note dated February 22, 2007 executed by Comstock Penderbrook, L.C. in favor of the Guggenheim Corporate Funding, LLC, as originally executed, or if varied, extended, supplemented, consolidated, amended, replaced, renewed, modified, or restated from time to time as so varied, extended, supplemented, consolidated, amended, replaced, renewed, modified, or restated.

“Guggenheim Senior Security Documents” means the “Security Documents” as defined in the Guggenheim Senior Loan Agreement, and each other Guggenheim Senior Loan Document securing any or all of the Guggenheim Senior Loan, together with any and all acknowledgments, powers, certificates, UCC financing statements, or other documents or instruments executed and delivered in connection therewith.

“Insolvency Proceeding” means any proceeding, whether voluntary or involuntary, under the Bankruptcy Code, or any other bankruptcy, insolvency, liquidation, reorganization, composition, extension, arrangement, adjustment or other similar proceeding concerning any Obligor, any action for the winding-up or dissolution of any Obligor, any proceeding (judicial or otherwise) concerning the application of the assets of any Obligor for the benefit of its creditors, the appointment of or any proceeding seeking the appointment of a trustee, receiver or other similar custodian for all or any substantial part of the assets of any Obligor, a general assignment for the benefit of creditors or any proceeding or action seeking the marshaling of the assets and liabilities of any Obligor, or any other action concerning the adjustment of the debts of any Obligor or the cessation of business by any Obligor, in each case under any applicable domestic or foreign federal or state law. For the purposes hereof, an “Insolvency Proceeding” shall also include the taking, seeking or approving of any action in any proceeding described in the foregoing sentence by, against or concerning any other person or entity that could adversely affect any Obligor, any other obligor with respect to the Subordinated Indebtedness, the Collateral, the Senior Loan Documents, the Agents, the Senior Lenders or any Judicial Proceeding under the Senior Security Documents or any other Senior Loan Document.

“Judicial Proceeding” means one or more proceedings by one or more holders of Senior Debt before a state or federal court (having jurisdiction with respect thereto) to collect the Senior Debt following an acceleration of the maturity thereof as a result of a default.

“KeyBank Agent” means KeyBank National Association, in its capacity as the agent under the KeyBank Senior Loan Documents, or any successor agent under the KeyBank Senior Loan Documents.

“KeyBank Cash Collateral Agreement” means that certain Cash Collateral Agreement dated on or near the date herewith executed by Borrower in favor of the KeyBank Agent for the benefit of the KeyBank Senior Lenders, and as may be further amended, modified, increased, consolidated, restated or replaced.

“KeyBank Collateral” means all of the real, personal and other property owned by the KeyBank Obligors now or hereafter encumbered by or securing the KeyBank Senior Note, the KeyBank Senior Loan Agreement, the KeyBank Senior Security Documents, the KeyBank Cash Collateral Agreement, the pledges by Borrower to KeyBank Agent of its equity interests in Potomac and Station View pursuant the KeyBank Senior Assignment of Interests, or the KeyBank Senior Guaranty, or any documents now or hereafter entered into or delivered in connection with any of them, and all of each KeyBank Obligor’s right, title and interest in and to such property, whether existing or future, and all security interests, security titles, liens, claims, pledges, encumbrances, conveyances, endorsements and guaranties of whatever nature now or hereafter securing any KeyBank Obligor’s obligations under the KeyBank Senior Loan Documents or any part thereof, and all products and proceeds of the foregoing.

“KeyBank Obligors” means Comstock Station View, L.C., a Virginia limited liability company, Comstock Potomac Yard, L.C., a Virginia limited liability company, and Borrower.

“KeyBank Senior Assignment of Interests” means that certain Assignment of Interests dated March 14, 2008 executed by Borrower in favor of KeyBank Agent for the benefit of the KeyBank Senior Lenders, as the same may be from time to time amended, extended, supplemented, consolidated, renewed, restated or otherwise modified.

“KeyBank Senior Debt” means the (i) principal of, premium, if any, and interest on, the KeyBank Senior Note or pursuant to the KeyBank Senior Loan Agreement (whether payable under the KeyBank Senior Note, the KeyBank Senior Loan Agreement, the KeyBank Senior Guaranty, or any other KeyBank Senior Loan Document), (ii) prepayment fees, yield maintenance charges, breakage costs, late charges, default interest, agent’s fees, costs of collection, protective advances, advances to cure defaults, and indemnities, and (iii) any other amount or obligations (including any fee or expense) due or payable with respect to the KeyBank Senior Loan or any of the KeyBank Senior Loan Documents (including interest and any other of the foregoing amounts accruing after the commencement of any Insolvency Proceeding, and any other interest that would have accrued but for the commencement of such Insolvency Proceeding, whether or not any such interest is allowed as an enforceable claim in such Insolvency Proceeding and regardless of the value of the KeyBank Collateral at the time of such accrual), whether outstanding on the date of this Subordinated Deficiency Note or hereafter incurred, whether as a secured claim, undersecured claim, unsecured claim, deficiency claim or otherwise, and all renewals, modifications, amendments, supplements, consolidations, restatements, extensions, refinances, and refundings of any thereof; provided, however, that notwithstanding anything herein to the contrary, “KeyBank Senior Debt” shall not include (a) any funds loaned or advanced by the KeyBank Senior Lenders after the date of this Subordinated Deficiency Note for any purpose unrelated to the Eclipse on Center Park Condominium high rise project in Arlington County, VA, referred to as the Potomac Project in the Key Bank Senior Loan Agreement, and the townhouse development project known as Station View in Loudoun

County, Virginia referred to as the Station View Project in the Key Bank Senior Loan Agreement, or (b) any of the items described in (i), (ii), (iii) of this definition that are related to any of the purposes set forth in (a); provided, further, however, that Wachovia acknowledges that all amounts currently outstanding under the KeyBank Senior Loan Documents shall be deemed KeyBank Senior Debt.

“KeyBank Senior Guaranty” means that certain Unconditional Guaranty of Payment and Performance dated as of March 14, 2008 executed by Borrower in favor of the KeyBank Agent for the benefit of the KeyBank Senior Lenders, as the same may be from time to time amended, extended, supplemented, consolidated, renewed, restated or otherwise modified.

“KeyBank Senior Lenders” means “Lenders” as defined in the KeyBank Senior Loan Agreement.

“KeyBank Senior Loan” means the up to \$40,391,200.00 credit facility provided pursuant to the KeyBank Senior Loan Agreement, as the same may be amended, modified, increased, consolidated, restated, or replaced.

“KeyBank Senior Loan Agreement” means that certain Loan Agreement dated as of March 14, 2008 executed by Comstock Station View, L.C., a Virginia limited liability company, and Comstock Potomac Yard, L.C., a Virginia limited liability company, and KeyBank National Association, individually and as Agent for the KeyBank Senior Lenders, and certain other parties now or hereafter a party thereto, as modified by that certain First Amendment to Loan Agreement dated on or near the date hereof, and as the same may be further amended, modified, increased, consolidated, restated or replaced.

“KeyBank Senior Loan Documents” means the KeyBank Senior Security Documents, the KeyBank Senior Note, the KeyBank Senior Loan Agreement, the KeyBank Senior Guaranty, the KeyBank Senior Assignment of Interests and any other documents, agreements or instruments now or hereafter executed and delivered by or on behalf of any KeyBank Obligor or any other person or entity in connection with the KeyBank Senior Loan, and any documents, agreements or instruments hereafter executed and delivered by or on behalf of any KeyBank Obligor or any other person or entity in connection with any refinancing of the KeyBank Senior Loan, as any of the same may be from time to time amended, extended, supplemented, consolidated, renewed, restated, or otherwise modified.

“KeyBank Senior Note” means that certain Amended and Restated Note dated March 14, 2008 executed by Comstock Station View, L.C., a Virginia limited liability company, and Comstock Potomac Yard, L.C., a Virginia limited liability company in favor of KeyBank National Association, as originally executed, or if varied, extended, supplemented, consolidated, amended, replaced, renewed, modified, or restated from time to time as so varied, extended, supplemented, consolidated, amended, replaced, renewed, modified, or restated.

“KeyBank Senior Security Documents” means the “Security Documents” as defined in the KeyBank Senior Loan Agreement, the KeyBank Cash Collateral Agreement, and each other KeyBank Senior Loan Document securing any or all of the KeyBank Senior Loan, together with any and all acknowledgments, powers, certificates, UCC financing statements, or other documents or instruments executed and delivered in connection therewith.

“Obligors” means the Guggenheim Obligors and the KeyBank Obligors.

“Potomac” means Comstock Potomac Yard, L.C., a Virginia limited liability company.

“Senior Debt” means the Guggenheim Senior Debt and the KeyBank Senior Debt.

“Senior Lender Sharing Ratio” means as of the date of determination thereof, with respect to the Guggenheim Senior Debt, the outstanding principal amount due on the Guggenheim Senior Guaranty divided by the total outstanding principal balance of the KeyBank Senior Debt plus the outstanding principal amount due on the Guggenheim Senior Guaranty, and means, with respect to the KeyBank Senior Debt, the outstanding principal balance of the KeyBank Senior Debt divided by the total outstanding principal balance of the KeyBank Senior Debt plus the outstanding principal amount due on the Guggenheim Senior Guaranty.

“Senior Lenders” means the KeyBank Senior Lenders and the Guggenheim Senior Lenders.

“Senior Loan Documents” means the Guggenheim Senior Loan Documents and the KeyBank Senior Loan Documents.

“Senior Security Documents” means the Guggenheim Senior Security Documents and the KeyBank Senior Security Documents.

“Station View” means Comstock Station View, L.C., a Virginia limited liability company.

“Subordinated Indebtedness” means the principal amount of the indebtedness evidenced by this Subordinated Deficiency Note, together with interest, breakage or other amount, if any, due thereon or payable with respect thereto, whether the same is payable by Borrower or any other Obligor.

“Subsidiary” means any corporation, association, partnership, trust, or other business entity of which the designated parent shall at any time own directly or indirectly through a Subsidiary or Subsidiaries at least a majority (by number of votes or controlling interests) of the outstanding Voting Interests.

“Voting Interests” means stock or similar ownership interests, of any class or classes (however designated), the holders of which are at the time entitled, as such holders, (a) to vote for the election of a majority of the directors (or persons performing similar functions) of the corporation, association, partnership, trust or other business entity involved, or (b) to control, manage, or conduct the business of the corporation, partnership, association, trust or other business entity involved.

“Wachovia Collateral” means all of the real, personal, and other property now or hereafter encumbered by or securing any obligation of Borrower or any of its affiliates to Wachovia (including, without limitation, that certain Revolving Promissory Note dated May 26, 2006 in the original principal amount of \$40,000,000.00, as renewed, extended, and/or modified, and all guaranties thereof), all of Borrower’s and its affiliates’ right, title and interest in and to such property, and all products and proceeds of the foregoing; provided, however, that notwithstanding anything herein to the contrary, “Wachovia Collateral” shall not include the KeyBank Collateral or the Guggenheim Collateral.

(b) Borrower for itself and its successors and assigns, and for its Subsidiaries and the successors and assigns of such Subsidiaries, covenants and agrees, and each holder of the Subordinated Indebtedness, by its acceptance of this Subordinated Deficiency Note, shall be deemed to have agreed, notwithstanding anything to the contrary in this Subordinated Deficiency Note, that the payment of the Subordinated Indebtedness shall be subordinated and junior in right and time of payment and all other respects, to the prior indefeasible payment in full, in cash, of all Senior Debt, and that each holder of Senior Debt, whether now outstanding or hereafter created, incurred, assumed or guaranteed, shall be deemed to have acquired Senior Debt in reliance upon the provisions contained in this Paragraph 8.

(c) Upon any distribution of the assets of Borrower in any Insolvency Proceeding relating to Borrower, or to its respective creditors as such, then and in any such event:

(i) the holders of the Senior Debt shall be entitled to receive payment in full of all amounts due or to become due on or in respect of all Senior Debt, before any payment, whether in cash, property, or securities is made on account of or applied to the Subordinated Indebtedness; and

(ii) any payment, whether in cash, property or securities, to which the holders of the Subordinated Indebtedness would be entitled except for the provisions of this Paragraph 8, shall be paid or delivered, to the extent permitted by law, by any debtor, custodian, liquidating trustee, agent, or other person making such payment, directly to the holders of the Senior Debt, or their representative or representatives, in amounts computed in accordance with each applicable Senior Lender Sharing Ratio, for application to the payment thereof, to the extent necessary to pay all such Senior Debt in full, after giving effect to any concurrent payment or distribution, or provision therefor, to the holders of such Senior Debt.

(d) Borrower will not, and will not permit any of its Subsidiaries to, directly or indirectly, make or agree to make, and neither the holder nor any assignee or successor holder of any Subordinated Indebtedness or agent for any of them will accept or receive any payment or distribution in cash, property or securities by set-off or otherwise, direct or indirect, or by repurchase, redemption or retirement, of or on account of all or any portion of any Subordinated Indebtedness until such time as the Senior Debt shall have been indefeasibly paid in full in cash, and Senior Lenders have no further obligation to make advances which would constitute Senior Debt.

(e) If any payment or distribution of any kind or character, whether in cash, property or securities shall be received by any holder of any of the Subordinated Indebtedness or any agent for such persons in contravention of this Paragraph 8, such payment or distribution shall, to the extent permitted by law, be held in trust for the benefit of, and shall be paid over or delivered and transferred to, the holders of the Senior Debt, or their representative or representatives, for application to the payment thereof in accordance with each applicable Senior Lender Sharing Ratio, to the extent necessary to pay all such Senior Debt in full, after giving effect to any concurrent payment or distribution, or provision therefor, to the holders of such Senior Debt.

(f) By acceptance of this Subordinated Deficiency Note, each holder of the Subordinated Indebtedness hereby absolutely and irrevocably waives, to the fullest extent permitted by law, any rights it may have, by contract, at law or in equity, to be subrogated to the Agents' and the Senior Lenders' rights against the Obligors under the Senior Loan Documents or to the Agents' liens and security interests on any of the Collateral.

(g) The Agents and the Senior Lenders shall be third party beneficiaries of the subordination provisions in this Paragraph 8; provided, however, nothing in this Subordinated Deficiency Note shall obligate the KeyBank Senior Lenders to share the KeyBank Collateral with the Guggenheim Senior Lenders, or for the Guggenheim Senior Lenders to share the Guggenheim Collateral with the KeyBank Senior Lenders. The provisions of this Paragraph 8 are solely for the purpose of defining the relative rights of the holders of Senior Debt on the one hand and the holders of Subordinated Indebtedness on the other hand, and (i) subject to the rights, if any, under this Paragraph 8 of the holders of Senior Debt, nothing in this Paragraph 8 shall (1) impair as between Borrower and the holder of any Subordinated Indebtedness the obligation of Borrower, which is unconditional and absolute, to pay the Subordinated Indebtedness to the holder thereof in accordance with the terms thereof, (2) subject to Paragraphs 8(h) and 8(i) prevent the holder of any Subordinated Indebtedness from exercising all remedies otherwise available to such holder, or (3) affect the relative rights of the holders of the Subordinated Indebtedness and creditors of Borrower other than the holders of the Senior Debt, and (ii) no person or entity is entitled to any third party beneficiary rights or other similar rights on account of or under this Paragraph 8 other than the holders of the Senior Debt. The failure to make any payment due in respect of the Subordinated Indebtedness or to comply with any of the terms and conditions of this Subordinated Deficiency Note by reason of any provision of this Paragraph 8 shall not be construed as preventing the occurrence of any default under this Subordinated Deficiency Note.

(h) Until such time as the KeyBank Senior Debt shall have been indefeasibly paid in full in cash, and the KeyBank Senior Lenders have no further obligation to make advances under the KeyBank Senior Loan Documents which would constitute KeyBank Senior Debt, by acceptance of this Subordinated Deficiency Note, each holder of the Subordinated Indebtedness agrees that it shall not take any of the following actions with respect to the Subordinated Indebtedness until ninety-one (91) days following the indefeasible payment in full of the KeyBank Senior Debt in cash without the prior written consent of the KeyBank Agent:

(i) Accelerate all or any portion of the amounts due under this Subordinated Deficiency Note or exercise any of its remedies (including, without limitation, any Enforcement Action) under this Subordinated Deficiency Note or at law or in equity;

(ii) Commence, directly or indirectly, any legal or other proceedings against any KeyBank Obligor, or commence any Enforcement Action against any KeyBank Obligor or the KeyBank Collateral;

(iii) Consent to or enter into any amendment or modification of this Subordinated Deficiency Note, other than a reduction in the principal balance of the Subordinated Deficiency Note; or

(iv) Commence, directly or indirectly, or consent to any Insolvency Proceeding by or against any KeyBank Obligor.

The holder of the Subordinated Indebtedness shall have no right, lien or claim in and to the KeyBank Collateral and the proceeds thereof (including, without limitation, any rights with respect to insurance proceeds or condemnation awards), or any other property or assets of any KeyBank Obligor until such time as the periods described in Paragraph 8(h) hereof shall have lapsed.

(i) Until such time as the Guggenheim Senior Debt shall have been indefeasibly paid in full in cash, and the Guggenheim Senior Lenders have no further obligation to make advances under the Guggenheim Senior Loan Documents which would constitute Guggenheim Senior Debt, by acceptance of this Subordinated Deficiency Note, each holder of the Subordinated Indebtedness agrees that it shall not take any of the following actions with respect to the Subordinated Indebtedness until ninety-one (91) days following the indefeasible payment in full of the Guggenheim Senior Debt in cash without the prior written consent of the Guggenheim Agent:

(i) Accelerate all or any portion of the amounts due under this Subordinated Deficiency Note or exercise any of its remedies (including, without limitation, any Enforcement Action) under this Subordinated Deficiency Note or at law or in equity;

(ii) Commence, directly or indirectly, any legal or other proceedings against any Guggenheim Obligor, or commence any Enforcement Action against any Guggenheim Obligor or the Guggenheim Collateral;

(iii) Consent to or enter into any amendment or modification of this Subordinated Deficiency Note, other than a reduction in the principal balance of the Subordinated Deficiency Note; or

(iv) Commence, directly or indirectly, or consent to any Insolvency Proceeding by or against any Guggenheim Obligor.

The holder of the Subordinated Indebtedness shall have no right, lien or claim in and to the Guggenheim Collateral and the proceeds thereof (including, without limitation, any rights with respect to insurance proceeds or condemnation awards), or any other property or assets of any Guggenheim Obligor until such time as the periods described in Paragraph 8(i) hereof shall have lapsed.

(j) By acceptance of this Subordinated Deficiency Note, each holder of the Subordinated Indebtedness hereby expressly waives any rights to require or request that the Agents, or either of them, or the Senior Lenders marshal the Collateral in favor of the holder of the Subordinated Indebtedness or to equitably subordinate the rights, liens or security interests of

the Agents, or either of them, or the Senior Lenders, or any of them, under the Senior Loan Documents, whether pursuant to the Bankruptcy Code or otherwise. The Agents, or either of them, and the Senior Lenders, or any of them, shall have the right at any and all times to determine the order in which, or whether, (i) recourse is sought against any Obligor or any other obligor with respect to the Senior Debt, or (ii) any or all of the Collateral shall be enforced. Each holder of the Subordinated Indebtedness hereby waives any and all rights to require that the Agents, or either of them, and/or the Senior Lenders, or any of them, pursue or exhaust any rights or remedies with respect to any Obligor or any other party prior to exercising their rights and remedies with respect to the Collateral or any other property or assets of the Obligors. The Agents, or either of them, and the Senior Lenders, or any of them, may forbear collection, grant indulgences, release, compromise or settle the Senior Debt, or sell, take, exchange, surrender or release collateral or security therefor, consent to or waive any breach of, or any act, omission or default under, any of the Senior Loan Documents, apply any sums received by or realized upon by the Agents, or either of them, and the Senior Lenders, or any of them, against liabilities of the Obligors to the Agents, or either of them, and the Senior Lenders, or any of them, in such order as the Agents, or either of them, and the Senior Lenders, or any of them, shall determine in their sole discretion, and otherwise deal with any and all parties and the Collateral or other property or assets of the Obligors (with the exception of the Wachovia Collateral) as they deem appropriate. The Agents and the Senior Lenders shall have no liability to the holder of the Subordinated Indebtedness for, and each holder of the Subordinated Indebtedness hereby waives any claim, right, action or cause of action which it may now or hereafter have against the Agents, or either of them, and the Senior Lenders, or any of them, arising out of, any waiver, consent, release, indulgence, extension, delay or other action or omission, any release of any Obligor, release of any of the Collateral, the failure to realize upon any Collateral or other property or assets of any Obligor, or the failure to exercise any rights or remedies of the Agents, or either of them, and the Senior Lenders, or any of them, under the Senior Loan Documents.

(k) Each holder of the Subordinated Indebtedness hereby expressly consents to and authorizes, at the option of each Agent, the amendment, extension, restatement, consolidation, increase, renewal, refinance or other modification, in whole or in part, of all or any of the Senior Loan Documents, including, without limitation, increasing or decreasing the stated principal amount of either Senior Loan, extending or shortening the term of either Senior Loan, increasing or decreasing the interest rate payable as provided in any of the Senior Loan Documents or altering any other payment terms under any of the Senior Loan Documents.

(l) By acceptance of this Subordinated Deficiency Note, each holder of the Subordinated Indebtedness acknowledges that no Agent and no Senior Lender has made nor do any of them now make any representations or warranties, express or implied, nor do they assume any liability to any holder of the Subordinated Indebtedness, with respect to the creditworthiness or financial condition of any Obligor or any other person. Each holder of the Subordinated Indebtedness acknowledges that it has, independently and without reliance upon the Agents, or either of them, or the Senior Lenders, or any of them, and based upon such information and documents as it has deemed appropriate, made its own credit analysis and decision to accept this Subordinated Deficiency Note and the Subordinated Indebtedness. Each holder of the Subordinated Indebtedness will, independently and without reliance upon the Agents, or either of them, or the Senior Lenders, or any of them, based upon such information and documents as it deems appropriate at the time, continue to make its own credit analysis and decisions in taking or

not taking action under this Subordinated Deficiency Note. No Agent and no Senior Lender shall have any duty or responsibility, either initially or on a continuing basis, to provide any holder of the Subordinated Indebtedness with any credit or other information with respect to any Obligor, whether coming into its possession before the making of any Senior Loan or at any time or times thereafter. Each holder of the Subordinated Indebtedness agrees that no Agent and no Senior Lender owes any fiduciary duty to the holder of the Subordinated Indebtedness in connection with the administration of any Senior Loan or any Senior Loan Document and the holder of the Subordinated Indebtedness agrees not to assert any such claim.

(m) The provisions of this Paragraph 8 shall be applicable both before and after the commencement, whether voluntary or involuntary, of any Insolvency Proceeding by or against any Obligor and all references herein to any Obligor shall be deemed to apply to any such Obligor as a debtor-in-possession and to any trustee in bankruptcy for the estate of any such Obligor. Furthermore, this Paragraph 8 and the subordinations contained herein shall apply notwithstanding the fact that all or any part of the Senior Debt or any claim for or with respect to all of any part of the Senior Debt is subordinated, avoided or disallowed, in whole or in part, in any Insolvency Proceeding or other applicable federal, state or foreign law. Without limiting the foregoing, by acceptance of this Subordinated Deficiency Note, each holder of the Subordinated Indebtedness expressly covenants and agrees that this Subordinated Deficiency Note is enforceable under applicable bankruptcy law and should be enforced under Section 510(a) of the Bankruptcy Code. Until such time as the Senior Debt has been indefeasibly paid in full in cash and Senior Lenders have no further obligation to make any advances which would constitute Senior Debt, the holders of the Subordinated Indebtedness shall not, and shall not solicit any person or entity to: (i) seek, commence, file, institute, consent to or acquiesce in any Involuntary Proceeding with respect to any Obligor or the Collateral; (ii) seek to consolidate any Obligor with any other person or entity in any Insolvency Proceeding; or (iii) take any action in furtherance of any of the foregoing.

(n) Each holder of the Subordinated Indebtedness hereby agrees that it shall not challenge the validity or amount of any claim submitted in such Insolvency Proceeding by the Agents, or either of them, or the Senior Lenders, or any of them, or any valuations of the Collateral submitted by the Agents, or either of them, or the Senior Lenders, or any of them, in such Insolvency Proceeding or take any other action in such Insolvency Proceeding, which is adverse to their enforcement of any claim or receipt of adequate protection (as that term is defined in the Bankruptcy Code).

(o) To the extent any transfer, payment or distribution of assets with respect to all or any portion of the Senior Debt (whether in cash, property or securities and whether by or on behalf of any Obligor as proceeds of security or enforcement of any right of setoff or otherwise) is declared to be fraudulent or preferential, set aside or required to be paid to any Obligor, the estate in bankruptcy thereof, any third party, or a trustee, receiver or other similar party under any bankruptcy, insolvency, receivership or similar law, then if such payment is recovered by, or paid over to, any Obligor, the estate in bankruptcy thereof, any third party, or such trustee, receiver or other similar party, the Senior Debt or part thereof originally intended to be satisfied shall be deemed to be reinstated and outstanding as if such payment or distribution had not occurred, and this Paragraph 8 and the agreements and subordination contained herein shall be reinstated with respect to any such transfer, payment or distribution. No Agent shall be required to contest any such declaration or obligation to return such payment or distribution.

(p) Each holder of the Subordinated Indebtedness intentionally and unconditionally waives and relinquishes any right to challenge the validity, enforceability and binding effect of any of the Senior Security Documents or the other Senior Loan Documents, and any lien, encumbrance, claim or security interest now or hereafter created thereunder, or the attachment, perfection or priority thereof, regardless of the order of recording or filing of any thereof, or compliance by the Agents, or either of them, or the Senior Lenders, or any of them, with the terms of any of the Senior Security Documents or any of the other Senior Loan Documents, by reason of any matter, cause or thing now or hereafter occurring, nor shall the holder of the Subordinated Indebtedness raise any such matter, cause or thing as a defense to the enforcement thereof.

(q) Each holder of the Subordinated Indebtedness agrees that it will not in any manner challenge, oppose, object to, interfere with or delay (i) the validity or enforceability of this Subordinated Deficiency Note, including without limitation, any provisions regarding the relative priority of the rights and duties of the Agents, or either of them, and Senior Lenders, or any of them, and the holder of the Subordinated Indebtedness, or (ii) any Agent's or any Senior Lender's security interest in, liens on and rights as to the Obligors, and any Collateral or any other property or assets of any Obligor (with the exception of the Wachovia Collateral), or any Enforcement Actions of the Agents, or either of them, or the Senior Lenders, or any of them, (including, without limitation, any efforts by the Agents, or either of them, to obtain relief from the automatic stay under Section 362 of the Bankruptcy Code).

IN WITNESS WHEREOF, the Borrower has executed and sealed, or caused to be executed and sealed, this Note on the date first above written.

BORROWER:

Comstock Homebuilding Companies, Inc.

By: _____ (SEAL)
Name: Christopher Clemente
Title: CEO

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In re: : Case No. 09-90332-MHM
: :
BUCKHEAD OVERLOOK, LLC, : Chapter 7
: :
Debtor. :
_____ :
:

DEBTOR’S STATEMENT OF FINANCIAL AFFAIRS AND SCHEDULES

Buckhead Overlook, LLC, “Debtor” herein, hereby files its Statement of Financial Affairs and Schedules.

Prepared and submitted by:
PAUL REECE MARR, P.C.
Debtor’s counsel

By: /s/ Paul Reece Marr
Paul Reece Marr
GA Bar #471230

Suite 960
300 Galleria Parkway, N.W.
Atlanta, GA 30339
770/984-2255

United States Bankruptcy Court
Northern District of Georgia, Atlanta Division

In re **Buckhead Overlook, LLC**
Debtor(s)

Case No. **09-90332-MHM**
Chapter **7**

STATEMENT OF FINANCIAL AFFAIRS

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under chapter 12 or chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. An individual debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional, should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs. To indicate payments, transfers and the like to minor children, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m).

Questions 1 - 18 are to be completed by all debtors. Debtors that are or have been in business, as defined below, also must complete Questions 19 - 25. **If the answer to an applicable question is "None," mark the box labeled "None."** If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question.

DEFINITIONS

"In business" A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within six years immediately preceding the filing of this bankruptcy case, any of the following: an officer, director, managing executive, or owner of 5 percent or more of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed full-time or part-time. An individual debtor also may be "in business for the purpose of this form if the debtor engages in a trade, business, or other activity, other than as an employee, to supplement income from the debtor's primary employment.

"Insider" The term "insider" includes but is not limited to: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or person in control; officers, directors, and any owner of 5 percent or more of the voting or equity securities of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; any managing agent of the debtor. 11 U.S.C. § 101.

1. Income from employment or operation of business

None State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business including part-time activities either as an employee or in independent trade or business, from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the **two years** immediately preceding this calendar year (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT SOURCE

2. Income other than from employment or operation of business

None State the amount of income received by the debtor other than from employment, trade, profession, or operation of the debtor's business during the **two years** immediately preceding the commencement of this case. Give particulars. If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT SOURCE

3. Payments to creditors

None **Complete a, or b., as appropriate, and c.**

a. *Individual or joint debtor(s) with primarily consumer debts.* List all payments on loans, installment purchases of goods or services, and other debts to any creditor made within **90 days** immediately preceding the commencement of this case unless the aggregate value of all property that constitutes or is affected by such transfer is less than \$600. Indicate with an (*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and creditor counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

<u>NAME AND ADDRESS OF CREDITOR</u>	<u>DATES OF PAYMENTS</u>	<u>AMOUNT PAID</u>	<u>AMOUNT STILL OWING</u>
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None b. *Debtor whose debts are not primarily consumer debts:* List each payment or other transfer to any creditor made within **90 days** immediately preceding the commencement of the case unless the aggregate value of all property that constitutes or is affected by such transfer is less than \$5,475. If the debtor is an individual, indicate with an asterisk (*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and creditor counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

<u>NAME AND ADDRESS OF CREDITOR</u>	<u>DATES OF PAYMENTS/ TRANSFERS</u>	<u>AMOUNT PAID OR VALUE OF TRANSFERS</u>	<u>AMOUNT STILL OWING</u>
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None c. *All debtors:* List all payments made within **one year** immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

<u>NAME AND ADDRESS OF CREDITOR AND RELATIONSHIP TO DEBTOR</u>	<u>DATE OF PAYMENT</u>	<u>AMOUNT PAID</u>	<u>AMOUNT STILL OWING</u>
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4. Suits and administrative proceedings, executions, garnishments and attachments

None a. List all suits and administrative proceedings to which the debtor is or was a party within **one year** immediately preceding the filing of this bankruptcy case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

<u>CAPTION OF SUIT AND CASE NUMBER</u>	<u>NATURE OF PROCEEDING</u>	<u>COURT OR AGENCY AND LOCATION</u>	<u>STATUS OR DISPOSITION</u>
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None b. Describe all property that has been attached, garnished or seized under any legal or equitable process within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

<u>NAME AND ADDRESS OF PERSON FOR WHOSE BENEFIT PROPERTY WAS SEIZED</u>	<u>DATE OF SEIZURE</u>	<u>DESCRIPTION AND VALUE OF PROPERTY</u>
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5. Repossessions, foreclosures and returns

None List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

<u>NAME AND ADDRESS OF CREDITOR OR SELLER</u>	<u>DATE OF REPOSSESSION, FORECLOSURE SALE, TRANSFER OR RETURN</u>	<u>DESCRIPTION AND VALUE OF PROPERTY</u>
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6. Assignments and receiverships

None a. Describe any assignment of property for the benefit of creditors made within **120 days** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include any assignment by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

<u>NAME AND ADDRESS OF ASSIGNEE</u>	<u>DATE OF ASSIGNMENT</u>	<u>TERMS OF ASSIGNMENT OR SETTLEMENT</u>
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None b. List all property which has been in the hands of a custodian, receiver, or court-appointed official within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not

<u>NAME AND ADDRESS OF CUSTODIAN</u>	<u>NAME AND LOCATION OF COURT CASE TITLE & NUMBER</u>	<u>DATE OF ORDER</u>	<u>DESCRIPTION AND VALUE OF PROPERTY</u>
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7. Gifts

None List all gifts or charitable contributions made within **one year** immediately preceding the commencement of this case except ordinary and usual gifts to family members aggregating less than \$200 in value per individual family member and charitable contributions aggregating less than \$100 per recipient. (Married debtors filing under chapter 12 or chapter 13 must include gifts or contributions by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

<u>NAME AND ADDRESS OF PERSON OR ORGANIZATION</u>	<u>RELATIONSHIP TO DEBTOR, IF ANY</u>	<u>DATE OF GIFT</u>	<u>DESCRIPTION AND VALUE OF GIFT</u>
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8. Losses

None List all losses from fire, theft, other casualty or gambling within **one year** immediately preceding the commencement of this case or **since the commencement of this case**. (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

<u>DESCRIPTION AND VALUE OF PROPERTY</u>	<u>DESCRIPTION OF CIRCUMSTANCES AND, IF LOSS WAS COVERED IN WHOLE OR IN PART BY INSURANCE, GIVE PARTICULARS</u>	<u>DATE OF LOSS</u>
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9. Payments related to debt counseling or bankruptcy

None List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of the petition in bankruptcy within **one year** immediately preceding the commencement of this case.

<u>NAME AND ADDRESS OF PAYEE</u>	<u>DATE OF PAYMENT, NAME OF PAYOR IF OTHER THAN DEBTOR</u>	<u>AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY</u>
Paul Reece Marr, P.C. Suite 960 300 Galleria Parkway Atlanta, GA 30339	11/09/2009 Comstock Homes of Atlanta, LLC	\$3,000.00 attorney fee + \$299.00 filing fee

10. Other transfers

None a. List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within **two years** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

<u>NAME AND ADDRESS OF TRANSFEREE, RELATIONSHIP TO DEBTOR</u>	<u>DATE</u>	<u>DESCRIBE PROPERTY TRANSFERRED AND VALUE RECEIVED</u>
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None b. List all property transferred by the debtor within **ten years** immediately preceding the commencement of this case to a self-settled trust or similar device of which the debtor is a beneficiary.

<u>NAME OF TRUST OR OTHER DEVICE</u>	<u>DATE(S) OF TRANSFER(S)</u>	<u>AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY OR DEBTOR'S INTEREST IN PROPERTY</u>
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11. Closed financial accounts

None List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within **one year** immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by or for either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

<u>NAME AND ADDRESS OF INSTITUTION</u>	<u>TYPE OF ACCOUNT, LAST FOUR DIGITS OF ACCOUNT NUMBER, AND AMOUNT OF FINAL BALANCE</u>	<u>AMOUNT AND DATE OF SALE OR CLOSING</u>
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12. Safe deposit boxes

None List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include boxes or depositories of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

<u>NAME AND ADDRESS OF BANK OR OTHER DEPOSITORY</u>	<u>NAMES AND ADDRESSES OF THOSE WITH ACCESS TO BOX OR DEPOSITORY</u>	<u>DESCRIPTION OF CONTENTS</u>	<u>DATE OF TRANSFER OR SURRENDER, IF ANY</u>
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13. Setoffs

None List all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within **90 days** preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

<u>NAME AND ADDRESS OF CREDITOR</u>	<u>DATE OF SETOFF</u>	<u>AMOUNT OF SETOFF</u>
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14. Property held for another person

None List all property owned by another person that the debtor holds or controls.

<u>NAME AND ADDRESS OF OWNER</u>	<u>DESCRIPTION AND VALUE OF PROPERTY</u>	<u>LOCATION OF PROPERTY</u>
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15. Prior address of debtor

None If the debtor has moved within **three years** immediately preceding the commencement of this case, list all premises which the debtor occupied during that period and vacated prior to the commencement of this case. If a joint petition is filed, report also any separate address of either spouse.

<u>ADDRESS</u>	<u>NAME USED</u>	<u>DATES OF OCCUPANCY</u>
5400 Laurel Springs Pkwy, Suite 201, Suwanee, GA 30024	Buckhead Overlook, LLC	01/01/2006 - 09/30/2008
405 Wakefiled Bluff Court, Alpharetta, GA 30004	Buckhead Overlook, LLC	10/01/2008 - 04/15/2009

16. Spouses and Former Spouses

None If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within **eight years** immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state.

NAME

17. Environmental Information.

For the purpose of this question, the following definitions apply:

“Environmental Law” means any federal, state, or local statute or regulation regulating pollution, contamination, releases of hazardous or toxic substances, wastes or material into the air, land, soil, surface water, groundwater, or other medium, including, but not limited to, statutes or regulations regulating the cleanup of these substances, wastes, or material.

“Site” means any location, facility, or property as defined under any Environmental Law, whether or not presently or formerly owned or operated by the debtor, including, but not limited to, disposal sites.

“Hazardous Material” means anything defined as a hazardous waste, hazardous substance, toxic substance, hazardous material, pollutant, or contaminant or similar term under an Environmental Law

None a. List the name and address of every site for which the debtor has received notice in writing by a governmental unit that it may be liable or potentially liable under or in violation of an Environmental Law. Indicate the governmental unit, the date of the notice, and, if known, the Environmental Law:

<u>SITE NAME AND ADDRESS</u>	<u>NAME AND ADDRESS OF GOVERNMENTAL UNIT</u>	<u>DATE OF NOTICE</u>	<u>ENVIRONMENTAL LAW</u>
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None b. List the name and address of every site for which the debtor provided notice to a governmental unit of a release of Hazardous Material. Indicate the governmental unit to which the notice was sent and the date of the notice.

<u>SITE NAME AND ADDRESS</u>	<u>NAME AND ADDRESS OF GOVERNMENTAL UNIT</u>	<u>DATE OF NOTICE</u>	<u>ENVIRONMENTAL LAW</u>
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None c. List all judicial or administrative proceedings, including settlements or orders, under any Environmental Law with respect to which the debtor is or was a party. Indicate the name and address of the governmental unit that is or was a party to the proceeding, and the docket number.

<u>NAME AND ADDRESS OF GOVERNMENTAL UNIT</u>	<u>DOCKET NUMBER</u>	<u>STATUS OR DISPOSITION</u>
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18. Nature, location and name of business

None a. *If the debtor is an individual*, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partner in a partnership, sole proprietor, or was self-employed in a trade, profession, or other activity either full- or part-time within **six years** immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities within **six years** immediately preceding the commencement of this case.

If the debtor is a partnership, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities, within **six years** immediately preceding the commencement of this case.

If the debtor is a corporation, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities within **six years** immediately preceding the commencement of this case.

<u>NAME</u>	<u>LAST FOUR DIGITS OF SOCIAL-SECURITY OR OTHER INDIVIDUAL TAXPAYER-I.D. NO. (ITIN)/COMPLETE EIN</u>	<u>ADDRESS</u>	<u>NATURE OF BUSINESS</u>	<u>BEGINNING AND ENDING DATES</u>
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None b. Identify any business listed in response to subdivision a., above, that is "single asset real estate" as defined in 11 U.S.C. §101.

<u>NAME</u>	<u>ADDRESS</u>
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The following questions are to be completed by every debtor that is a corporation or partnership and by any individual debtor who is or has been, within **six years** immediately preceding the commencement of this case, any of the following: an officer, director, managing executive, or owner of more than 5 percent of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership, a sole proprietor or self-employed in a trade, profession, or other activity, either full- or part-time.

*(An individual or joint debtor should complete this portion of the statement **only** if the debtor is or has been in business, as defined above, within six years immediately preceding the commencement of this case. A debtor who has not been in business within those six years should go directly to the signature page.)*

19. Books, records and financial statements

None a. List all bookkeepers and accountants who within **two years** immediately preceding the filing of this bankruptcy case kept or supervised the keeping of books of account and records of the debtor.

<u>NAME AND ADDRESS</u>	<u>DATES SERVICES RENDERED</u>
Jeff Dauer 11465 Sunset Hills Rd. 5th Floor Reston, VA 20190	

None b. List all firms or individuals who within the **two years** immediately preceding the filing of this bankruptcy case have audited the books of account and records, or prepared a financial statement of the debtor.

<u>NAME</u>	<u>ADDRESS</u>	<u>DATES SERVICES RENDERED</u>
PriceWaterhouse Coopers, LLC	Attn: Chris Dietrick 1800 Tysons Blvd. Mc Lean, VA 22102	

None c. List all firms or individuals who at the time of the commencement of this case were in possession of the books of account and records of the debtor. If any of the books of account and records are not available, explain.

<u>NAME</u>	<u>ADDRESS</u>
Jeff Dauer	11465 Sunset Hills Rd. 5th Floor Reston, VA 20190

None d. List all financial institutions, creditors and other parties, including mercantile and trade agencies, to whom a financial statement was issued by the debtor within **two years** immediately preceding the commencement of this case.

<u>NAME AND ADDRESS</u>	<u>DATE ISSUED</u>
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20. Inventories

None a. List the dates of the last two inventories taken of your property, the name of the person who supervised the taking of each inventory, and the dollar amount and basis of each inventory.

<u>DATE OF INVENTORY</u>	<u>INVENTORY SUPERVISOR</u>	<u>DOLLAR AMOUNT OF INVENTORY (Specify cost, market or other basis)</u>
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None

- b. List the name and address of the person having possession of the records of each of the two inventories reported in a., above.

DATE OF INVENTORY NAME AND ADDRESSES OF CUSTODIAN OF INVENTORY RECORDS

21. Current Partners, Officers, Directors and Shareholders

- None a. If the debtor is a partnership, list the nature and percentage of partnership interest of each member of the partnership.

■

NAME AND ADDRESS NATURE OF INTEREST PERCENTAGE OF INTEREST

- None b. If the debtor is a corporation, list all officers and directors of the corporation, and each stockholder who directly or indirectly owns, controls, or holds 5 percent or more of the voting or equity securities of the corporation.

NAME AND ADDRESS TITLE NATURE AND PERCENTAGE OF STOCK OWNERSHIP

Comstock Homebuilding Companies, Inc. 11465 Sunset Hills Road Suite 500 Reston, VA 20190	manager	sole member
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22. Former partners, officers, directors and shareholders

- None a. If the debtor is a partnership, list each member who withdrew from the partnership within **one year** immediately preceding the commencement of this case.

■

NAME ADDRESS DATE OF WITHDRAWAL

- None b. If the debtor is a corporation, list all officers, or directors whose relationship with the corporation terminated within **one year** immediately preceding the commencement of this case.

■

NAME AND ADDRESS TITLE DATE OF TERMINATION

23. Withdrawals from a partnership or distributions by a corporation

- None If the debtor is a partnership or corporation, list all withdrawals or distributions credited or given to an insider, including compensation in any form, bonuses, loans, stock redemptions, options exercised and any other perquisite during **one year** immediately preceding the commencement of this case.

■

<u>NAME & ADDRESS OF RECIPIENT, RELATIONSHIP TO DEBTOR</u>	<u>DATE AND PURPOSE OF WITHDRAWAL</u>	<u>AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY</u>
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24. Tax Consolidation Group.

- None If the debtor is a corporation, list the name and federal taxpayer identification number of the parent corporation of any consolidated group for tax purposes of which the debtor has been a member at any time within **six years** immediately preceding the commencement of the case.

■

NAME OF PARENT CORPORATION TAXPAYER IDENTIFICATION NUMBER (EIN)

25. Pension Funds.

- None If the debtor is not an individual, list the name and federal taxpayer identification number of any pension fund to which the debtor, as an employer, has been responsible for contributing at any time within **six years** immediately preceding the commencement of the case.

■

NAME OF PENSION FUND TAXPAYER IDENTIFICATION NUMBER (EIN)

DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF CORPORATION OR PARTNERSHIP

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct to the best of my knowledge, information and belief.

Date **November 25, 2009**

Signature /s/ Christopher Clemente
Christopher Clemente
C.E.O. of Comstock Homebuilding Companies, Inc., its
Manager

[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor.]

Penalty for making a false statement: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571

In re **Buckhead Overlook, LLC,**
Debtor

Case No. **09-90332-MHM**

SCHEDULE A - REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a cotenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim." If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

Description and Location of Property	Nature of Debtor's Interest in Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption	Amount of Secured Claim
approx. 20.58 acres, Alpharetta, Forsyth County, GA 30005 (book value = \$2,353,751.00; tax assessed value = \$1,852,200.00)	Fee simple	—	2,353,751.00	2,390,169.96
		Sub-Total >	2,353,751.00	(Total of this page)
		Total >	2,353,751.00	

0 continuation sheets attached to the Schedule of Real Property

(Report also on Summary of Schedules)

In re **Buckhead Overlook, LLC,**
Debtor

Case No. **09-90332-MHM**

SCHEDULE B - PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "x" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property." If the property is being held for a minor child, simply state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m).

	<u>Type of Property</u>	<u>N O N E</u>	<u>Description and Location of Property</u>	<u>Husband, Wife, Joint, or Community</u>	<u>Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption</u>
1.	Cash on hand	X			
2.	Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.	X			
3.	Security deposits with public utilities, telephone companies, landlords, and others.	X			
4.	Household goods and furnishings, including audio, video, and computer equipment.	X			
5.	Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.	X			
6.	Wearing apparel.	X			
7.	Furs and jewelry.	X			
8.	Firearms and sports, photographic, and other hobby equipment.	X			
9.	Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.	X			
10.	Annuities. Itemize and name each issuer.	X			
				Sub-Total >	
				(Total of this page)	0.00

2 continuation sheets attached to the Schedule of Personal Property

In re **Buckhead Overlook, LLC,**
Debtor

Case No. **09-90332-MHM**

SCHEDULE B - PERSONAL PROPERTY
(Continuation Sheet)

	<u>Type of Property</u>	<u>N O N E</u>	<u>Description and Location of Property</u>	<u>Husband, Wife, Joint, or Community</u>	<u>Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption</u>
11.	Interests in an education IRA as defined in 26 U.S.C. § 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1). Give particulars. (File separately the record(s) of any such interest(s). 11 U.S.C. §521 (c).)	X			
12.	Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.	X			
13.	Stock and interests in incorporated and unincorporated businesses. Itemize.	X			
14.	Interests in partnerships or joint ventures. Itemize.	X			
15.	Government and corporate bonds and other negotiable and nonnegotiable instruments.	X			
16.	Accounts receivable.	X			
17.	Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	X			
18.	Other liquidated debts owed to debtor including tax refunds. Give particulars.	X			
19.	Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule A - Real Property.	X			
20.	Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	X			
21.	Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.	X			
				Sub-Total>	0.00
				(Total of this page)	

Sheet 1 of 2 continuation sheets attached to the Schedule of Personal Property

B6B (Official Form 6B) (12/07) - Cont.

In re **Buckhead Overlook, LLC,**
Debtor

Case No. **09-90332-MHM**

SCHEDULE B - PERSONAL PROPERTY
(Continuation Sheet)

	<u>Type of Property</u>	<u>N O N E</u>	<u>Description and Location of Property</u>	<u>Husband, Wife, Joint, or Community</u>	<u>Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption</u>
22.	Patents, copyrights, and other intellectual property. Give particulars.	X			
23.	Licenses, franchises, and other general intangibles. Give particulars.	X			
24.	Customer lists or other compilations containing personally identifiable information (as defined in 11 U.S.C. § 101(41 A)) provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes.	X			
25.	Automobiles, trucks, trailers, and other vehicles and accessories.	X			
26.	Boats, motors, and accessories.	X			
27.	Aircraft and accessories.	X			
28.	Office equipment, furnishings, and supplies.	X			
29.	Machinery, fixtures, equipment, and supplies used in business.	X			
30.	Inventory.	X			
31.	Animals.	X			
32.	Crops - growing or harvested. Give particulars.	X			
33.	Farming equipment and implements.	X			
34.	Farm supplies, chemicals, and feed.	X			
35.	Other personal property of any kind not already listed. Itemize.	X			
				Sub-Total >	0.00
				(Total of this page)	
				Total >	0.00

Sheet 2 of 2 continuation sheets attached to the Schedule of Personal Property

(Report on Summary of Schedule)

In re **Buckhead Overlook, LLC,**
Debtor

Case No. **09-90332-MHM**

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests.

List creditors in alphabetical order to the extent practicable. If a minor child is a creditor, the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor", include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community".

If the claim is contingent, place an "X" in the column labeled "Contingent". If the claim is unliquidated, place an "X" in the column labeled "Unliquidated". If the claim is disputed, place an "X" in the column labeled "Disputed". (You may need to place an "X" in more than one of these three columns.)

Total the columns labeled "Amount of Claim Without Deducting Value of Collateral" and "Unsecured Portion, if Any" in the boxes labeled "Total(s)" on the last sheet of the completed schedule. Report the total from the column labeled "Amount of Claim" also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report the total from the column labeled "Unsecured Portion" on the Statistical Summary of Certain Liabilities and Related Data.

Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	Husband, Wife, Joint, or Community		U N C L O I N Q D T U I I S A M O U N T O F C L A I M W I T H O U T D E D U C T I N G V A L U E O F C O L L A T E R A L	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
	C O D E B T O R	D I S P U T E D			
Account No.	2008, 2009				
Forsyth County Tax Commissioner 1092 Tribble Gap Rd. Cumming, GA 30040	property tax - approx. 20.58 acres, Alpharetta, Forsyth County, GA 30005 (book value = \$2,353,751.00; tax assessed value = \$1,852,200.00)				
	Value \$		2,353,751.00	36,418.96	36,418.96
Account No.	mortgage				
RBC Builder Finance Attn: Jim McDunn 301 Grant Street; Suite 4325 Pittsburgh, PA 15219	approx. 20.58 acres, Alpharetta, Forsyth County, GA 30005 X - (book value = \$2,353,751.00; tax assessed value = \$1,852,200.00)				
	Value \$		2,353,751.00	2,353,751.00	0.00
Account No.	additional notice address				
RBC Builder Finance Attn: Legal 11011 Richmond Ave.; Suite 850 Houston, TX 77042	-				
	Value \$		0.00	0.00	0.00
Account No.	Value \$				
			Subtotal (Total of this page)	2,390,169.96	36,418.96
			Total (Report on Summary of Schedules)	2,390,169.96	36,418.96

0 continuation sheets attached

In re **Buckhead Overlook, LLC,**
Debtor

Case No. **09-90332-MHM**

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name, mailing address, including zip code, and last four digits of the account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of the petition. Use a separate continuation sheet for each type of priority and label each with the type of priority.

The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m).

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H-Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

Report the total of amounts entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Report the total of amounts not entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts not entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

- Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

TYPES OF PRIORITY CLAIMS (Check the appropriate box(es) below if claims in that category are listed on the attached sheets)

Domestic support obligations

Claims for domestic support that are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such a child, or a governmental unit to whom such a domestic support claim has been assigned to the extent provided in 11 U.S.C. § 507(a)(1).

Extensions of credit in an involuntary case

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(3).

Wages, salaries, and commissions

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to \$10,950* per person earned within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

Contributions to employee benefit plans

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(5).

Certain farmers and fishermen

Claims of certain farmers and fishermen, up to \$5,400* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(6).

Deposits by individuals

Claims of individuals up to \$2,425* for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(7).

Taxes and certain other debts owed to governmental units

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C. § 507(a)(8).

Commitments to maintain the capital of an insured depository institution

Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507(a)(9).

Claims for death or personal injury while debtor was intoxicated

Claims for death or personal injury resulting from the operation of a motor vehicle or vessel while the debtor was intoxicated from using alcohol, a drug, or another substance. 11 U.S.C. § 507(a)(10).

* Amounts are subject to adjustment on April 1, 2010, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

0 continuation sheets attached

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Best Case Bankruptcy

In re **Buckhead Overlook, LLC,**
Debtor

Case No. **09-90332-MHM**

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Check this box if debtor has no creditors holding unsecured claims to report on this Schedule F.

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	Husband, Wife, Joint, or Community		DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	U N C L O I N Q D T U I I S N D P G A U E T T N E E T D D	AMOUNT OF CLAIM
	C	H			
Account No.					
Account No.					
Account No.					
Account No.					
0 continuation sheets attached					
				Subtotal (Total of this page)	
				Total (Report on Summary of Schedules)	0.00

In re **Buckhead Overlook, LLC,**
Debtor

Case No. **09-90332-MHM**

SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., "Purchaser", "Agent", etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described. If a minor child is a party to one of the leases or contracts, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

■ Check this box if debtor has no executory contracts or unexpired leases.

Name and Mailing Address, Including Zip Code,
of Other Parties to Lease or Contract

Description of Contract or Lease and Nature of Debtor's Interest.
State whether lease is for nonresidential real property.
State contract number of any government contract.

0 continuation sheets attached to Schedule of Executory Contracts and Unexpired Leases

In re **Buckhead Overlook, LLC,**
Debtor

Case No. **09-90332-MHM**

SCHEDULE H - CODEBTORS

Provide the information requested concerning any person or entity, other than a spouse in a joint case, that is also liable on any debts listed by debtor in the schedules of creditors. Include all guarantors and co-signers. If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within the eight year period immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state, commonwealth, or territory. Include all names used by the nondebtor spouse during the eight years immediately preceding the commencement of this case. If a minor child is a codebtor or a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

Check this box if debtor has no codebtors.

NAME AND ADDRESS OF CODEBTOR

Andrew H. Chandler, Jr.
126 N. Rantun Court
Norcross, GA 30071

James B. Parker
2105 Woodfalls Drive
Cumming, GA 30041

Parker Chandler Homes, LLC
11465 Sunset Hills Road
Suite 510
Reston, VA 20190

NAME AND ADDRESS OF CREDITOR

RBC Builder Finance
Attn: Jim McDunn
301 Grant Street; Suite 4325
Pittsburgh, PA 15219

RBC Builder Finance
Attn: Jim McDunn
301 Grant Street; Suite 4325
Pittsburgh, PA 15219

RBC Builder Finance
Attn: Jim McDunn
301 Grant Street; Suite 4325
Pittsburgh, PA 15219

0 continuation sheets attached to Schedule of Codebtors

**United States Bankruptcy Court
Northern District of Georgia, Atlanta Division**

In re **Buckhead Overlook, LLC**
Debtor(s)

Case No. **09-90332-MHM**
Chapter **7**

DISCLOSURE OF COMPENSATION OF ATTORNEY FOR DEBTOR(S)

1. Pursuant to 11 U.S.C. § 329(a) and Bankruptcy Rule 2016(b), I certify that I am the attorney for the above-named debtor and that compensation paid to me within one year before the filing of the petition in bankruptcy, or agreed to be paid to me, for services rendered or to be rendered on behalf of the debtor(s) in contemplation of or in connection with the bankruptcy case is as follows:

For legal services, I have agreed to accept	\$3,000.00
Prior to the filing of this statement I have received	\$3,000.00
Balance Due	\$ 0.00

2. **\$299.00** of the filing fee has been paid.
3. The source of the compensation paid to me was:
 Debtor Other (specify): **Comstock Homes of Atlanta, LLC**
4. The source of compensation to be paid to me is:
 Debtor Other (specify):
5. I have not agreed to share the above-disclosed compensation with any other person unless they are members and associates of my law firm.
 I have agreed to share the above-disclosed compensation with a person or persons who are not members or associates of my law firm. A copy of the agreement, together with a list of the names of the people sharing in the compensation is attached.
6. In return for the above-disclosed fee, I have agreed to render legal service for all aspects of the bankruptcy case, including:
- a. Analysis of the debtor's financial situation, and rendering advice to the debtor in determining whether to file a petition in bankruptcy;
 - b. Preparation and filing of any petition, schedules, statement of affairs and plan which may be required;
 - c. Representation of the debtor at the meeting of creditors and confirmation hearing, and any adjourned hearings thereof;
 - d. [Other provisions as needed]
7. By agreement with the debtor(s), the above-disclosed fee does not include the following service:
representation of the debtor(s) in adversary proceedings.

CERTIFICATION

I certify that the foregoing is a complete statement of any agreement or arrangement for payment to me for representation of the debtor(s) in this bankruptcy proceeding.

Dated: **November 25, 2009**

/s/ Paul Reece Marr

**Paul Reece Marr
Paul Reece Marr, P.C.
Suite 960
300 Galleria Parkway
Atlanta, GA 30339
(770) 984-2255
pmarr@mindspring.com**

B6 Summary (Official Form 6 - Summary) (12/07)

**United States Bankruptcy Court
Northern District of Georgia, Atlanta Division**

In re **Buckhead Overlook, LLC,**
Debtor

Case No. **09-90332-MHM**
Chapter **7**

SUMMARY OF SCHEDULES

Indicate as to each schedule whether that schedule is attached and state the number of pages in each. Report the totals from Schedules A, B, D, E, F, I, and J in the boxes provided. Add the amounts from Schedules A and B to determine the total amount of the debtor's assets. Add the amounts of all claims from Schedules D, E, and F to determine the total amount of the debtor's liabilities. Individual debtors must also complete the "Statistical Summary of Certain Liabilities and Related Data" if they file a case under chapter 7, 11, or 13.

<u>NAME OF SCHEDULE</u>	<u>ATTACHED (YES/NO)</u>	<u>NO. OF SHEETS</u>	<u>ASSETS</u>	<u>LIABILITIES</u>	<u>OTHER</u>
A - Real Property	Yes	1	2,353,751.00		
B - Personal Property	Yes	3	0.00		
C - Property Claimed as Exempt	No	0			
D - Creditors Holding Secured Claims	Yes	1		2,390,169.96	
E - Creditors Holding Unsecured Priority Claims (Total of Claims on Schedule E)	Yes	1		0.00	
F - Creditors Holding Unsecured Nonpriority Claims	Yes	1		0.00	
G - Executory Contracts and Unexpired Leases	Yes	1			
H - Codebtors	Yes	1			
I - Current Income of Individual Debtor(s)	No	0			N/A
J - Current Expenditures of Individual Debtors)	No	0			N/A
Total Number of Sheets of ALL Schedules		9			
Total Assets			2,353,751.00		
Total Liabilities				2,390,169.96	

United States Bankruptcy Court
Northern District of Georgia, Atlanta Division

In re **Buckhead Overlook, LLC,**
Debtor

Case No. **09-90332-MHM**
Chapter **7**

STATISTICAL SUMMARY OF CERTAIN LIABILITIES AND RELATED DATA (28 U.S.C. § 159)

If you are an individual debtor whose debts are primarily consumer debts, as defined in § 101(8) of the Bankruptcy Code (11 U.S.C. § 101(8)), filing a case under chapter 7, 11 or 13, you must report all information requested below.

- Check this box if you are an individual debtor whose debts are NOT primarily consumer debts. You are not required to report any information here.

This information is for statistical purposes only under 28 U.S.C. § 159.

Summarize the following types of liabilities, as reported in the Schedules, and total them.

<u>Type of Liability</u>	<u>Amount</u>
Domestic Support Obligations (from Schedule E)	
Taxes and Certain Other Debts Owed to Governmental Units (from Schedule E)	
Claims for Death or Personal Injury While Debtor Was Intoxicated (from Schedule E) (whether disputed or undisputed)	
Student Loan Obligations (from Schedule F)	
Domestic Support, Separation Agreement, and Divorce Decree Obligations Not Reported on Schedule E	
Obligations to Pension or Profit-Sharing, and Other Similar Obligations (from Schedule F)	
TOTAL	

State the following:

Average Income (from Schedule 1, Line 16)

Average Expenses (from Schedule J, Line 18)

Current Monthly Income (from Form 22A Line 12; OR, Form 22B Line 11; OR, Form 22C Line 20)

State the following:

- Total from Schedule D, "UNSECURED PORTION, IF ANY" column
- Total from Schedule E, "AMOUNT ENTITLED TO PRIORITY" column
- Total from Schedule E, "AMOUNT NOT ENTITLED TO PRIORITY, IF ANY" column
- Total from Schedule F
- Total of non-priority unsecured debt (sum of 1, 3, and 4)

**United States Bankruptcy Court
Northern District of Georgia, Atlanta Division**

In re **Buckhead Overlook, LLC**
Debtor(s)

Case No. **09-90332-MHM**
Chapter **7**

DECLARATION CONCERNING DEBTORS SCHEDULES

DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF CORPORATION OR PARTNERSHIP

I, the C.E.O. of Comstock Homebuilding Companies, Inc., its Manager of the corporation named as debtor in this case, declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of **11** sheets, and that they are true and correct to the best of my knowledge, information, and belief.

Date **November 25, 2009**

Signature /s/ Christopher Clemente
Christopher Clemente
C.E.O. of Comstock Homebuilding Companies, Inc., its
Manager

Penalty for making a false statement or concealing property: Fine of up to \$500,000 or imprisonment for up to 5 years or both.
18 U.S.C. §§ 152 and 3571.

**United States Bankruptcy Court
Northern District of Georgia, Atlanta Division**

In re **Buckhead Overlook, LLC**
Debtor(s)

Case No. **09-90332-MHM**
Chapter **7**

CORPORATE OWNERSHIP STATEMENT (RULE 7007.1)

Pursuant to Federal Rule of Bankruptcy Procedure 7007.1 and to enable the Judges to evaluate possible disqualification or recusal, the undersigned counsel for **Buckhead Overlook, LLC** in the above captioned action, certifies that the following is a (are) corporation(s), other than the debtor or a governmental unit, that directly or indirectly own(s) 10% or more of any class of the corporation's(s') equity interests, or states that there are no entities to report under FRBP 7007.1:

**Comstock Homebuilding
Companies, Inc.**
11465 Sunset Hills Rd; Ste 500
Reston, VA 20190

None [*Check if applicable*]

November 25, 2009
Date

/s/ Paul Reece Marr

Paul Reece Marr
Signature of Attorney or Litigant
Counsel for **Buckhead Overlook, LLC**
Paul Reece Marr, P.C.
Suite 960
300 Galleria Parkway
Atlanta, GA 30339
(770) 984-2255
pmarr@mindspring.com

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In re: : Case No. 09-90332-MHM
: :
BUCKHEAD OVERLOOK, LLC, : Chapter 7
: :
Debtor. : :
_____ :

CERTIFICATE OF SERVICE

I, Paul Reece Marr, certify that I am over the age of 18 and that on the below referenced date I served a copy of the attached STATEMENT OF FINANCIAL AFFAIRS AND SCHEDULES by first class U.S. Mail, with adequate postage prepaid on the following persons or entities at the addresses stated on the attached list:

Martha A. Miller
Martha A. Miller, PC
229 Peachtree Street, NE
Suite 2415
Atlanta, GA 30303

This the 25th day of November, 2009.

/s/ Paul Reece Marr
Paul Reece Marr

Paul Reece Marr, P.C.
300 Galleria Pkwy; Ste 960
Atlanta, GA 30339
770/984-2255

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In re: : Case No. 09-90335-MHM
: :
POST PRESERVE, LLC, : Chapter 7
: :
Debtor. :
: :
_____ :

DEBTOR’S STATEMENT OF FINANCIAL AFFAIRS, SCHEDULES, AND
SUPPLEMENTAL MATRIX

Post Preserve, LLC, “Debtor” herein, hereby files its STATEMENT OF FINANCIAL AFFAIRS, SCHEDULES, AND SUPPLEMENTAL MATRIX.

Prepared and submitted by:
PAUL REECE MARR, P.C.
Debtor’s counsel

By: /s/ Paul Reece Marr
Paul Reece Marr
GA Bar #471230

Suite 960
300 Galleria Parkway, N.W.
Atlanta, GA 30339
770/984-2255

United States Bankruptcy Court
Northern District of Georgia, Atlanta Division

In re **Post Preserve, LLC**
Debtor(s)

Case No. **09-90335-mhm**
Chapter **7**

STATEMENT OF FINANCIAL AFFAIRS

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under chapter 12 or chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. An individual debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional, should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs. To indicate payments, transfers and the like to minor children, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m).

Questions 1 - 18 are to be completed by all debtors. Debtors that are or have been in business, as defined below, also must complete Questions 19-25. **If the answer to an applicable question is "None," mark the box labeled "None."** If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question.

DEFINITIONS

"In business." A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within six years immediately preceding the filing of this bankruptcy case, any of the following: an officer, director, managing executive, or owner of 5 percent or more of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed full-time or part-time. An individual debtor also may be "in business" for the purpose of this form if the debtor engages in a trade, business, or other activity, other than as an employee, to supplement income from the debtor's primary employment.

"Insider." The term "insider" includes but is not limited to: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or person in control; officers, directors, and any owner of 5 percent or more of the voting or equity securities of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; any managing agent of the debtor. 11 U.S.C. §101.

1. Income from employment or operation of business

None State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business, including part-time activities either as an employee or in independent trade or business, from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the **two years** immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT SOURCE

2. Income other than from employment or operation of business

None State the amount of income received by the debtor other than from employment, trade, profession, or operation of the debtor's business during the **two years** immediately preceding the commencement of this case. Give particulars. If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT SOURCE

3. Payments to creditors

None

Complete a. or b., as appropriate, and c.

a. *Individual or joint debtor(s) with primarily consumer debts.* List all payments on loans, installment purchases of goods or services, and other debts to any creditor made within **90 days** immediately preceding the commencement of this case unless the aggregate value of all property that constitutes or is affected by such transfer is less than \$600. Indicate with an (*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and creditor counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

<u>NAME AND ADDRESS OF CREDITOR</u>	<u>DATES OF PAYMENTS</u>	<u>AMOUNT PAID</u>	<u>AMOUNT STILL OWING</u>
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None

b. *Debtor whose debts are not primarily consumer debts:* List each payment or other transfer to any creditor made within **90 days** immediately preceding the commencement of the case unless the aggregate value of all property that constitutes or is affected by such transfer is less than \$5,475. If the debtor is an individual, indicate with an asterisk (*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and creditor counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

<u>NAME AND ADDRESS OF CREDITOR</u>	<u>DATES OF PAYMENTS/ TRANSFERS</u>	<u>AMOUNT PAID OR VALUE OF TRANSFERS</u>	<u>AMOUNT STILL OWING</u>
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None

c. *All debtors:* List all payments made within **one year** immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

<u>NAME AND ADDRESS OF CREDITOR AND RELATIONSHIP TO DEBTOR</u>	<u>DATE OF PAYMENT</u>	<u>AMOUNT PAID</u>	<u>AMOUNT STILL OWING</u>
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4. Suits and administrative proceedings, executions, garnishments and attachments

None

a. List all suits and administrative proceedings to which the debtor is or was a party within **one year** immediately preceding the filing of this bankruptcy case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

<u>CAPTION OF SUIT AND CASE NUMBER</u>	<u>NATURE OF PROCEEDING</u>	<u>COURT OR AGENCY AND LOCATION</u>	<u>STATUS OR DISPOSITION</u>
Paramont Grading Company vs. Comstock Homes of Atlanta, LLC and Post Preserve, LLC, case no. 07A-10018-8	business dispute	Gwinnett County, GA Superior Court	judgment dated 10/21/2009

None

b. Describe all property that has been attached, garnished or seized under any legal or equitable process within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

<u>NAME AND ADDRESS OF PERSON FOR WHOSE BENEFIT PROPERTY WAS SEIZED</u>	<u>DATE OF SEIZURE</u>	<u>DESCRIPTION AND VALUE OF PROPERTY</u>
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5. Repossessions, foreclosures and returns

None List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

<u>NAME AND ADDRESS OF CREDITOR OR SELLER</u>	<u>DATE OF REPOSSESSION, FORECLOSURE SALE, TRANSFER OR RETURN</u>	<u>DESCRIPTION AND VALUE OF PROPERTY</u>
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6. Assignments and receiverships

None a. Describe any assignment of property for the benefit of creditors made within **120 days** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include any assignment by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

<u>NAME AND ADDRESS OF ASSIGNEE</u>	<u>DATE OF ASSIGNMENT</u>	<u>TERMS OF ASSIGNMENT OR SETTLEMENT</u>
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None b. List all property which has been in the hands of a custodian, receiver, or court-appointed official within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

<u>NAME AND ADDRESS OF CUSTODIAN</u>	<u>NAME AND LOCATION OF COURT CASE TITLE & NUMBER</u>	<u>DATE OF ORDER</u>	<u>DESCRIPTION AND VALUE OF PROPERTY</u>
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7. Gifts

None List all gifts or charitable contributions made within **one year** immediately preceding the commencement of this case except ordinary and usual gifts to family members aggregating less than \$200 in value per individual family member and charitable contributions aggregating less than \$100 per recipient. (Married debtors filing under chapter 12 or chapter 13 must include gifts or contributions by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

<u>NAME AND ADDRESS OF PERSON OR ORGANIZATION</u>	<u>RELATIONSHIP TO DEBTOR, IF ANY</u>	<u>DATE OF GIFT</u>	<u>DESCRIPTION AND VALUE OF GIFT</u>
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8. Losses

None List all losses from fire, theft, other casualty or gambling within **one year** immediately preceding the commencement of this case **or since the commencement of this case**. (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

<u>DESCRIPTION AND VALUE OF PROPERTY</u>	<u>DESCRIPTION OF CIRCUMSTANCES AND, IF LOSS WAS COVERED IN WHOLE OR IN PART BY INSURANCE, GIVE PARTICULARS</u>	<u>DATE OF LOSS</u>
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9. Payments related to debt counseling or bankruptcy

None List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of the petition in bankruptcy within **one year** immediately preceding the commencement of this case.

<u>NAME AND ADDRESS OF PAYEE</u>	<u>DATE OF PAYMENT, NAME OF PAYOR IF OTHER THAN DEBTOR</u>	<u>AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY</u>
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Paul Reece Marr, P.C. Suite 960 300 Galleria Parkway Atlanta, GA 30339	04/21/2009 Comstock Homes of Atlanta, LLC	\$3,000.00 attorney fee + \$299.00 filing fee
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10. Other transfers

None a. List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within **two years** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

<u>NAME AND ADDRESS OF TRANSFEREE, RELATIONSHIP TO DEBTOR</u>	<u>DATE</u>	<u>DESCRIBE PROPERTY TRANSFERRED AND VALUE RECEIVED</u>
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None b. List all property transferred by the debtor within **ten years** immediately preceding the commencement of this case to a self-settled trust or similar device of which the debtor is a beneficiary.

<u>NAME OF TRUST OR OTHER DEVICE</u>	<u>DATE(S) OF TRANSFER(S)</u>	<u>AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY OR DEBTOR'S INTEREST IN PROPERTY</u>
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11. Closed financial accounts

None List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within **one year** immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by or for either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

<u>NAME AND ADDRESS OF INSTITUTION</u>	<u>TYPE OF ACCOUNT, LAST FOUR DIGITS OF ACCOUNT NUMBER, AND AMOUNT OF FINAL BALANCE</u>	<u>AMOUNT AND DATE OF SALE OR CLOSING</u>
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12. Safe deposit boxes

None List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include boxes or depositories of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

<u>NAME AND ADDRESS OF BANK OR OTHER DEPOSITORY</u>	<u>NAMES AND ADDRESSES OF THOSE WITH ACCESS TO BOX OR DEPOSITORY</u>	<u>DESCRIPTION OF CONTENTS</u>	<u>DATE OF TRANSFER OR SURRENDER, IF ANY</u>
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13. Setoffs

None List all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within **90 days** preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

<u>NAME AND ADDRESS OF CREDITOR</u>	<u>DATE OF SETOFF</u>	<u>AMOUNT OF SETOFF</u>
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14. Property held for another person

None List all property owned by another person that the debtor holds or controls.

<u>NAME AND ADDRESS OF OWNER</u>	<u>DESCRIPTION AND VALUE OF PROPERTY</u>	<u>LOCATION OF PROPERTY</u>
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15. Prior address of debtor

None If the debtor has moved within **three years** immediately preceding the commencement of this case, list all premises which the debtor occupied during that period and vacated prior to the commencement of this case. If a joint petition is filed, report also any separate address of either spouse.

<u>ADDRESS</u>	<u>NAME USED</u>	<u>DATES OF OCCUPANCY</u>
5400 Laurel Springs Pkwy, Suite 201, Suwanee, GA 30024	Post Preserve, LLC	01/01/2006 - 09/30/2008
405 Wakefield Bluff Court, Alpharetta, GA 30004	Post Preserve, LLC	10/01/2008 - 04/15/2009

16. Spouses and Former Spouses

None If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within **eight years** immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state.

NAME

17. Environmental Information.

For the purpose of this question, the following definitions apply:

"Environmental Law" means any federal, state, or local statute or regulation regulating pollution, contamination, releases of hazardous or toxic substances, wastes or material into the air, land, soil, surface water, groundwater, or other medium, including, but not limited to, statutes or regulations regulating the cleanup of these substances, wastes, or material.

"Site" means any location, facility, or property as defined under any Environmental Law, whether or not presently or formerly owned or operated by the debtor, including, but not limited to, disposal sites.

"Hazardous Material" means anything defined as a hazardous waste, hazardous substance, toxic substance, hazardous material, pollutant, or contaminant or similar term under an Environmental Law

None a. List the name and address of every site for which the debtor has received notice in writing by a governmental unit that it may be liable or potentially liable under or in violation of an Environmental Law. Indicate the governmental unit, the date of the notice, and, if known, the Environmental Law:

<u>SITE NAME AND ADDRESS</u>	<u>NAME AND ADDRESS OF GOVERNMENTAL UNIT</u>	<u>DATE OF NOTICE</u>	<u>ENVIRONMENTAL LAW</u>
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None b. List the name and address of every site for which the debtor provided notice to a governmental unit of a release of Hazardous Material. Indicate the governmental unit to which the notice was sent and the date of the notice.

<u>SITE NAME AND ADDRESS</u>	<u>NAME AND ADDRESS OF GOVERNMENTAL UNIT</u>	<u>DATE OF NOTICE</u>	<u>ENVIRONMENTAL LAW</u>
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None c. List all judicial or administrative proceedings, including settlements or orders, under any Environmental Law with respect to which the debtor is or was a party. Indicate the name and address of the governmental unit that is or was a party to the proceeding, and the docket number.

<u>NAME AND ADDRESS OF GOVERNMENTAL UNIT</u>	<u>DOCKET NUMBER</u>	<u>STATUS OR DISPOSITION</u>
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18. Nature, location and name of business

None

a. *If the debtor is an individual*, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partner in a partnership, sole proprietor, or was self-employed in a trade, profession, or other activity either full- or part-time within **six years** immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities within **six years** immediately preceding the commencement of this case.

If the debtor is a partnership, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities, within **six years** immediately preceding the commencement of this case.

If the debtor is a corporation, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities within **six years** immediately preceding the commencement of this case.

<u>NAME</u>	<u>LAST FOUR DIGITS OF SOCIAL-SECURITY OR OTHER INDIVIDUAL TAXPAYER-I.D. NO. (ITIN)/ COMPLETE EIN</u>	<u>ADDRESS</u>	<u>NATURE OF BUSINESS</u>	<u>BEGINNING AND ENDING DATES</u>
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None

b. Identify any business listed in response to subdivision a., above, that is "single asset real estate" as defined in 11 U.S.C. §101.

<u>NAME</u>	<u>ADDRESS</u>
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The following questions are to be completed by every debtor that is a corporation or partnership and by any individual debtor who is or has been, within **six years** immediately preceding the commencement of this case, any of the following: an officer, director, managing executive, or owner of more than 5 percent of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership, a sole proprietor or self-employed in a trade, profession, or other activity, either full- or part-time.

(An individual or joint debtor should complete this portion of the statement only if the debtor is or has been in business, as defined above, within six years immediately preceding the commencement of this case. A debtor who has not been in business within those six years should go directly to the signature page.)

19. Books, records and financial statements

None

a. List all bookkeepers and accountants who within **two years** immediately preceding the filing of this bankruptcy case kept or supervised the keeping of books of account and records of the debtor.

<u>NAME AND ADDRESS</u>	<u>DATES SERVICES RENDERED</u>
Jeff Dauer 11465 Sunset Hills Rd 5th Floor Reston, VA 20190	

None

b. List all firms or individuals who within the **two years** immediately preceding the filing of this bankruptcy case have audited the books of account and records, or prepared a financial statement of the debtor.

<u>NAME</u>	<u>ADDRESS</u>	<u>DATES SERVICES RENDERED</u>
PriceWaterhouse Coopers, LLC	Attn: Chris Dietrick 1800 Tysons Blvd. Mc Lean, VA 22102	

None

c. List all firms or individuals who at the time of the commencement of this case were in possession of the books of account and records of the debtor. If any of the books of account and records are not available, explain.

<u>NAME</u>	<u>ADDRESS</u>
Jeff Dauer	11465 Sunset Hills Road 5th Floor Reston, VA 20190

None d. List all financial institutions, creditors and other parties, including mercantile and trade agencies, to whom a financial statement was issued by the debtor within **two years** immediately preceding the commencement of this case.

NAME AND ADDRESS

DATE ISSUED

20. Inventories

None a. List the dates of the last two inventories taken of your property, the name of the person who supervised the taking of each inventory, and the dollar amount and basis of each inventory.

DATE OF INVENTORY

INVENTORY SUPERVISOR

DOLLAR AMOUNT OF INVENTORY
(Specify cost, market or other basis)

None b. List the name and address of the person having possession of the records of each of the two inventories reported in a., above.

NAME AND ADDRESSES
OF CUSTODIAN OF
INVENTORY RECORDS

DATE OF INVENTORY

21. Current Partners, Officers, Directors and Shareholders

None a. If the debtor is a partnership, list the nature and percentage of partnership interest of each member of the partnership.

NAME AND ADDRESS

NATURE OF INTEREST

PERCENTAGE OF INTEREST

None b. If the debtor is a corporation, list all officers and directors of the corporation, and each stockholder who directly or indirectly owns, controls, or holds 5 percent or more of the voting or equity securities of the corporation.

NAME AND ADDRESS

TITLE

NATURE AND PERCENTAGE
OF STOCK OWNERSHIP

Comstock Homebuilding Companies, Inc.
11465 Sunset Hills Rd.
Suite 500
Reston, VA 20190

manager

sole member

22. Former partners, officers, directors and shareholders

None a. If the debtor is a partnership, list each member who withdrew from the partnership within **one year** immediately preceding the commencement of this case.

NAME

ADDRESS

DATE OF WITHDRAWAL

None b. If the debtor is a corporation, list all officers, or directors whose relationship with the corporation terminated within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS

TITLE

DATE OF TERMINATION

23. Withdrawals from a partnership or distributions by a corporation

None If the debtor is a partnership or corporation, list all withdrawals or distributions credited or given to an insider, including compensation in any form, bonuses, loans, stock redemptions, options exercised and any other perquisite during **one year** immediately preceding the commencement of this case.

NAME & ADDRESS
OF RECIPIENT,
RELATIONSHIP TO DEBTOR

DATE AND PURPOSE
OF WITHDRAWAL

AMOUNT OF MONEY
OR DESCRIPTION AND
VALUE OF PROPERTY

24. Tax Consolidation Group.

None
■ If the debtor is a corporation, list the name and federal taxpayer identification number of the parent corporation of any consolidated group for tax purposes of which the debtor has been a member at any time within **six years** immediately preceding the commencement of the case.

NAME OF PARENT CORPORATION

TAXPAYER IDENTIFICATION NUMBER (EIN)

25. Pension Funds.

None
■ If the debtor is not an individual, list the name and federal taxpayer identification number of any pension fund to which the debtor, as an employer, has been responsible for contributing at any time within **six years** immediately preceding the commencement of the case.

NAME OF PENSION FUND

TAXPAYER IDENTIFICATION NUMBER (EIN)

DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF CORPORATION OR PARTNERSHIP

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct to the best of my knowledge, information and belief.

Date **November 25, 2009**

Signature /s/ Christopher Clemente

Christopher Clemente

**C.E.O., Comstock Homebuilding Companies, Inc., its
Manager**

[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor.]

Penalty for making a false statement: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571

In re **Post Preserve, LLC,**
Debtor

Case No. **09-90335-mhm**

SCHEDULE A - REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a cotenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim." If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt,

<u>Description and Location of Property</u>	<u>Nature of Debtor's Interest in Property</u>	<u>Husband, Wife, Joint, or Community</u>	<u>Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption</u>	<u>Amount of Secured Claim</u>
acreage, approximately 33 acres, Forsyth County, GA, parcel number 038 011 (book value = \$3,182,026.00; tax assessed value = \$1,476,450.00)	fee simple	—	3,182,026.00	3,190,811.05
		Sub-Total >	3,182,026.00	(Total of this page)
		Total >	3,182,026.00	

0 continuation sheets attached to the Schedule of Real Property

(Report also on Summary of Schedules)

In re **Post Preserve, LLC,**
Debtor

Case No. **09-90335-mhm**

SCHEDULE B - PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "x" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property." If the property is being held for a minor child, simply state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

	N O N E	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
Type of Property	Description and Location of Property		
1. Cash on hand	X		
2. Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.	X		
3. Security deposits with public utilities, telephone companies, landlords, and others.	X		
4. Household goods and furnishings, including audio, video, and computer equipment.	X		
5. Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.	X		
6. Wearing apparel.	X		
7. Furs and jewelry.	X		
8. Firearms and sports, photographic, and other hobby equipment.	X		
9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.	X		
10. Annuities. Itemize and name each issuer.	X		
Sub-Total > (Total of this page)			0.00

2 continuation sheets attached to the Schedule of Personal Property

In re **Post Preserve, LLC,**
Debtor

Case No. **09-90335-mhm**

SCHEDULE B - PERSONAL PROPERTY
(Continuation Sheet)

	<u>Type of Property</u>	<u>N O N E</u>	<u>Description and Location of Property</u>	<u>Husband, Wife, Joint, or Community</u>	<u>Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption</u>
11.	Interests in an education IRA as defined in 26 U.S.C. § 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1). Give particulars. (File separately the record(s) of any such interests). 11 U.S.C. §521 (c.)	X			
12.	Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.	X			
13.	Stock and interests in incorporated and unincorporated businesses. Itemize.	X			
14.	Interests in partnerships or joint ventures. Itemize.	X			
15.	Government and corporate bonds and other negotiable and nonnegotiable instruments.	X			
16.	Accounts receivable.	X			
17.	Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	X			
18.	Other liquidated debts owed to debtor including tax refunds. Give particulars.	X			
19.	Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule A - Real Property.	X			
20.	Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	X			
21.	Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.	X			

Sub-Total > **0.00**
(Total of this page)

Sheet 1 of 2 continuation sheets attached to the Schedule of Personal Property

In re **Post Preserve, LLC,**
Debtor

Case No. **09-90335-mhm**

SCHEDULE B - PERSONAL PROPERTY
(Continuation Sheet)

	N O N E	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
Type of Property		Description and Location of Property	
22. Patents, copyrights, and other intellectual property. Give particulars.	X		
23. Licenses, franchises, and other general intangibles. Give particulars.	X		
24. Customer lists or other compilations containing personally identifiable information (as defined in 11 U.S.C. § 101(41A)) provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes.	X		
25. Automobiles, trucks, trailers, and other vehicles and accessories.	X		
26. Boats, motors, and accessories.	X		
27. Aircraft and accessories.	X		
28. Office equipment, furnishings, and supplies.	X		
29. Machinery, fixtures, equipment, and supplies used in business.	X		
30. Inventory.	X		
31. Animals.	X		
32. Crops - growing or harvested. Give particulars.	X		
33. Fanning equipment and implements.	X		
34. Farm supplies, chemicals, and feed.	X		
35. Other personal property of any kind not already listed. Itemize.	X		
		Sub-Total >	0.00
		(Total of this page)	
		Total >	0.00

Sheet 2 of 2 continuation sheets attached to the Schedule of Personal Property

(Report also on Summary of Schedules)

In re **Post Preserve, LLC,**
Debtor

Case No. **09-90335-mhm**

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests.

List creditors in alphabetical order to the extent practicable. If a minor child is a creditor, the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor", include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community".

If the claim is contingent, place an "X" in the column labeled "Contingent". If the claim is unliquidated, place an "X" in the column labeled "Unliquidated". If the claim is disputed, place an "X" in the column labeled "Disputed". (You may need to place an "X" in more than one of these three columns.)

Total the columns labeled "Amount of Claim Without Deducting Value of Collateral" and "Unsecured Portion, if Any" in the boxes labeled "Total(s)" on the last sheet of the completed schedule. Report the total from the column labeled "Amount of Claim" also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report the total from the column labeled "Unsecured Portion" on the Statistical Summary of Certain Liabilities and Related Data.

Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E B T O R	H U S B A N D, W I F E, J O I N T, O R C O M M U N I T Y	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	U N S E C U R E D P O R T I O N, I F A N Y		
				AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY	
Account No.			property taxes			
Forsyth County Tax Commissioner 1100 East Main Street Cumming, GA 30040			acreage, approximately 33 acres, Forsyth County, GA, parcel number 038 011 (book value = \$3,182,026.00; tax assessed value = \$1,476,450.00)			
			Value	\$3,182,026.00	14,090.05	8,785.05
Account No.			08/11/2008			
Mickey Thomas & Sons 12195 Hwy 92 Suite 114-214 Woodstock, GA 30188			Notice of Lien Filing			
			Value	\$0.00	1,942.00	1,942.00
Account No.			additional notice address			
Mickey Thomas & Sons 6065 Southard Trace Suite 106 Woodstock, GA 30188			-			
			Value	\$0.00	0.00	0.00
Account No.			10/21/2009			
Paramont Grading Company John Pearson, Registered Agent 4405 Canton Hwy Cumming, GA 30040	X		judgment			
			Value	\$0.00	307,855.21	307,855.21
				Subtotal		
				(Total of this page) 323,887.26 318,582.26		

I continuation sheets attached

In re Post Preserve, LLC,
Debtor

Case No. 09-90335-mhm

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS
(Continuation Sheet)

C R E D I T O R S N A M E A N D M A I L I N G A D D R E S S I N C L U D I N G Z I P C O D E, A N D A C C O U N T N U M B E R (See instructions.)	C O D E	H U S B A N D, W I F E, J O I N T, O R C O M M U N I T Y	D A T E C L A I M W A S I N C U R R E D, N A T U R E O F L I E N, A N D D E S C R I P T I O N A N D V A L U E O F P R O P E R T Y S U B J E C T T O L I E N	U N S E C U R E D C L A I M S		
				A M O U N T O F C L A I M W I T H O U T D E D U C T I N G V A L U E O F C O L L A T E R A L	W I T H O U T D E D U C T I N G V A L U E O F C O L L A T E R A L	U N S E C U R E D P O R T I O N, I F A N Y
Account No.			deed to secure debt			
RBC Builder Finance Attn: Legal 11011 Richmond Ave.; Suite 850 Houston, TX 77042	X		acreage, approximately 33 acres, Forsyth County, GA, parcel number 038 011 (book value = \$3,182,026.00; tax assessed value = \$1,476,450.00)	\$3,182,026.00	3,176,721.00	0.00
Account No.			- additional notice address			
RBC Builder Finance Attn: Jim McDunn 301 Grant Street; Suite 4325 Pittsburgh, PA 15219				\$0.00	0.00	0.00
Account No.			- notice only			
S. Gregory Joy, Esq. Smith, Currie & Hancock LLP 245 P'tree Cntr Ave NE; # 2700 Atlanta, GA 30303-1227				\$0.00	0.00	0.00
Account No.				\$		
Account No.				\$		
				Subtotal		
				(Total of this page) 3,176,721.00 0.00		
				Total		
				(Report on Summary of Schedules) 3,500,608.26 318,582.26		

Sheet 1 of 1 continuation sheets attached to Schedule of Creditors Holding Secured Claims

In re **Post Preserve, LLC,**
Debtor

Case No. **09-90335-mhm**

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name, mailing address, including zip code, and last four digits of the account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of the petition. Use a separate continuation sheet for each type of priority and label each with the type of priority.

The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H-Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the claim is contingent, place an "X" in the column labeled "Contingent," If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

Report the total of amounts entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Report the total of amounts not entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts not entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

☐ Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

TYPES OF PRIORITY CLAIMS (Check the appropriate box(es) below if claims in that category are listed on the attached sheets)

Domestic support obligations

Claims for domestic support that are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such a child, or a governmental unit to whom such a domestic support claim has been assigned to the extent provided in 11 U.S.C. §507(a)(1).

Extensions of credit in an involuntary case

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. §507(a)(3).

Wages, salaries, and commissions

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to \$10,950* per person earned within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

Contributions to employee benefit plans

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. §507(a)(5).

Certain farmers and fishermen

Claims of certain farmers and fishermen, up to \$5,400* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(6).

Deposits by individuals

Claims of individuals up to \$2,425* for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(7).

Taxes and certain other debts owed to governmental units

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C. § 507(a)(8).

Commitments to maintain the capital of an insured depository institution

Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. §507(a)(9).

Claims for death or personal injury while debtor was intoxicated

Claims for death or personal injury resulting from the operation of a motor vehicle or vessel while the debtor was intoxicated from using alcohol a drug or another substance. 11 U.S.C. § 507(a)(10).

* Amounts are subject to adjustment on April 1, 2010, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

0 continuation sheets attached

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Best Case Bankruptcy

In re **Post Preserve, LLC,**
Debtor

Case No. **09-90335-mhm**

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Check this box if debtor has no creditors holding unsecured claims to report on this Schedule F.

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E B T O R	H U S B A N D	W I F E	J O I N T	C O M M U N I T Y	U N L I Q U I D A T E D	C O N T I N G E N T	D I S P U T E D	A M O U N T O F C L A I M
Account No.									account payable
Atlantic Risk									
5850 Waterloo Road									-
Number 240									
Columbia, MD 21045									175.00
Account No.									account payable
Builders Design & Leasing Inc.									
7601 Lindbergh Drive									-
Gaithersburg, MD 20879									551.00
Account No.									account payable
Forsyth County									
110 East Main Street									-
Cumming, GA 30040									500.00
Account No.									account payable
Forsyth County Water Dept.									
PO Box 100003									-
Cumming, GA 30028-8303									176.00
									Subtotal
									(Total of this page)
									1,402.00

1 continuation sheets attached

In re Post Preserve, LLC,
Debtor

Case No. 09-90335-mhm

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	Husband, Wife, Joint, or Community		DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM, IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	U N C L O I N Q D T U I I S N D P G A U E T T N E E T D D	AMOUNT OF CLAIM
	C O D E	B H T W O J R C			
Account No.			account payable		
Mason Bahr, LLP Attn: Chip Carter Two Ravinia Drive; Suite 610 Atlanta, GA 30346		-			6,568.75
Account No.			account payable		
Sawnee EMC PO Box 2153 Birmingham, AL 35287-2530		-			28.34
Account No.			account payable		
The Erosion Company, Inc. PO Box 740209 Atlanta, GA 30374-0209		-			303.90
Account No.			account payable		
Travelers Casualty & Surety Co. of America One Tower Square Hartford, CT 06183-9062		-			Unknown
Account No.			account payable		
William Scotsman, Inc. PO Box 91975 Chicago, IL 60693-1975		-			5,544.75
				Subtotal (Total of this page)	12,445.74
				Total (Report on Summary of Schedules)	13,847.74

Sheet no. 1 of 1 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims

In re **Post Preserve, LLC,**
Debtor

Case No. **09-90335-mhm**

SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., "Purchaser", "Agent", etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described. If a minor child is a party to one of the leases or contracts, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

■ Check this box if debtor has no executory contracts or unexpired leases.

**Name and Mailing Address, Including Zip Code,
of Other Parties to Lease or Contract**

**Description of Contract or Lease and Nature of Debtor's Interest.
State whether lease is for nonresidential real property.
State contract number of any government contract.**

0 continuation sheets attached to Schedule of Executory Contracts and Unexpired Leases

In re **Post Preserve, LLC,**
Debtor

Case No. **09-90335-mhm**

SCHEDULE H - CODEBTORS

Provide the information requested concerning any person or entity, other than a spouse in a joint case, that is also liable on any debts listed by debtor in the schedules of creditors. Include all guarantors and co-signers. If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within the eight year period immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state, commonwealth, or territory. Include all names used by the nondebtor spouse during the eight years immediately preceding the commencement of this case. If a minor child is a codebtor or a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

Check this box if debtor has no codebtors.

<u>NAME AND ADDRESS OF CODEBTOR</u>	<u>NAME AND ADDRESS OF CREDITOR</u>
Andrew W. Chandler 126 N. Rantun Court Norcross, GA 30071	RBC Builder Finance Attn: Legal 11011 Richmond Ave.; Suite 850 Houston, TX 77042
James B. Parker, Jr. 2105 Woodfalls Drive Cumming, GA 30041	RBC Builder Finance Attn: Legal 11011 Richmond Ave.; Suite 850 Houston, TX 77042
Parker Chandler Homes, LLC 11465 Sunset Hills Rd Suite 500 Suwanee, GA 30024	RBC Builder Finance Attn: Legal 11011 Richmond Ave.; Suite 850 Houston, TX 77042
Parker Chandler Homes, LLC 11465 Sunset Hills Rd Suite 500 Suwanee, GA 30024	Paramont Grading Company John Pearson, Registered Agent 4405 Canton Hwy Cumming, GA 30040

0 continuation sheets attached to Schedule of Codebtors

**United States Bankruptcy Court
Northern District of Georgia, Atlanta Division**

In re **Post Preserve, LLC**
Debtor(s)

Case No. **09-90335-mhm**
Chapter **7**

DISCLOSURE OF COMPENSATION OF ATTORNEY FOR DEBTOR(S)

1. Pursuant to 11 U.S.C. § 329(a) and Bankruptcy Rule 2016(b), I certify that I am the attorney for the above-named debtor and that compensation paid to me within one year before the filing of the petition in bankruptcy, or agreed to be paid to me, for services rendered or to be rendered on behalf of the debtor(s) in contemplation of or in connection with the bankruptcy case is as follows:

For legal services, I have agreed to accept	\$3,000.00
Prior to the filing of this statement I have received	\$3,000.00
Balance Due	\$ 0.00

2. **\$ 299.00** of the filing fee has been paid.
3. The source of the compensation paid to me was:
 Debtor Other (specify): **Comstock Homes of Atlanta, LLC**
4. The source of compensation to be paid to me is:
 Debtor Other (specify):
5. I have not agreed to share the above-disclosed compensation with any other person unless they are members and associates of my law firm.
 I have agreed to share the above-disclosed compensation with a person or persons who are not members or associates of my law firm. A copy of the agreement, together with a list of the names of the people sharing in the compensation is attached.
6. In return for the above-disclosed fee, I have agreed to render legal service for all aspects of the bankruptcy case, including:
- a. Analysis of the debtor's financial situation, and rendering advice to the debtor in determining whether to file a petition in bankruptcy;
 - b. Preparation and filing of any petition, schedules, statement of affairs and plan which may be required;
 - c. Representation of the debtor at the meeting of creditors and confirmation hearing, and any adjourned hearings thereof;
 - d. [Other provisions as needed]
7. By agreement with the debtor(s), the above-disclosed fee does not include the following service:
representation of the debtor(s) in adversary proceedings.

CERTIFICATION

I certify that the foregoing is a complete statement of any agreement or arrangement for payment to me for representation of the debtor(s) in this bankruptcy proceeding.

Dated: **November 25, 2009**

/s/ **Paul Reece Marr**

Paul Reece Marr
Paul Reece Marr, P.C.
Suite 960
300 Galleria Parkway
Atlanta, GA 30339
(770) 984-2255
pmarr@mindspring.com

B6 Summary (Official Form 6 - Summary) (12/07)

**United States Bankruptcy Court
Northern District of Georgia, Atlanta Division**

In re **Post Preserve, LLC,**
Debtor

Case No. **09-90335-mhm**
Chapter **7**

SUMMARY OF SCHEDULES

Indicate as to each schedule whether that schedule is attached and state the number of pages in each. Report the totals from Schedules A, B, D, E, F, I, and J in the boxes provided. Add the amounts from Schedules A and B to determine the total amount of the debtor's assets. Add the amounts of all claims from Schedules D, E, and F to determine the total amount of the debtor's liabilities. Individual debtors must also complete the "Statistical Summary of Certain Liabilities and Related Data" if they file a case under chapter 7, 11, or 13.

<u>NAME OF SCHEDULE</u>	<u>ATTACHED (YES/NO)</u>	<u>NO. OF SHEETS</u>	<u>ASSETS</u>	<u>LIABILITIES</u>	<u>OTHER</u>
A - Real Property	Yes	1	3,182,026.00		
B - Personal Property	Yes	3	0.00		
C - Property Claimed as Exempt	No	0			
D - Creditors Holding Secured Claims	Yes	2		3,500,608.26	
E - Creditors Holding Unsecured					
Priority Claims (Total of Claims on Schedule E)	Yes	1		0.00	
F - Creditors Holding Unsecured Nonpriority Claims	Yes	2		13,847.74	
G - Executory Contracts and Unexpired Leases	Yes	1			
H - Codebtors	Yes	1			
I - Current Income of Individual Debtor(s)	No	0			N/A
J - Current Expenditures of Individual Debtor(s)	No	0			N/A
Total Number of Sheets of ALL Schedules		11			
Total Assets			3,182,026.00		
Total Liabilities				3,514,456.00	

United States Bankruptcy Court
Northern District of Georgia, Atlanta Division

In re **Post Preserve, LLC,**
Debtor

Case No. **09-90335-mhm**
Chapter **7**

STATISTICAL SUMMARY OF CERTAIN LIABILITIES AND RELATED DATA (28 U.S.C. § 159)

If you are an individual debtor whose debts are primarily consumer debts, as defined in § 101(8) of the Bankruptcy Code (11 U.S.C. § 101(8)), filing a case under chapter 7, 11 or 13, you must report all information requested below.

- Check this box if you are an individual debtor whose debts are NOT primarily consumer debts. You are not required to report any information here.

This information is for statistical purposes only under 28 U.S.C. § 159.

Summarize the following types of liabilities, as reported in the Schedules, and total them.

<u>Type of Liability</u>	<u>Amount</u>
Domestic Support Obligations (from Schedule E)	
Taxes and Certain Other Debts Owed to Governmental Units (from Schedule E)	
Claims for Death or Personal Injury While Debtor Was Intoxicated (from Schedule E) (whether disputed or undisputed)	
Student Loan Obligations (from Schedule F)	
Domestic Support, Separation Agreement, and Divorce Decree Obligations Not Reported on Schedule E	
Obligations to Pension or Profit-Sharing, and Other Similar Obligations (from Schedule F)	
TOTAL	

State the following:

Average Income (from Schedule I, Line 16)

Average Expenses (from Schedule J, Line 18)

Current Monthly Income (from Form 22A Line 12; OR, Form 22B Line 11; OR, Form 22C Line 20)

State the following:

1. Total from Schedule D, "UNSECURED PORTION, IF ANY" column
2. Total from Schedule E, "AMOUNT ENTITLED TO PRIORITY" column
3. Total from Schedule E, "AMOUNT NOT ENTITLED TO PRIORITY, IF ANY" column
4. Total from Schedule F
5. Total of non-priority unsecured debt (sum of 1, 3, and 4)

**United States Bankruptcy Court
Northern District of Georgia, Atlanta Division**

In re **Post Preserve, LLC**
Debtor(s)

Case No. **09-90335-mhm**
Chapter **7**

DECLARATION CONCERNING DEBTOR'S SCHEDULES

DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF CORPORATION OR PARTNERSHIP

I, the C.E.O., Comstock Homebuilding Companies, Inc., its Manager of the corporation named as debtor in this case, declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of 13 sheets, and that they are true and correct to the best of my knowledge, information, and belief.

Date **November 25, 2009**

Signature /s/ Christopher Clemente

Christopher Clemente
C.E.O., Comstock Homebuilding Companies, Inc., its
Manager

Penalty for making a false statement or concealing property: Fine of up to \$500,000 or imprisonment for up to 5 years or both.
18 U.S.C. §§ 152 and 3571.

**United States Bankruptcy Court
Northern District of Georgia, Atlanta Division**

In re **Post Preserve, LLC**
Debtor(s)

Case No. **09-90335-mhm**
Chapter **7**

CORPORATE OWNERSHIP STATEMENT (RULE 7007.1)

Pursuant to Federal Rule of Bankruptcy Procedure 7007.1 and to enable the Judges to evaluate possible disqualification or recusal, the undersigned counsel for **Post Preserve, LLC** in the above captioned action, certifies that the following is a (are) corporation(s), other than the debtor or a governmental unit, that directly or indirectly own(s) 10% or more of any class of the corporation's(s') equity interests, or states that there are no entities to report under FRBP 7007.1:

**Comstock Homebuilding
Companies, Inc.**
11465 Sunset Hills Rd; 5th Flr
Reston, VA 20190

None *[Check if applicable]*

November 25, 2009
Date

/s/ Paul Reece Marr

Paul Reece Marr
Signature of Attorney or Litigant
Counsel for **Post Preserve, LLC**
Paul Reece Marr, P.C.
Suite 960
300 Galleria Parkway
Atlanta, GA 30339
(770) 984-2255
pmarr@mindspring.com

SUPPLEMENTAL MATRIX

S. Gregory Joy, Esq.
Smith, Currie & Hancock LLP
245 P'tree Cntr Ave NE; # 2700
Atlanta, GA 30303-1227

Travelers Casualty & Surety
Co. of America
One Tower Square
Hartford, CT 06183-9062

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In re: : Case No. 09-90335-MHM
: :
POST PRESERVE, LLC, : Chapter 7
: :
Debtor. : :
: :

CERTIFICATE OF SERVICE

I, Paul Reece Marr, certify that I am over the age of 18 and that on the below referenced date I served a copy of the attached STATEMENT OF FINANCIAL AFFAIRS, SCHEDULES, AND SUPPLEMENTAL MATRIX by first class U.S. Mail, with adequate postage prepaid on the following persons or entities at the addresses stated on the attached list:

Martha A. Miller
Martha A. Miller, PC
229 Peachtree Street, NE
Suite 2415
Atlanta, GA 30303

This the 25th day of November, 2009.

/s/ Paul Reece Marr
Paul Reece Marr

Paul Reece Marr, P.C.
300 Galleria Pkwy; Ste 960
Atlanta, GA 30339
770/984-2255

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In re: : Case No. 09-90334-MHM
: :
PARKER CHANDLER HOMES, LLC, : Chapter 7
: :
Debtor. :
_____ :

DEBTOR’S STATEMENT OF FINANCIAL AFFAIRS, SCHEDULES, AND
SUPPLEMENTAL MATRIX

Parker Chandler Homes, LLC, “Debtor” herein, hereby files its STATEMENT OF FINANCIAL AFFAIRS, SCHEDULES, AND SUPPLEMENTAL MATRIX.

Prepared and submitted by:
PAUL REECE MARR, P.C.
Debtor’s counsel

By: /s/ Paul Reece Marr
Paul Reece Marr
GA Bar #471230
Suite 960
300 Galleria Parkway, N.W.
Atlanta, GA 30339
770/984-2255

**United States Bankruptcy Court
Northern District of Georgia, Atlanta Division**

In re **Parker Chandler Homes, LLC**
Debtor(s)

Case No. _____
Chapter **7**

STATEMENT OF FINANCIAL AFFAIRS

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under chapter 12 or chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. An individual debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional, should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs. To indicate payments, transfers and the like to minor children, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m).

Questions 1 - 18 are to be completed by all debtors. Debtors that are or have been in business, as defined below, also must complete Questions 19 - 25. **If the answer to an applicable question is "None," mark the box labeled "None."** If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question.

DEFINITIONS

"In business." A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within six years immediately preceding the filing of this bankruptcy case, any of the following: an officer, director, managing executive, or owner of 5 percent or more of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed full-time or part-time. An individual debtor also may be "in business" for the purpose of this form if the debtor engages in a trade, business, or other activity, other than as an employee, to supplement income from the debtor's primary employment.

"Insider," The term "insider" includes but is not limited to: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or person in control; officers, directors, and any owner of 5 percent or more of the voting or equity securities of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; any managing agent of the debtor. 11 U.S.C. § 101.

1. Income from employment or operation of business

None State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business, including part-time activities either as an employee or in independent trade or business, from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the **two years** immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT	SOURCE
\$ 0.00	2009 year to Petition Date total revenue
\$ 4,854,694.00	2008 total revenue
\$ 19,322,461.00	2007 total revenue

2. Income other than from employment or operation of business

None State the amount of income received by the debtor other than from employment, trade, profession, or operation of the debtor's business during the **two years** immediately preceding the commencement of this case. Give particulars. If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT SOURCE

3. Payments to creditors

None *Complete a. or b., as appropriate, and c.*

a. *Individual or joint debtor(s) with primarily consumer debts.* List all payments on loans, installment purchases of goods or services, and other debts to any creditor made within **90 days** immediately preceding the commencement of this case unless the aggregate value of all property that constitutes or is affected by such transfer is less than \$600. Indicate with an (*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and creditor counseling agency, (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR DATES OF PAYMENTS AMOUNT PAID AMOUNT STILL OWING

None b. *Debtor whose debts are not primarily consumer debts:* List each payment or other transfer to any creditor made within **90 days** immediately preceding the commencement of the case unless the aggregate value of all property that constitutes or is affected by such transfer is less than \$5,475. If the debtor is an individual, indicate with an asterisk (*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and creditor counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR DATES OF PAYMENTS/ TRANSFERS AMOUNT PAID OR VALUE OF TRANSFERS AMOUNT STILL OWING

None c. *All debtors:* List all payments made within **one year** immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR AND RELATIONSHIP TO DEBTOR DATE OF PAYMENT AMOUNT PAID AMOUNT STILL OWING

4. Suits and administrative proceedings, executions, garnishments and attachments

None a. List all suits and administrative proceedings to which the debtor is or was a party within **one year** immediately preceding the filing of this bankruptcy case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

<u>CAPTION OF SUIT AND CASE NUMBER</u>	<u>NATURE OF PROCEEDING</u>	<u>COURT OR AGENCY AND LOCATION</u>	<u>STATUS OR DISPOSITION</u>
Atlanta Communities Magazine, Inc. vs. Comstock Homes of Atlanta, LLC, cv no. 08C20804 1	suit on account	State Court of Gwinnett County, GA	filed 12/08/2008
Comstock Homes of Atlanta, LLC v. R. Jerry Thacker, cv no. 07-3400-EM	business dispute	Superior Court of Cherokee County, GA	filed 11/26/2007
Landmark Design Associates, LLC vs. Comstock Homes of Atlanta, Inc., cv no. 08C163656	complaint on account	State Court of Gwinnett County, GA	filed 09/30/2008

CAPTION OF SUIT AND CASE NUMBER	NATURE OF PROCEEDING	COURT OR AGENCY AND LOCATION	STATUS OR DISPOSITION
New South Publishing, Inc. vs. Comstock Homes of Atlanta, LLC, cv no. 09C04613-1	complaint on account	State Court of Gwinnett County, GA	filed 03/19/2009
Paramont Grading Company vs. Comstock Homes of Atlanta, LLC and Post Preserve, LLC, case no. 07A-10018-8	business dispute	Gwinnett County, GA Superior Court	judgment dated 10/21/2009
ProBuild South, LLC vs. Comstock Homes of Atlanta, LLC, case no. 09C-04512-2	business dispute	Gwinnett County, GA State Court	judgment dated 10/28/2009
Robert Bowden, Inc. vs. Comstock Homes of Atlanta, LLC as successor of Parker-Chandler Homes, Inc. and James B. Parker, Jr., case no. 08-A-18948-1	complaint on account and personal guaranty	State Court of Cobb County, GA	judgment dated 7/6/2009
Signature Communities, LLC and Signature Communities at High Grove, LLC, Appellants, v Parker-Chandler Homes, Inc. n/k/a Comstock Homes of Atlanta, LLC, Andrew H. Chandler, Jr. and James B. Parker, Appellees, No. A09A0924	business dispute	Court of Appeals of GA	Appellate Court held for Defendants
Stuart Mechanical Service, Inc. vs. Comstock Homes of Atlanta, LLC, cv no. 09C-03545-5	complaint on account	Gwinnett County State Court	judgment dated 7/9/2009
Tabas, LLLP vs. Comstock Homes of Atlanta, LLC, case no. 07A-09201 8	Complaint for Specific Performance of Contract and Damages	Gwinnett County, GA Superior Court	judgment dated 6/10/2009
The Lamar Companies vs. Comstock Homes of Atlanta, LLC, cv no. 08C182295	complaint on account	State Court of Gwinnett County, GA	filed 10/27/2008

None b. Describe all property that has been attached, garnished or seized under any legal or equitable process within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON FOR WHOSE BENEFIT PROPERTY WAS SEIZED	DATE OF SEIZURE	DESCRIPTION AND VALUE OF PROPERTY
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5. Repossessions, foreclosures and returns

None List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

<u>NAME AND ADDRESS OF CREDITOR OR SELLER</u>	<u>DATE OF REPOSSESSION, FORECLOSURE SALE, TRANSFER OR RETURN</u>	<u>DESCRIPTION AND VALUE OF PROPERTY</u>
Bank of America c/o Valerie L. Combs, Esq. Troutman Sanders LLP Suite 5200; 600 P'tree Street, NE Atlanta, GA 30308	12/04/2008	various lots in Brentwood Estates and Senators Ridge Subdivisions, Jackson County, GA [aggregate foreclosure sale price = \$491,988.00; estimated aggregate secured debt = \$1,453,508.00]
Branch Banking & Trust Co. c/o Courington & Chisholm, PC kathleen Horne, Esq. 17 West McDonough Street Savannah, GA 31401	09/02/2008	various lots in Settindown, Maristone, Glenn Ivey, and Wyngate Subdivisions, Forsyth County, GA [estimated aggregate fair market value = \$6,898,500.00; estimated aggregate secured debt = \$12,837,128.00]
Regions Bank, c/o Bryan T. Glover, Esq. Burr & Forman, L.L.P. Suite 1100; 171 17th Street Atlanta, GA 30363	09/02/2008	8.50 acres, Forsyth County, GA [estimated fair market value = \$264,000.00; secured debt = \$699,774.00]

6. Assignments and receiverships

None a. Describe any assignment of property for the benefit of creditors made within **120 days** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include any assignment by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

<u>NAME AND ADDRESS OF ASSIGNEE</u>	<u>DATE OF ASSIGNMENT</u>	<u>TERMS OF ASSIGNMENT OR SETTLEMENT</u>
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None b. List all property which has been in the hands of a custodian, receiver, or court-appointed official within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

<u>NAME AND ADDRESS OF CUSTODIAN</u>	<u>NAME AND LOCATION OF COURT CASE TITLE & NUMBER</u>	<u>DATE OF ORDER</u>	<u>DESCRIPTION AND VALUE OF PROPERTY</u>
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7. Gifts

None List all gifts or charitable contributions made within **one year** immediately preceding the commencement of this case except ordinary and usual gifts to family members aggregating less than \$200 in value per individual family member and charitable contributions aggregating less than \$100 per recipient. (Married debtors filing under chapter 12 or chapter 13 must include gifts or contributions by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

<u>NAME AND ADDRESS OF PERSON OR ORGANIZATION</u>	<u>RELATIONSHIP TO DEBTOR, IF ANY</u>	<u>DATE OF GIFT</u>	<u>DESCRIPTION AND VALUE OF GIFT</u>
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8. Losses

None List all losses from fire, theft, other casualty or gambling within **one year** immediately preceding the commencement of this case **or since the commencement of this case.** (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

<u>DESCRIPTION AND VALUE OF PROPERTY</u>	<u>DESCRIPTION OF CIRCUMSTANCES AND, IF LOSS WAS COVERED IN WHOLE OR IN PART BY INSURANCE, GIVE PARTICULARS</u>	<u>DATE OF LOSS</u>
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9. Payments related to debt counseling or bankruptcy

None List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of the petition in bankruptcy within **one year** immediately preceding the commencement of this case.

<u>NAME AND ADDRESS OF PAYEE</u>	<u>DATE OF PAYMENT, NAME OF PAYOR IF OTHER THAN DEBTOR</u>	<u>AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY</u>
Paul Reece Marr, P.C. Suite 960 300 Galleria Parkway Atlanta, GA 30339	04/21/2009	\$3,000.00 attorney fee + \$299.00 filing fee

10. Other transfers

None a. List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within **two years** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

<u>NAME AND ADDRESS OF TRANSFEREE, RELATIONSHIP TO DEBTOR</u>	<u>DATE</u>	<u>DESCRIBE PROPERTY TRANSFERRED AND VALUE RECEIVED</u>
various		the debtor sold various properties to third parties in the ordinary course of business during the referenced time period

None b. List all property transferred by the debtor within **ten years** immediately preceding the commencement of this case to a self-settled trust or similar device of which the debtor is a beneficiary.

<u>NAME OF TRUST OR OTHER DEVICE</u>	<u>DATE(S) OF TRANSFER(S)</u>	<u>AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY OR DEBTOR'S INTEREST IN PROPERTY</u>
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11. Closed financial accounts

None List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within **one year** immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by or for either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

<u>NAME AND ADDRESS OF INSTITUTION</u>	<u>TYPE OF ACCOUNT, LAST FOUR DIGITS OF ACCOUNT NUMBER, AND AMOUNT OF FINAL BALANCE</u>	<u>AMOUNT AND DATE OF SALE OR CLOSING</u>
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12. Safe deposit boxes

None List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include boxes or depositories of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

<u>NAME AND ADDRESS OF BANK OR OTHER DEPOSITORY</u>	<u>NAMES AND ADDRESSES OF THOSE WITH ACCESS TO BOX OR DEPOSITORY</u>	<u>DESCRIPTION OF CONTENTS</u>	<u>DATE OF TRANSFER OR SURRENDER, IF ANY</u>
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13. Setoffs

None List all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within **90 days** preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

<u>NAME AND ADDRESS OF CREDITOR</u>	<u>DATE OF SETOFF</u>	<u>AMOUNT OF SETOFF</u>
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14. Property held for another person

None List all property owned by another person that the debtor holds or controls.

<u>NAME AND ADDRESS OF OWNER</u>	<u>DESCRIPTION AND VALUE OF PROPERTY</u>	<u>LOCATION OF PROPERTY</u>
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15. Prior address of debtor

None If the debtor has moved within **three years** immediately preceding the commencement of this case, list all premises which the debtor occupied during that period and vacated prior to the commencement of this case. If a joint petition is filed, report also any separate address of either spouse.

<u>ADDRESS</u>	<u>NAME USED</u>	<u>DATES OF OCCUPANCY</u>
5400 Laurel Springs Pkwy; Suite 201 Suwanee, GA 30024	Comstock Homes of Atlanta, LLC	01/01/2006 - 09/30/2008
405 Wakefield Bluff Court Alpharetta, GA 30004	Comstock Homes of Atlanta, LLC	10/01/2008 - 04/15/2009

16. Spouses and Former Spouses

None If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within **eight years** immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state.

NAME

17. Environmental Information.

For the purpose of this question, the following definitions apply;

“Environmental Law” means any federal, state, or local statute or regulation regulating pollution, contamination, releases of hazardous or toxic substances, wastes or material into the air, land, soil, surface water, groundwater, or other medium, including, but not limited to, statutes or regulations regulating the cleanup of these substances, wastes, or material.

“Site” means any location, facility, or property as defined under any Environmental Law, whether or not presently or formerly owned or operated by the debtor, including, but not limited to, disposal sites.

“Hazardous Material” means anything defined as a hazardous waste, hazardous substance, toxic substance, hazardous material, pollutant, or contaminant or similar term under an Environmental Law

None a. List the name and address of every site for which the debtor has received notice in writing by a governmental unit that it may be liable or potentially liable under or in violation of an Environmental Law. Indicate the governmental unit, the date of the notice, and, if known, the Environmental Law:

<u>SITE NAME AND ADDRESS</u>	<u>NAME AND ADDRESS OF GOVERNMENTAL UNIT</u>	<u>DATE OF NOTICE</u>	<u>ENVIRONMENTAL LAW</u>
None <input checked="" type="checkbox"/>	b. List the name and address of every site for which the debtor provided notice to a governmental unit of a release of Hazardous Material. Indicate the governmental unit to which the notice was sent and the date of the notice.		

<u>SITE NAME AND ADDRESS</u>	<u>NAME AND ADDRESS OF GOVERNMENTAL UNIT</u>	<u>DATE OF NOTICE</u>	<u>ENVIRONMENTAL LAW</u>
None <input checked="" type="checkbox"/>	c. List all judicial or administrative proceedings, including settlements or orders, under any Environmental Law with respect to which the debtor is or was a party. Indicate the name and address of the governmental unit that is or was a party to the proceeding, and the docket number.		

<u>NAME AND ADDRESS OF GOVERNMENTAL UNIT</u>	<u>DOCKET NUMBER</u>	<u>STATUS OR DISPOSITION</u>
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18. Nature, location and name of business

- None
- a. *If the debtor is an individual*, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partner in a partnership, sole proprietor, or was self-employed in a trade, profession, or other activity either full- or part-time within **six years** immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities within **six years** immediately preceding the commencement of this case.
- If the debtor is a partnership*, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities, within **six years** immediately preceding the commencement of this case.
- If the debtor is a corporation*, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities within **six years** immediately preceding the commencement of this case.

<u>NAME</u>	<u>LAST FOUR DIGITS OF SOCIAL-SECURITY OR OTHER INDIVIDUAL TAXPAYER-I.D. NO. (ITIN)/COMPLETE EIN</u>	<u>ADDRESS</u>	<u>NATURE OF BUSINESS</u>	<u>BEGINNING AND ENDING DATES</u>
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- None
- b. Identify any business listed in response to subdivision a., above, that is "single asset real estate" as defined in 11 U.S.C. § 101.

<u>NAME</u>	<u>ADDRESS</u>
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The following questions are to be completed by every debtor that is a corporation or partnership and by any individual debtor who is or has been, within **six years** immediately preceding the commencement of this case, any of the following: an officer, director, managing executive, or owner of more than 5 percent of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership, a sole proprietor or self-employed in a trade, profession, or other activity, either full- or part-time.

*(An individual or joint debtor should complete this portion of the statement **only** if the debtor is or has been in business, as defined above, within six years immediately preceding the commencement of this case. A debtor who has not been in business within those six years should go directly to the signature page.)*

19. Books, records and financial statements

- None
- a. List all bookkeepers and accountants who within **two years** immediately preceding the filing of this bankruptcy case kept or supervised the keeping of books of account and records of the debtor.

NAME AND ADDRESS

DATES SERVICES RENDERED

Jeff Dauer
11465 Sunset Hills Rd
5th Floor
Reston, VA 20190

None b. List all firms or individuals who within the **two years** immediately preceding the filing of this bankruptcy case have audited the books of account and records, or prepared a financial statement of the debtor.

NAME

ADDRESS

DATES SERVICES RENDERED

PriceWaterhouse Coopers, LLC
Attn: Chris Dietrick
1800 Tysons Blvd.
McLean, VA 22102

None c. List all firms or individuals who at the time of the commencement of this case were in possession of the books of account and records of the debtor. If any of the books of account and records are not available, explain.

NAME

ADDRESS

Jeff Dauer

11465 Sunset Hills Rd
5th Floor
Reston, VA 20190

None d. List all financial institutions, creditors and other parties, including mercantile and trade agencies, to whom a financial statement was issued by the debtor within **two years** immediately preceding the commencement of this case.

NAME AND ADDRESS

DATE ISSUED

20. Inventories

None a. List the dates of the last two inventories taken of your property, the name of the person who supervised the taking of each inventory, and the dollar amount and basis of each inventory.

DATE OF INVENTORY

INVENTORY SUPERVISOR

DOLLAR AMOUNT OF INVENTORY
(Specify cost, market or other basis)

None b. List the name and address of the person having possession of the records of each of the two inventories reported in a., above.

DATE OF INVENTORY

NAME AND ADDRESSES OF CUSTODIAN OF INVENTORY RECORDS

21. Current Partners, Officers, Directors and Shareholders

None a. If the debtor is a partnership, list the nature and percentage of partnership interest of each member of the partnership.

NAME AND ADDRESS

NATURE OF INTEREST

PERCENTAGE OF INTEREST

None b. If the debtor is a corporation, list all officers and directors of the corporation, and each stockholder who directly or indirectly owns, controls, or holds 5 percent or more of the voting or equity securities of the corporation.

NAME AND ADDRESS

TITLE

NATURE AND PERCENTAGE OF STOCK OWNERSHIP

Comstock Homebuilding Companies, Inc.
11465 Sunset Hills Rd
Suite 500
Reston, VA 20190

manager

sole member

22. Former partners, officers, directors and shareholders

None
 a. If the debtor is a partnership, list each member who withdrew from the partnership within **one year** immediately preceding the commencement of this case.

NAME ADDRESS DATE OF WITHDRAWAL

None
 b. If the debtor is a corporation, list all officers, or directors whose relationship with the corporation terminated within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS TITLE DATE OF TERMINATION

23. Withdrawals from a partnership or distributions by a corporation

None
 If the debtor is a partnership or corporation, list all withdrawals or distributions credited or given to an insider, including compensation in any form, bonuses, loans, stock redemptions, options exercised and any other perquisite during **one year** immediately preceding the commencement of this case.

NAME & ADDRESS OF RECIPIENT, RELATIONSHIP TO DEBTOR DATE AND PURPOSE OF WITHDRAWAL AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY

24. Tax Consolidation Group.

None
 If the debtor is a corporation, list the name and federal taxpayer identification number of the parent corporation of any consolidated group for tax purposes of which the debtor has been a member at any time within **six years** immediately preceding the commencement of the case.

NAME OF PARENT CORPORATION TAXPAYER IDENTIFICATION NUMBER (EIN)

25. Pension Funds.

None
 If the debtor is not an individual, list the name and federal taxpayer identification number of any pension fund to which the debtor, as an employer, has been responsible for contributing at any time within **six years** immediately preceding the commencement of the case.

NAME OF PENSION FUND TAXPAYER IDENTIFICATION NUMBER (EIN)

DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF CORPORATION OR PARTNERSHIP

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct to the best of my knowledge, information and belief.

Date **11/25/2009**

Signature /s/ Christopher Clemente
Christopher Clemente

[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor.]

Penalty for making a false statement: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571

In re **Parker Chandler Homes, LLC**
Debtor(s)

Case No. _____

SCHEDULE A – REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a co-tenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor’s own benefit. If the debtor is married, state whether the husband, wife, both, or the marital community own the property by placing an “H,” “W,” “J,” or “C” in the column labeled “Husband, Wife, Joint, or Community.” If the debtor holds no interest in real property, write “None” under “Description and Location of Property.”

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write “none” in the column labeled “Amount of Secured Claim.”

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

Description and Location of Property	Nature of Debtor's Interest in Property	Husband Wife Joint or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption	Amount of Secured Claim
Lots 26, 28, 30, Allen Creek subdivision, Talmo, Jackson County, GA 30575 (book value = \$60,201.00, tax assessed value = \$127,490.00)	fee simple	—	\$ 60,201.00	\$15,893,229.00
Lots 4, 5, 7, 19, 20, 22, 24, 25, 27, and 28, Arcanum Subdivision, Cumming, Forsyth County, GA 30040 (book value = \$181,221.00, tax assessed value = \$340,000.00)	fee simple	—	\$ 181,221.00	\$15,893,229.00
Lots 1, 2, 7, 14, and 16, Failing Water Subdivision, Woodstock, Cherokee County, GA 30188 (book value = \$243,851.00, tax assessed value = \$825,000.00)	fee simple	—	\$ 243,851.00	\$15,893,229.00
Lot 25, Glenn Ivey Subdivision, Cumming, Forsyth County, GA 30040 (book value = \$216,220.00, tax assessed value = \$78,948.00)	fee simple	—	\$ 216,220.00	\$ 199,094.00
Lot 36, Glenn Ivey Subdivision, Cumming, Forsyth County, GA 30040 (book value = \$35,968.00, tax assessed value = \$23,600.00)	fee simple	—	\$ 35,968.00	\$ 71,087.00
Lot 23, Wyngate Subdivision, Alpharetta, GA 30040 (book value = \$280,887.00, tax assessed value = \$32,000.00)	fee simple	—	\$ 280,887.00	\$ 279,023.00
Total:			\$1,018,348.00	

(Report also on Summary of Schedules)

In re **Parker Chandler Homes, LLC**
Debtor(s)

Case No. _____

SCHEDULE B - PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "x" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether the husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property." If the property is being held for a minor child, simply state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed R. Bankr. P. 1007(m).

	N O N E	Husband, Wife, Joint or Community	Current Value of Debtor's Interest In Property, With-Out Deducting Any Secured Claim or Exemption
Type of Property	Description and Location of Property		
1. Cash on hand.	X		
2. Checking, savings or other financial accounts, certificates of deposit or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.		—	\$0.00
		—	\$0.00
		—	\$0.00
3. Security deposits with public utilities, telephone companies, landlords, and others.	X		
4. Household goods and furnishings, including audio, video, and computer equipment.	X		
5. Books; pictures and other art objects; antiques; stamp, coin, record, tape, compact disc, and other collections or collectibles.	X		
6. Wearing apparel.	X		
7. Furs and jewelry.	X		
8. Firearms and sports, photographic, and other hobby equipment.	X		
9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.	X		

In re **Parker Chandler Homes, LLC**
Debtor

Case No. _____
 (If known)

SCHEDULE B - PERSONAL PROPERTY
 (Continuation Sheet)

<u>Type of Property</u>	<u>N O N E</u>	<u>Description and Location of Property</u>	<u>Husband, Wife, Joint or Community</u>	<u>Current Value of Debtor's Interest In Property, With-Out Deducting Any Secured Claim or Exemption</u>
10. Annuities. Itemize and name each issuer.	X			
11. Interests in an education IRA as defined in 26 U.S.C. §530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. §529(b)(1). Give particulars. (File separately the record(s) of any such interest(s). 11 U.S.C. §521 (c).)	X			
12. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.	X			
13. Stock and interests in incorporated and unincorporated businesses. Itemize.	X			
14. Interests in partnerships or joint ventures. Itemize.	X			
15. Government and corporate bonds and other negotiable and nonnegotiable instruments.	X			
16. Accounts receivable.	X			
17. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	X			
18. Other liquidated debts owed to debtor including tax refunds. Give particulars.	X			
19. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule A - Real Property.	X			
20. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	X			

In re **Parker Chandler Homes, LLC**
Debtor

Case No. _____
 (If known)

SCHEDULE B - PERSONAL PROPERTY
 (Continuation Sheet)

<u>Type of Property</u>	<u>N O N E</u>	<u>Description and Location of Property</u>	<u>Husband, Wife, Joint or Community</u>	<u>Current Value of Debtor's Interest In Property, With-Out Deducting Any Secured Claim or Exemption</u>
21. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.	X			
22. Patents, copyrights, and other intellectual property. Give particulars.	X			
23. Licenses, franchises, and other general intangibles. Give particulars.	X			
24. Customer lists or other compilations containing personally identifiable information (as defined in 11 U.S.C. §101(41A)) provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes.	X			
25. Automobiles, trucks, trailers, and other vehicles and accessories.	X			
26. Boats, motors, and accessories.	X			
27. Aircraft and accessories.	X			
28. Office equipment, furnishings, and supplies.	X			
29. Machinery, fixtures, equipment, and supplies used in business.	X			
30. Inventory.	X			
31. Animals.	X			
32. Crops - growing or harvested. Give particulars.	X			
33. Farming equipment and implements.	X			
34. Farm supplies, chemicals, and feed.	X			
35. Other personal property of any kind not already listed. Itemize.	X			
Total >				\$0.00

(Report also on Summary of Schedules)

In re **Parker Chandler Homes, LLC**
Debtor(s)

Case No. _____

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests.

List creditors in alphabetical order to the extent practicable. If a minor child is the creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112 and Fed R. Bankr. P. 1007(m). If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns).

Total the columns labeled "Amount of Claim Without Deducting Value of Collateral" and "Unsecured Portion, if Any" in the boxes labeled "Total(s)" on the last sheet of the completed schedule. Report the total from the column labeled "Amount of Claim Without Deducting Value of Collateral" also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report the total from the column labeled "Unsecured Portion, if Any" on the Statistical Summary of Certain Liabilities and Related Data.

Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND AN ACCOUNT NUMBER <i>(See Instructions Above)</i>	C O D E B T O R	H U S B A N D, W I F E, J O I N T O R C O M M U N I T Y	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	U N S E C U R E D P O R T I O N		
				AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY	
ACCOUNT NO.			claim of lien			
Atlanta Glass & Mirror, Inc. 196 Rio Circle Decatur, GA 30030			VALUE	\$ 0.00	\$ 1,138.70	\$ 1,138.70
ACCOUNT NO.			deed to secure debt			
Branch Banking & Trust Co. Attn: Warren Sandberg 16410 Heritage Blvd., 3rd Flr Bowie, MD 20716			Lot 25, Glenn Ivey Subdivision, Cumming, Forsyth County, GA 30040 (book value = \$216,220.00, tax assessed value = \$78,948.00)	\$ 216,220.00	\$ 199,094.00	\$ 0.00

In re **Parker Chandler Homes, LLC**
Debtor(s)

Case No. _____

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS
(Continuation Sheet)

C R E D I T O R S N A M E A N D A D D R E S S I N C L U D I N G Z I P C O D E A N D A N A C C O U N T N U M B E R <i>(See Instructions Above)</i>	H U S B A N D W I F E J O I N T O R C O M M U N I T Y	D A T E C L A I M W A S I N C U R R E D N A T U R E O F L I E N A N D D E S C R I P T I O N A N D V A L U E O F P R O P E R T Y S U B J E C T T O L I E N	U N S E C U R E D C L A I M S A M O U N T O F C L A I M W I T H O U T D E D U C T I N G V A L U E O F C O L L A T E R A L			U N S E C U R E D P O R T I O N I F A N Y
			W I T H O U T D E D U C T I N G V A L U E O F C O L L A T E R A L	W I T H O U T D E D U C T I N G V A L U E O F C O L L A T E R A L	W I T H O U T D E D U C T I N G V A L U E O F C O L L A T E R A L	
ACCOUNT NO.		deed to secure debt				
Branch Banking & Trust Co. Attn: Warren Sandberg 16410 Heritage Blvd.; 3rd Flr Bowie, MD 20716	N A	Lot 23, Wyngate Subdivision, Alpharetta, GA 30040 (book value = \$280,887.00, tax assessed value = \$32,000.00)	VALUE	\$ 280,887.00	\$ 279,023.00 \$ 0.00	
ACCOUNT NO.		additional notice address				
Branch Banking & Trust Co. Attn: Keri Jackson 1308 Devils Reach Rd; Ste 200 Woodbridge, VA 22192 ACCOUNT NO. 0244175	N A		VALUE	\$ 0.00	\$ 0.00 \$ 0.00	
Canon Financial Services, Inc. 14904 Collections Center Drive Chicago, IL 60693	N A	lease 2 copiers	VALUE	\$ 1,000.00	\$ 5,836.69 4,836.69	
ACCOUNT NO.		9/3/2008				
Jenkins Brothers' Construction c/o Brian F. Hansen, Esq. 11625 Rainwater Dr. Suite 350 Alpharetta, GA 30004	N A	claim of lien	VALUE	\$ 0.00	\$ 3,657.60 \$ 3,657.60	
ACCOUNT NO.		1/30/2008				
L&W Supply Corp. Larry Edmondson 101 Jonesboro Rd. Mcdonough, GA 30253	N A	claim of lien	VALUE	\$ 0.00	\$ 0.00 \$ 0.00	

Sheet 2 of 6 total sheets in Schedule of Creditors Holding Secured Claims

In re **Parker Chandler Homes, LLC**
Debtor(s)

Case No. _____

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS
(Continuation Sheets)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND AN ACCOUNT NUMBER <i>(See Instructions Above)</i>	C O D E B T W O J R C	H U S B A N D W I F E J O I N T O R C O M M U N I T Y	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	U N C L O I N Q U I T I S N D P G A U T E T N E T D D	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO.			10/21/2009			
Paramont Grading Company John Pearson, Registered Agent 4405 Canton Hwy Cumming, GA 30040	X	N A	judgment business dispute			
			VALUE	\$ 0.00	X X X \$ 261,372.00	\$ 261,372.00
ACCOUNT NO.			10/28/2009			
ProBuild South, LLC 12215 East 61st Street Broken Arrow, OK 74012		N A	judgment business dispute			
			VALUE	\$ 0.00	X \$ 3,434.04	\$ 3,434.04
ACCOUNT NO.			deed to secure debt			
RBC Builder Finance Attn: Legal 11011 Richmond Ave.; Suite 850 Houston, TX 77042	X	N A	Lot 36, Glenn Ivey Subdivision, Cumming, Forsyth County, GA 30040 (book value = \$35,968.00, tax assessed value = \$23,600.00)			
			VALUE	\$ 35,968.00	\$ 71,087.00	\$ 35,119.00
ACCOUNT NO.			additional notice address			
RBC Builder Finance Attn: Jim McDunn 301 Grant St; number 4325 Pittsburgh, PA 15219		N A				
			VALUE	\$ 0.00	\$ 0.00	\$ 0.00
ACCOUNT NO.			1/30/2008			
Residential Drywall, Inc. c/o Suzanne Woolum PO Box 1390 Hiram, GA 30141		N A	claim of lien			
			VALUE	\$ 0.00	\$ 11,061.48	\$ 11,061.48

Sheet 3 of 6 total sheets in Schedule of Creditors Holding Secured Claims

In re **Parker Chandler Homes, LLC**
Debtor(s)

Case No. _____

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS
(Continuation Sheet)

CREDITORS NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND AN ACCOUNT NUMBER <i>(See Instructions Above)</i>	C O D E B T W O J R C	H U S B A N D W I F E J O I N T O R C O M M U N I T Y	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	U N C L O I N Q D T U I S N D P G A U E T T N E E T D D	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO.			claim of lien			
Rich Drywall, Inc.	N					
Daphne Jackson	A					
3425 Chartwell Ridge			VALUE		\$ 18,585.00	\$ 18,585.00
Suwanee, GA 30024			7/6/2009	\$0.00	\$	
ACCOUNT NO.			judgment			
Robert Bowden, Inc.	X	N				
Attn: Stephen Cola, CEO	A		business account payable			
PO Box 4237			VALUE		\$ 5,526.00	\$ 5,526.00
Marietta, GA 30061-4237			7/9/2008	\$0.00	\$	
ACCOUNT NO.			claim of lien			
Southern Staircase, Inc.	N					
Suite E	A					
6025 Shiloh Rd			VALUE		\$ 3,606.57	\$ 3,606.57
Alpharetta, GA 30005			6/10/2009	\$0.00	\$	
ACCOUNT NO.			judgment			
Stuart Mechancial Service, Inc	X	N				
Attn: James M. Stuart	A					
5267 Palmero Court			VALUE		\$ 5,486.00	\$ 5,486.00
Buford, GA 30518-5848			6/10/2009	\$0.00	\$	
ACCOUNT NO.			judgment			
Tabas, LLLP	N			X X X		
Attn: Albert M. Ashkouti	A					
6075 Barfield Rd Ste 110			VALUE		\$ 1,501,859.00	\$1,501,859.00
Atlanta, GA 30328			6/10/2009	\$0.00	\$	

Sheet 4 of 6 total sheets in Schedule of Creditors Holding Secured Claims

In re **Parker Chandler Homes, LLC**
Debtor(s)

Case No. _____

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS
(Continuation Sheet)

C R E D I T O R S N A M E A N D M A I L I N G A D D R E S S I N C L U D I N G Z I P C O D E A N D A N A C C O U N T N U M B E R <i>(See Instructions Above)</i>	H U S B A N D W I F E J O I N T O R C O M M U N I T Y	D A T E C L A I M W A S I N C U R R E D N A T U R E O F L I E N A N D D E S C R I P T I O N A N D V A L U E O F P R O P E R T Y S U B J E C T T O L I E N	U N S E C U R E D C L A I M A M O U N T O F C L A I M W I T H O U T D E D U C T I N G V A L U E O F C O L L A T E R A L			U N S E C U R E D P O R T I O N I F A N Y
			AMOUNT OF CLAIM	WITHOUT	DEDUCTING VALUE	OF COLLATERAL
ACCOUNT NO.						
Wachovia Bank, N.A.		additional notice address				
Attn: Joe Morrocco	N					
150 Fayetteville Street	A					
Raleigh, NC 27602						
VALUE			\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
ACCOUNT NO.						
Wachovia Bank, N.A.		N deeds to unsecured debt				
Ron Sanders- S. Tower VA 1927 1753	A	Lots 26, 28, 30, Allen Creek subdivision,				
Pinnacle Drive; 5th Floor		Jackson County, GA; Lots 4, 5, 7, 19, 20, 22, 24,				
Mc Lean, VA 22102		25, 27, 28, Arcanum Subdivision, Forsyth				
		County, GA; and Lots 1, 2, 7, 14, 16, Falling				
		Water Subdivision, Cherokee County, GA.				
		(Book value = \$485,273.00, tax assessed value =				
		\$1,292,490.00)				
VALUE			\$485,273.00	\$ 15,893,229.00	\$ 15,407,956.00	
ACCOUNT NO.						
Wachovia Bank, N.A.		additional notice address				
Attn: Patrick McGovern	N					
123 South Broad Street Philadelphia,	A					
PA 19109						
VALUE			\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
ACCOUNT NO.						
Woodman Gutters, Inc.		claim of lien				
PO Box 740209	N					
Atlanta, GA 30374-0209	A					
VALUE			\$ 0.00	\$ 2,317.00	\$ 2,317.00	

In re **Parker Chandler Homes, LLC**
Debtor(s)

Case No. _____

SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS
(Continuation Sheet)

CREDITORS NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND AN ACCOUNT NUMBER <i>(See Instructions Above)</i>	Husband, Wife, Joint, or Community	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	U N C L O I N Q D T U I I S N D P G A U E T T N E E T D	AMOUNT OF CLAIM	UNSECURED
				WITHOUT DEDUCTING VALUE OF COLLATERAL	PORTION, IF ANY
ACCOUNT NO.					
Woodman Insulation Co., Inc. 1230 Samples Industrial Drive Cumming, GA 30041	claim of lien				
	VALUE	\$ 0.00		\$ 2,508.00	\$ 2,508.00
			Total(s) (Use only on last page)	\$ 18,268,821.08	\$17,268,463.08

(Report also on Summary of Schedules) If applicable, report also on Statistical Summary of Certain Liabilities and Related Data)

In re **Parker Chandler Homes, LLC**
Debtor(s)

Case No. _____

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name, mailing address, including zip code, and last four digits of the account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of the petition. Use a separate continuation sheet for each type of priority and label each with the type of priority.

The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H-Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

Report the total of amounts entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Report the total of amounts not entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts not entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

TYPES OF PRIORITY CLAIMS (Check the appropriate box(es) below if claims in that category are listed on the attached sheets)

Domestic Support Obligations

Claims for domestic support that are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such a child, or a governmental unit to whom such a domestic support claim has been assigned to the extent provided in 11 U.S.C. §507(a)(1).

Extensions of credit in an involuntary case

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(3).

Wages, salaries, and commissions

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to 510,950* per person earned within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

Contributions to employee benefit plans

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(5).

Sheet 1 of 3 total sheets in Schedule of Creditors Holding Unsecured Priority Claims

In re **Parker Chandler Homes, LLC**
Debtor(s)

Case No. _____

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS
(Continuation Sheet)

Certain farmers and fishermen

Claims of certain farmers and fishermen, up to 5,400* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(6).

Deposits by individuals

Claims of individuals up to \$2,425* for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(7).

Taxes and Certain Other Debts Owed to Governmental Units

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C. §507(a)(8).

Commitments to Maintain the Capital of an Insured Depository Institution

Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507(a)(9).

Claims for Death or Personal Injury While Debtor Was Intoxicated

Claims for death or personal injury resulting from the operation of a motor vehicle or vessel while the debtor was intoxicated from using alcohol, a drug, or another substance. 11 U.S.C. § 507(a)(10).

* Amounts are subject to adjustment on April 1, 2010, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

Sheet 2 of 3 total sheets in Schedule of Creditors Holding Unsecured Priority Claims

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Best Case Bankruptcy

B6E (Official Form 6E) (12/07) - Cont.

In re **Parker Chandler Homes, LLC**
Debtor(s)

Case No. _____

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See Instructions.)	H U S B A N D, W I F E, J O I N T, O R C O M M U N I T Y	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM	Taxes and Certain Other Debts Owed to Governmental Units			
			Type of Priority	AMOUNT OF CLAIM	AMOUNT NOT ENTITLED TO PRIORITY, IF ANY	AMOUNT ENTITLED TO PRIORITY
Account No.						
Cherokee Cnty Tax Commissioner 2780 Marietta Street Canton, GA 30114	N A	ad valorem taxes		\$14,626.12	0.00	\$ 14,626.12
Account No.						
Forsyth County Tax Commissioner 1092 Tribble Gap Rd. Cumming, GA 30040	N A	ad valorem taxes		\$44,176.75	0.00	\$ 44,176.75
Account No.						
NC Department of Revenue PO Box 2500 Raleigh, NC 27640-0520	N A	ad valorem taxes		\$ 104.24	0.00	\$ 104.24
Subtotals:						
(Totals of this page)				58,907.11	0.00	58,907.11
Total:						
(Use only on last page of the completed Schedule E. Repeat also on the Summary of Schedules.)				58,907.11		
Totals:					0.00	
(Use only on last page of the completed Schedule E. If applicable, report also on the Statistical Summary of Certain Liabilities and Related Data.)						58,907.11

Sheet 3 of 3 total sheets in Schedule of Creditors Holding Unsecured Priority Claims

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Best Case Bankruptcy

In re **Parker Chandler Homes, LLC**
Debtor(s)

Case No. _____

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number of all entities holding unsecured claims without priority against the debtor, as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m). Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns).

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Check this box if debtor has no creditors holding secured claims to report on this Schedule F.

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER <i>(See instructions above)</i>	Husband, Wife, Joint, or Community		DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	U N C L O I N Q D T U I I S N D P G A U E T T N E E T D D	AMOUNT OF CLAIM
	C O D E B T O R	H W J C			
ACCOUNT NO. 071 -032623					
Aaron Rents & Sells Furniture 8198 Terminal Rd. Lorton, VA 22079	N A		account payable		939.70
ACCOUNT NO.					
ADT Security Services, Inc. PO Box 371967 Pittsburgh, PA 15250-7067	N A		account payable		191.16
ACCOUNT NO. 06-C-21224 S6					
Advanced Reporting Services 183 Katielee Cove Dallas, GA 30132	N A		account payable		591.85

In re **Parker Chandler Homes, LLC**
Debtor(s)

Case No. _____

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER <i>(See instructions above.)</i>	Husband, Wife, Joint, or Community		DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	U N C L O I N Q D T U I I S N D P G A U E T T N E E A M O U N T O F C L A I M	AMOUNT OF CLAIM
	C O D E	B H T W O J R C			
ACCOUNT NO.					
Anand Narayanan and Sunitha Subbarao 2910 Buford Dr; Apt. 910 Buford, GA 30519	N A	account payable			6,340.00
ACCOUNT NO.					
Andrade's Clean Up, Inc. 4141 North Arnold Mill Rd. Woodstock, GA 30188	N A	account payable			300.00
ACCOUNT NO.					
Arrow Exterminators PO Box 707 Cumming, GA 30028-0707	N A	account payable			95.00
ACCOUNT NO. various					
AT&T-GA PO Box 105262 Atlanta, GA 30348-5262	N A	accounts payable			2,043.59
ACCOUNT NO.					
Atlanta Communities Magazine 1000 Parkwood Circle Suite 260 Atlanta, GA 30339	X A	N A account payable		X	11,190.00
ACCOUNT NO.					
Atlantic Risk 5850 Waterloo Road Number 240 Columbia, MD 21045	N A	account payable			200.00

Sheet 2 of 15 total sheets in Schedule of Creditors Holding Unsecured Nonpriority Claims

In re **Parker Chandler Homes, LLC**
Debtor(s)

Case No. _____

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER <i>(See instructions above.)</i>	Husband, Wife, Joint, or Community		U N C L O I N Q D T U I I S N D P G A U E T T N E E A M O U N T O F C L A I M
	C O D E	D E S C R I B I O N	
ACCOUNT NO. Blu-John.Com. Inc. 257 Castleberry Ind. Dr. Cumming, GA 30040	N	account payable	321.00
ACCOUNT NO. Broadriver Communication Corp. 1000 Hemphill Ave NW Atlanta, GA 30318-5441	N	account payable	337.31
ACCOUNT NO. Builders Design & Leasing Inc. 7601 Lindbergh Drive Gaithersburg, MD 20879	N	account payable	6,574.52
ACCOUNT NO. C. Lee Davis, Esq. 506 Roswell Street Building 200; Suite 230 Marietta, GA 30060	N	notice only; attorney for A Robert Bowden, Inc.	0.00
ACCOUNT NO. Cherokee County Water and Sewer Authority PO Box 5000 Canton, GA 30114	N	account payable	14,626.12
ACCOUNT NO. City of Suwanee 330 Town Center Avenue Suwanee, GA 30024	N	liability under performance A bonds	X X 0.00

B6F (Official Form 6F) (12/07) - Cont.

In re **Parker Chandler Homes, LLC**
Debtor(s)

Case No _____

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER <i>(See instructions above.)</i>	Husband, Wife, Joint, or Community		DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	U N C L O I N Q D I I S N D P G A U E T T N E E T D D	AMOUNT OF CLAIM
	C O D E B H T W O J R C	A C C O U N T T Y P E			
ACCOUNT NO. Clear Channel Outdoor PO Box 402379 Atlanta, GA 30384-2379	N A	account payable			1,600.00
ACCOUNT NO. Conroy & Associates, PC 4550 Atwater Court Suite 203 Buford, GA 30518	N A	account payable			400.00
ACCOUNT NO. Consumer Source, Inc. PO Box 402039 Atlanta, GA 30384-2035	N A	account payable			1,246.96
ACCOUNT NO. Copper Electric, Inc. 2320 Hewatt Rd. Snellville, GA 30039	N A	account payable			125.00
ACCOUNT NO. De Jesus Painting, Inc. 5466 Copperfield Ct. Lilburn, GA 30047	N A	account payable			175.00
ACCOUNT NO. Dell Business Credit PO Box 5275 Carol Stream, IL 60197-5275	N A	account payable			8.48

Sheet 4 of 15 total sheets in Schedule of Creditors Holding Unsecured Nonpriority Claims

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Best Case Bankruptcy

In re **Parker Chandler Homes, LLC**
Debtor(s)

Case No _____

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER <i>(See instructions above.)</i>	Husband, Wife, Joint, or Community		DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	U N C L O I N Q D T U I I S N D P G A U E T T N E E T D D	AMOUNT OF CLAIM
	C O D E	B H T W O J R C			
ACCOUNT NO. Douglas Thompson, Esq. Douglas Thompson, PC 1S72-C Independence Square Dunwoody, GA 30338	N A	notice only			0.00
ACCOUNT NO. First Multiple Listing Service 5457 Roswell Rd Suite 208 Atlanta, GA 30342	N A	account payable			779.76
ACCOUNT NO. Forsyth County Government 110 East Main Street Cumming, GA 30040	N A	liability under performance bonds		X X	0.00
ACCOUNT NO. Forsyth County Water PO Box 100003 Cumming, GA 30028-8303	N A	account payable			1,243.53
ACCOUNT NO. GE Appliance HPS-NC PO Box 281865 Atlanta, GA 30384-1865	N A	account payable			85.50
ACCOUNT NO. Georgia Duplicating Products PO Box 3547 Macon, GA 31205	N A	account payable			408.00

B6F (Official Form 6F) (12/07) - Cont.

In re **Parker Chandler Homes, LLC**
Debtor(s)

Case No _____

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER <i>(See instructions above.)</i>	H W J C	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	U N C L O I N Q D T U I I S N D P G A U E T T N E E T D D			AMOUNT OF CLAIM
			U N C L O I N Q D T U I I S N D P G A U E T T N E E T D D			
ACCOUNT NO. 11735-99026 07						
Georgia Power 96 Annex Atlanta, GA 30396-0001	N A	account payable				713.29
ACCOUNT NO.						
Glenn Ivey HOA, Inc. c/o Community Club Mgmt 11735 Pointe Place Roswall, GA 30076	N A	account payable				11,234.72
ACCOUNT NO.						
Graham & Penman, LLP The Pinnacle - Suite 500 3455 Peachtree Road, N.E. Atlanta, GA 30326	N A	account payable				5.96
ACCOUNT NO.						
Graphic Services, Inc. 7997 Wellingford Drive Manassas, VA 20109	N A	account payable				2,850.00
ACCOUNT NO. 6035322133151260						
Home Depot Credit Services PO Box 6029 The Lakes, NV 88901-6029	N A	corporate credit card account				1,348.68
ACCOUNT NO.						
Hooshang Khoshnood 5715 Sourwood Road Cumming, GA 30040	N A	account payable				100.00

In re **Parker Chandler Homes, LLC**
Debtor(s)

Case No _____

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER <i>(See instructions above.)</i>	Husband, Wife, Joint, or Community		DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	U N C O N T I N E N T D E D	A M O U N T O F C L A I M
	C O D E	B H T W O R			
ACCOUNT NO. Infiniti Energy PO Box 791263 Baltimore, MD 21279-1263	N	A	accounts payable		150.38
ACCOUNT NO. INSCO DICO PO Box 19725 Irvine, CA 92623	N	A	account payable		0.00
ACCOUNT NO. J. Christopher Simpson, Esq. for New South Publishing, Inc. 3490 Piedmont Rd, NE; #300 Atlanta, GA 30305	N	A	notice only; attorneys for New South Publishing, Inc.		0.00
ACCOUNT NO. Jackson County Tax Commission PO Box 247 Jefferson, GA 30549	N	A	account payable		1,610.97
ACCOUNT NO. James C. Busch for ProBuild South, LLC 701 Whitlock Avenue, K-47 Marietta, GA 30064	N	A	notice only; attorneys for ProBuild South, LLC		0.00
ACCOUNT NO. Jason White, Esq. for Atlanta Communities Magazi 3340 P'tree Rd NE; Ste 2540 Atlanta, GA 30326	N	A	notice only, attorneys for Atlanta Communities Magazine, Inc.		0.00

In re **Parker Chandler Homes, LLC**
Debtor(s)

Case No _____

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheets)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER <i>(See instructions above.)</i>	Husband, Wife, Joint, or Community		DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	U N L C O I N Q D T U I I S N D P G A U E T T N E E T D D	AMOUNT OF CLAIM
	C O D E B H T W O J R C				
ACCOUNT NO. John A. Christy, Esq. Schreeder, Wheeler & Flint LLP 1100 P'tree St NE; Ste 800 Atlanta, GA 30309	N A		notice only; attorney for Andrew H. Chandler and James B. Parker, co-defendants in the Signature Communities litigation		0.00
ACCOUNT NO. Just Tubs 7924 Benchmark Drive Flowery Branch, GA 30542	N A		account payable		150.00
ACCOUNT NO. Kerxton Insurance Agency 3922 Ponder Drive Number 120 Fairfax, VA 22030	N A		account payable		529.97
ACCOUNT NO. L&S Holdings, LLC 6135 Polo Drive Cumming, GA 30040	N A		account payable		6,000.00
ACCOUNT NO. Landmark Design, Ltd. 4460 Commerce Drive Buford, GA 30518	N A		account payable		54,616.88
ACCOUNT NO. Liberty Bond Services c/o Atlantic Risk 5850 Waterloo Rd; number 240 Columbia, MD 21045	N A		account payable		100.00

Sheet 8 of 15 total sheets in Schedule of Creditors Holding Unsecured Nonpriority Claims

In re **Parker Chandler Homes, LLC**
Debtor(s)

Case No _____

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER <i>(See instructions above.)</i>	Husband, Wife, Joint, or Community		DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	U N C L O I N Q D T U I I S N D P G A U E T T N E E T D D	AMOUNT OF CLAIM
	C O D E B H T W O J R C				
ACCOUNT NO. Marcelino Reyes Painting, Inc. 651 Roscoe Davis Road Monroe, GA 30656	N A	account payable			100.00
ACCOUNT NO. Marc V. Thomes, Esq. Merbaum Law Group, PC 5755 North Point Pkwy Suite 284 Alpharetta, GA 30004	N A	notice only			0.00
ACCOUNT NO. Mason Bahr, LLP Attn: Chip Carter Two Ravinia Drive; Suite 610 Atlanta, GA 30346	N A	account payable			12,813.00
ACCOUNT NO. Masterpiece Lighting, Inc. 774 Forrest Street Atlanta, GA 30313	N A	account payable			68.27
ACCOUNT NO. McClain & Merritt Attn: Ed Goodgame 11625 Rainwatter Dr; Ste 125 Alpharetta, GA 30004	N A	account payable			1,060.00
ACCOUNT NO. McClain & Merritt 3445 Peachtree Rd NE Suite 500 Atlanta, GA 30326-1276	N A	additional notice address			0.00

B6F (Official Form 6F) (12/07) - Cont.

In re **Parker Chandler Homes, LLC**
Debtor(s)

Case No _____

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER <i>(See instructions above.)</i>	Husband, Wife, Joint, or Community		DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	U N C L O I N Q D T U I I S N D P G A U E T T N E E T D D	AMOUNT OF CLAIM
	C O D E	B H T W O J R C			
ACCOUNT NO. McNair Law Firm, P.A. Attn: Lynn Stevens 2411 Oak Street; Number 206 Myrtle Beach, SC 29577	N	A	account payable		69.00
ACCOUNT NO. Mickey Thomas & Sons 6065 Southard Trace Suite 106 Cumming, GA 30040	N	A	account payable		1,895.00
ACCOUNT NO. Move Sales, Inc. PO Box 13239 Scottsdale, AZ 85267-3239	N	A	account payable		1,200.00
ACCOUNT NO. New South Publishing, Inc. 450 North ridge Pkwy Suite 202 Atlanta, GA 30350	N	A	complaint for damages		12,860.00
ACCOUNT NO. New South Publising, Inc. 1303 Hightower trall Suite 106 Cumming, GA 30040	N	A	additional notice address		0.00
ACCOUNT NO. NEXT, LLC 3535 Highway 81 Loganville, GA 30052	N	A	account payable		9,600.00

Sheet 10 of 15 total sheets in Schedule of Creditors Holding Unsecured Nonpriority Claims

In re **Parker Chandler Homes, LLC**
Debtor(s)

Case No _____

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER <i>(See instructions above.)</i>	Husband, Wife, Joint, or Community		DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	U N C L O I N Q D T U I S N D P G A U E T T N E E T D D	AMOUNT OF CLAIM
	C O D E	B H T W O J R C			
ACCOUNT NO. NEXT, LLC c/o Andrew N. Gross; Suite 200 1201 P'tree St NE; Bldg 400	X	N A	notice only; collection attorney		0.00
ACCOUNT NO. Paul W. Andrew, Esq. for Landmark Design Associates Seven Lumpkin Street Lawrenceville, GA 30045		N A	notice only, attorney for Landmark Design Associates, LLC		0.00
ACCOUNT NO. Paulding County Government 240 Constitution Road Dallas, GA 30132		N A	liability under performance bonds	X X	0.00
ACCOUNT NO. 8852882 Pitney Bowes Global PO Box 856460 Louisville, KY 40285-6460		N A	account payable		17.17
ACCOUNT NO. 8000-9090-0253-4571 Pitney Bowes Purchase Power PO Box 856042 Louisville, KY 40285-6042		N A	account payable		42.16
ACCOUNT NO. Platte River Insurance Co. 2975 Vine Circle Decatur, GA 30033	X	N A	account payable		0.00

In re **Parker Chandler Homes, LLC**
Debtor(s)

Case No. _____

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER <i>(See instructions above.)</i>	Husband, Wife, Joint, or Community		DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	U N C L O I N Q D T U I I S N D P G A U E T T N E E T D D	AMOUNT OF CLAIM
	C O D E B H T W O J R C				
ACCOUNT NO.					
R. Jerry Thacker c/o Larry C. Oldham, P.C. 416 Pirkle Ferry R, Ste K-500 Cumming, GA 30040	N	notice only			0.00
ACCOUNT NO.					
Rajendra Tummala 1880 Lynwood Place Alpharetta, GA 30004	N	account payable			5,000.00
ACCOUNT NO.					
Richard M. Howe, Esq. for Stuart Mechanical Service 4385 Kimball Bridge Rd Ste 100 Alpharetta, GA 30022	N	notice only; attorneys for Stuart Mechanical Service, Inc.			0.00
ACCOUNT NO.					
S. Gregory Joy, Esq. Smith, Currie & Hancock LLP 245 P'tree Cntr Ave NE; # 2700 Atlanta, GA 30303-1227	N	notice only; attorneys for Paramount Grading Company			0.00
ACCOUNT NO. various					
Sawnee EMC PO Box 2153 Birmingham, AL 35287-2530	N	accounts payable			750.80
ACCOUNT NO. various					
Scana Energy PO Box 100157 Columbia, SC 29202-3157	N	accounts payable			455.77

Sheet 12 of 15 total sheets in Schedule of Creditors Holding Unsecured Nonpriority Claims

B6F (Official Form 6F) (12/07) - Cont

In re **Parker Chandler Homes, LLC**
Debtor(s)

Case No. _____

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER <i>(See instructions above.)</i>	Husband, Wife, Joint, or Community		DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	U N C O N T I N G I S D E P A U T E T T E D	AMOUNT OF CLAIM
	C O D E B H T W O J R C				
ACCOUNT NO.					
Signature Communities, LLC 5400 Laurel Springs Pkwy Bldg 100 - Suite 102 Suwanee, GA 30024	X	N	business dispute	X	300,000.00
ACCOUNT NO.					
Soon Tan 12260 Osprey Drive Alpharetta, GA 30004		N	account payable		19,968.00
ACCOUNT NO. DC 1041221					
Staples Business Advantage Dept DC 85105 Hartford, CT 06150-0851		N	account payable		0.00
ACCOUNT NO.					
Stephen Ross Plumbing, Inc. 5140 Carson Court Buford, GA 30518		N	account payable		3,215.00
ACCOUNT NO.					
Sutter McClellan & Gilbreath 1424 North Brown Road Number 300 Lawrenceville, GA 30043-8107		N	account payable		200.00
ACCOUNT NO.					
The Atlanta Journal P.O. Box 105375 Atlanta, GA 30348-5375		N	account payable		2,088.00

Sheet 13 of 15 total sheets in Schedule of Creditors Holding Unsecured Nonpriority Claims

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Best Case Bankruptcy

In re **Parker Chandler Homes, LLC**
Debtor(s)

Case No. _____

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER <i>(See instructions above.)</i>	C O D E B T O R	H W J C	Husband, Wife, Joint, or Community	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	U N C O N T I N E D I N T H E S E S E T T L E M E N T S	AMOUNT OF CLAIM
ACCOUNT NO.						
The Caiaccio Law Firm, LLC 3455 Peachtree Rd NE Number 500 Atlanta, GA 30326	N A		account payable			0.00
ACCOUNT NO.						
The Lamar Companies c/o Howe and Associates 4385 Kimball Bridge Rd Ste 100 Alpharetta, GA 30022	N A		account payable			4,128.00
ACCOUNT NO.						
Travelers Casualty & Surety Co. of America Hartford, CT 06183-9062	N A		account payable			100.00
ACCOUNT NO.						
Tyler Dixon, Esq. Raiford & Dixon, LLC 6065 Roswell Road; Suite 200 Atlanta, GA 30328	N A		notice only; attorneys for Tabas, LLLP			0.00
ACCOUNT NO.						
Wildes-Spirit Design & Printng PO Box 1510 White Plains, MD 20695	N A		account payable			2,016.74
ACCOUNT NO.						
William Rogers, Esq. Whelchel, Dunlap, et al PO Box one Gainesville, GA 30503	N A		notice only			0.00

In re **Parker Chandler Homes, LLC**
 Debtor(s)

Case No. _____

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
 (Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER <i>(See instructions above.)</i>	Husband, Wife, Joint, or Community		DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM, IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	U N C L O I N Q D T U I I S N D P G A U E T T N E E T D D	AMOUNT OF CLAIM
	C O D E B H T W O J R C				
ACCOUNT NO.					
Wise Guys Contracting 11128 Industrial Road Manassas, VA 20109-3909	N	account payable			108.00
Total (Use only on last page of the completed Schedule F.) (Report also on Summary of Schedules and, if applicable, on the Statistical Summary of Certain Liabilities and Related Data.)					506,988.24

B6G (Official Form 6G) (12/07)

In re **Parker Chandler Homes, LLC**
Debtor(s)

Case No. _____

SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., "Purchaser," "Agent," etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described. If a minor child is a party to one of the leases or contracts, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m).

Check this box if debtor has no executory contracts or unexpired leases.

**NAME AND MAILING ADDRESS,
INCLUDING ZIP CODE,
OF OTHER PARTIES TO LEASE OR CONTRACT.**

**Canon Financial Services, Inc.
14904 Collections Center Drive
Chicago, IL 60693**

**DESCRIPTION OF CONTRACT OR LEASE AND
NATURE OF DEBTOR'S INTEREST. STATE
WHETHER LEASE IS FOR NONRESIDENTIAL
REAL PROPERTY. STATE CONTRACT
NUMBER OF ANY GOVERNMENT CONTRACT.**

2 copiers

Sheet 1 of 1 total sheets in Schedule of Executory Contracts and Unexpired Leases

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Best Case Bankruptcy

In re **Parker Chandler Homes, LLC**
Debtor(s)

Case No. _____

SCHEDULE H – CODEBTORS

Provide the information requested concerning any person or entity, other than a spouse in a joint case, that is also liable on any debts listed by the debtor in the schedules of creditors. Include all guarantors and co-signers. If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within the eight years immediately preceding the commencement of this case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state, commonwealth, or territory. Include all names used by the nondebtor spouse during the eight years immediately preceding the commencement of this case. If a minor child is a codebtor or a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

Check this box if debtor has no codebtors.

NAME AND ADDRESS OF CODEBTOR

Andrew H. Chandler
c/o **John Christy, Esq.**
100 P'tree St NE; #800
Atlanta, GA 30309

Comstock Homes Realty, LLC
11465 Sunset Hills Rd
5th Floor
Reston, VA 20190

Comstock Homebuilding
Companies, Inc.
11465 Sunset Hills Rd; 5th Flr
Reston, VA 20190

James B. Parker, Jr.
2105 Woodfall Drive
Cumming, GA 30041

James B. Parker, Jr.
2105 Woodfall Drive
Cumming, GA 30041

Post Preserve, LLC
11465 Sunset Hills Road
Suite 20190
Reston, VA 20190

Andrew H. Chandler
c/o **John Christy, Esq.**
100 P'tree St NE; #800
Atlanta, GA 30309

NAME AND ADDRESS OF CREDITOR

Signature Communities, LLC
5400 Laurel Springs Pkwy
Bldg 100 - Suite 102
Suwanee, GA 30024

NEXT, LLC
c/o **Andrew N. Gross; Suite 200**
1201 P'tree St NE; Bldg 400

Atlanta Communities Magazine
1000 Parkwood Circle
Suite 260
Atlanta, GA 30339

Robert Bowden, Inc.
Attn: Stephen Cole, CEO
PO Box 4237
Marietta, GA 30061-4237

Signature Communities, LLC
5400 Laurel Springs Pkwy
Bldg 100 - Suite 102
Suwanee, GA 30024

Paramont Grading Company
John Pearson, Registered Agent
4405 Canton Hwy
Cumming, GA 30040

Platte River Insurance Co.
2975 Vine Circle
Decatur, GA 30033

Sheet 1 of 2 total sheets in Schedule of Codebtors

In re **Parker Chandler Homes, LLC**

Case No. _____

SCHEDULE H - CODEBTORS
(Continuation Sheet)

NAME AND ADDRESS OF CODEBTOR

Andrew H. Chandler
c/o John Christy, Esq.
100 P'tree St NE; #800
Atlanta, GA 30309

James B. Parker, Jr.
2105 Woodfall Drive
Cumming, GA 30041

James B. Parker, Jr.
2105 Woodfall Drive
Cumming, GA 30041

NAME AND ADDRESS OF CREDITOR

Platte River Insurance Co.
2975 Vine Circle
Decatur, GA 30033

RBC Builder Finance
Attn: Legal
11011 Richmond Ave.; Suite 850
Houston, TX 77042

RBC Builder Finance
Attn: Legal
11011 Richmond Ave.; Suite 850
Houston, TX 77042

Sheet 2 of 2 total sheets in Schedule of Codebtors

**United States Bankruptcy Court
Northern District of Georgia, Atlanta Division**

In re **Parker Chandler Homes, LLC**
Debtor(s)

Case No. _____
Chapter 7

DISCLOSURE OF COMPENSATION OF ATTORNEY FOR DEBTOR(S)

1. Pursuant to 11 U.S.C. § 329(a) and Bankruptcy Rule 2016(b), I certify that I am the attorney for the above-named debtor and that compensation paid to me within one year before the filing of the petition in bankruptcy, or agreed to be paid to me, for services rendered or to be rendered on behalf of the debtor(s) in contemplation of or in connection with the bankruptcy case is as follows:

For legal services, I have agreed to accept	\$3,000.00
Prior to the filing of this statement I have received	\$3,000.00
Balance Due	\$ 0.00

2. **\$299.00** of the filing fee has been paid.
3. The source of the compensation paid to me was:
 Debtor Other (specify):
4. The source of compensation to be paid to me is:
 Debtor Other (specify):
5. I have not agreed to share the above-disclosed compensation with any other person unless they are members and associates of my law firm.
 I have agreed to share the above-disclosed compensation with a person or persons who are not members or associates of my law firm. A copy of the agreement, together with a list of the names of the people sharing in the compensation is attached.
6. In return for the above-disclosed fee, I have agreed to render legal service for all aspects of the bankruptcy case, including:
- a. Analysis of the debtor's financial situation, and rendering advice to the debtor in determining whether to file a petition in bankruptcy;
 - b. Preparation and filing of any petition, schedules, statement of affairs and plan which may be required;
 - c. Representation of the debtor at the meeting of creditors and confirmation hearing, and any adjourned hearings thereof;
 - d. [Other provisions as needed]
7. By agreement with the debtor(s), the above-disclosed fee does not include the following service:
representation of the debtor(s) in adversary proceedings.

CERTIFICATION

I certify that the foregoing is a complete statement of any agreement or arrangement for payment to me for representation of the debtor(s) in this bankruptcy proceeding.

Dated: **11/25/2009**

/s/ Paul Reece Marr

**Paul Reece Marr
Paul Reece Marr, P.C.
Suite 960
300 Galleria Parkway
Atlanta, GA 30339
(770) 984-2255
pmarr@mindspring.com**

B6 Summary (Form 6 - Summary) (12/07)

**United States Bankruptcy Court
Northern District of Georgia, Atlanta Division**

In re **Parker Chandler Homes, LLC**
Debtor(s)

Case No. _____
Chapter **7**

SUMMARY OF SCHEDULES

Indicate as to each schedule whether that schedule is attached and state the number of pages in each. Report the totals from Schedules A, B, D, E, F, I, and J in the boxes provided. Add the amounts from Schedules A and B to determine the total amount of the debtor's assets. Add the amounts of all claims from Schedules D, E, and F to determine the total amount of the debtor's liabilities. Individual debtors also must complete the "Statistical Summary of Certain Liabilities and Related Data" if they file a case under chapter 7, 11, or 13.

<u>NAME OF SCHEDULE</u>	<u>ATTACHED (YES/NO)</u>	<u>NO. OF SHEETS</u>	<u>ASSETS</u>	<u>LIABILITIES</u>	<u>OTHER</u>
A - Real Property	Yes	1	\$1,018,348.00		
B - Personal Property	Yes	3	\$ 0.00		
C - Property Claimed as Exempt	No	0			
D - Creditors Holding Secured Claims	Yes	4		\$18,268,821.08	
E - Creditors Holding Unsecured Priority Claims (Total of Claims on Schedule E)	Yes	2		\$ 58,907.11	
F - Creditors Holding Unsecured Nonpriority Claims	Yes	16		\$ 506,988.24	
G - Executory Contracts and Unexpired Leases	Yes	1			
H - Codebtors	Yes	1			
I - Current Income of Individual Debtor(s)	No	0			\$ N/A
J - Current Expenditures of Individual Debtor(s)	No	0			\$ N/A
TOTAL		28	\$1,018,348.00	\$18,834,716.43	

**United States Bankruptcy Court
Northern District of Georgia, Atlanta Division**

In re **Parker Chandler Homes, LLC**
Debtor(s)

Case No. _____
Chapter 7

STATISTICAL SUMMARY OF CERTAIN LIABILITIES AND RELATED DATA (28 U.S.C. § 159)

If you are an individual debtor whose debts are primarily consumer debts, as defined in § 101(8) of the Bankruptcy Code (11 U.S.C. § 101(8)), filing a case under chapter 7, 11 or 13, you must report all information requested below.

Check this box if you are an individual debtor whose debts are NOT primarily consumer debts. You are not required to report any information here.

This information is for statistical purposes only under 28 U.S.C. § 159.

Summarize the following types of liabilities, as reported in the Schedules, and total them.

<u>Type of Liability</u>	<u>Amount</u>
Domestic Support Obligations (from Schedule E)	\$
Taxes and Certain Other Debts Owed to Governmental Units (from Schedule E)	\$
Claims for Death or Personal Injury While Debtor Was Intoxicated (from Schedule E) (whether disputed or undisputed)	\$
Student Loan Obligations (from Schedule F)	\$
Domestic Support, Separation Agreement, and Divorce Decree Obligations Not Reported on Schedule E	\$
Obligations to Pension or Profit-Sharing, and Other Similar Obligations (from Schedule F)	\$
TOTAL	\$

State the following:

Average Income (from Schedule I, Line 16)	\$
Average Expenses (from Schedule J, Line 18)	\$
Current Monthly Income (from Form 22A Line 12; OR, Form 22B Line 11; OR, Form 22C Line 20)	\$

State the following:

1. Total from Schedule D, "UNSECURED PORTION, IF ANY" column	\$
2. Total from Schedule E, "AMOUNT ENTITLED TO PRIORITY" column.	\$
3. Total from Schedule E, "AMOUNT NOT ENTITLED TO PRIORITY, IF ANY" column	\$
4. Total from Schedule F	\$
5. Total of non-priority unsecured debt (sum of 1, 3, and 4)	\$

B6 Declaration (Official Form 6 - Declaration) (12/07)

**United States Bankruptcy Court
Northern District of Georgia, Atlanta Division**

In re **Parker Chandler Homes, LLC**
Debtor(s)

Case No. _____
Chapter **7**

DECLARATION CONCERNING DEBTOR'S SCHEDULES

DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF CORPORATION OR PARTNERSHIP

I, the of the corporation named as debtor in this case, declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of 30 sheets, and that they are true and correct to the best of my knowledge, information, and belief.

Date **11/25/2009**

Signature /s/ Christopher Clemente
Christopher Clemente

Penalty for making a false statement or concealing property: Fine of up to \$500,000 or imprisonment for up to 5 years or both.
18 U.S.C. §§ 152 and 3571.

**United States Bankruptcy Court
Northern District of Georgia, Atlanta Division**

In re **Parker Chandler Homes, LLC**
Debtor(s)

Case No. _____
Chapter 7

CORPORATE OWNERSHIP STATEMENT (RULE 7007.1)

Pursuant to Federal Rule of Bankruptcy Procedure 7007.1 and to enable the Judges to evaluate possible disqualification or recusal, the undersigned counsel for **Parker Chandler Homes, LLC** in the above captioned action, certifies that the following is a (are) corporation(s), other than the debtor or a governmental unit, that directly or indirectly own(s) 10% or more of any class of the corporation's(s') equity interests, or states that there are no entities to report under FRBP 7007.1:

**Comstock Homebuilding
Companies, Inc.
11465 Sunset Hills Rd; #500
Reston, VA 20190**

None [Check if applicable]

11/25/2009
Date

/s/ Paul Reece Marr

Paul Reece Marr
Signature of Attorney or Litigant
Counsel for **Parker Chandler Homes, LLC**
Paul Reece Marr, P.C.
Suite 960
300 Galleria Parkway
Atlanta, GA 30339
(770) 984-2255
pmarr@mindspring.com

SUPPLEMENTAL MATRIX

Anand Narayanan and
Sunitha Subbarao
2910 Buford Dr; Apt. 910
Buford, GA 30519

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Douglas Thompson, PC
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Dunwoody, GA 30338

Marc V. Thomses, Esq.
Merbaum Law Group, PC
5755 North Point Pkwy
Suite 284
Alpharetta, GA 30004

Rajendra Tummala
1880 Lynwood Place
Alpharetta, GA 30004

Soon Tan
12260 Osprey Drive
Alpharetta, GA 30004

William Rogers, Esq.
Whelchel, Dunlap, et al
PO Box one
Gainesville, GA 30503

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In re: : Case No. 09-90334-MHM
: :
PARKER CHANDLER HOMES, LLC, : Chapter 7
: :
Debtor. : :
: :

CERTIFICATE OF SERVICE

I, Paul Reece Marr, certify that I am over the age of 18 and that on the below referenced date I served a copy of the attached STATEMENT OF FINANCIAL AFFAIRS, SCHEDULES, AND SUPPLEMENTAL MATRIX by first class U.S. Mail, with adequate postage prepaid on the following persons or entities at the addresses stated on the attached list:

Tamara Miles Ogier
Ellenberg, Ogier,
Rothschild & Rosenfeld
170 Mitchell St. S.W.
Atlanta, GA 30303

This the 25th day of November, 2009.

/s/ Paul Reece Marr

Paul Reece Marr

Paul Reece Marr, P.C.
300 Galleria Pkwy; Ste 960
Atlanta, GA 30339
770/984-2255

AGREEMENT OF SUBLEASE

THIS AGREEMENT OF SUBLEASE (“Sublease”) is made as of the 31st day of December, 2009 by and between **Comstock Asset Management, L.C.** (“Sublandlord”) and **Comstock Property Management, L.C.**, a Virginia limited liability company (“Subtenant”).

WITNESSETH

WHEREAS, pursuant to a Lease Agreement between Sublandlord and 11465 SH I, LC (f/k/a Comstock Partners, L.C.) (“Landlord”) dated October 1, 2004, as amended (“Lease”), Landlord leased to Sublandlord a portion (“Premises”) of Landlord’s building (“Building”) at 11465 Sunset Hills Road, Reston, Virginia.

WHEREAS, Subtenant desires to sublet from Sublandlord a portion of the Premises, and Subtenant and Sublandlord desire to enter into this Sublease to set forth their respective rights, duties and liabilities relating to the Subleased Premises.

NOW, THEREFORE, in consideration of the mutual covenants herein and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, Sublandlord and Subtenant mutually agree and intend to be legally bound as follows:

1. Subleased Premises. Sublandlord leases to Subtenant those premises known as “Suite 410,” comprising 7,620 rentable square feet, and “Suite 110,” comprising 550 rentable square feet, as the same are depicted on Exhibit A attached hereto (collectively, the “Subleased Premises”).
2. Sublease Term.
 - A. The “Sublease Term” shall commence on January 1, 2010, or at such later date as the Subleased Premises becomes available for use and occupancy by Subtenant, or when Sublandlord has secured the consent of the Landlord (“Commencement Date”).
 - B. The Sublease Term shall expire on the last day of the calendar month which completes three years after the Commencement Date (i.e., December 31, 2012) (“Expiration Date”).
 - C. After the Commencement Date, the parties shall promptly execute a Commencement and Expiration Date Memorandum substantially in the Landlord’s standard form, which is attached hereto as Exhibit B, wherein the parties shall specify the Commencement Date, the Expiration Date and the date on which Subtenant is to commence paying Basic Rent.
3. Basic Rent. Subtenant shall pay to Sublandlord rent in equal monthly installments on the first (1st) day of each month. If the Commencement Date is not the 1st of the month, then for the initial partial month of the Sublease Term, Subtenant shall pay to Sublandlord a prorated amount of the Monthly Basic Rent. The Basic Rent during the Sublease Term hereunder will be as follows:

	Suite 110 - 550 SF			Suite 410 – 7,620 SF			Premises
	Annual	Monthly	Rent PSF	Annual	Monthly	Rent PSF	Monthly Total
Lease Year 1	\$11,000.00	\$916.67	\$ 20.00	\$188,595.00	\$15,716.25	\$ 24.75	\$16,632.92
Lease Year 2	\$11,440.00	\$953.33	\$ 20.80	\$196,138.80	\$16,344.90	\$ 25.74	\$17,298.23
Lease Year 3	\$11,897.60	\$991.47	\$ 21.63	\$203,984.35	\$16,998.70	\$ 26.77	\$17,990.16

-
4. Late Payments. Should Monthly installments of the Basic Rent not be made on or before the 5th day of a calendar month, the payment shall be considered overdue and Sublandlord may begin charging Subtenant an interest rate per annum equal to the sum of (i) the prime rate of interest established and publicly announced by The Chase Manhattan Bank, N.A., New York, plus (ii) four percent (4%), until such payment is made. In no event shall the default rate of interest be less than twelve percent (12%) nor more than eighteen percent (18%).
 5. Subordination. This Sublease is in all respects subject and subordinated to the Lease between Landlord and Sublandlord, a copy of which is attached hereto and incorporated as Exhibit E.
 6. Assignment. No assignment of this Sublease nor further sublease of any portion of the Subleased Premises shall be made without the prior written consent of Sublandlord and approval of Landlord.
 7. Operating Expenses. A pro-rata portion of any operating expenses due under the Lease in excess of the Sublease Base Year (2009) shall be payable as additional rent hereunder in the same manner as Basic Rent.
 8. Parking. Subtenant will have the right to utilize a proportionate share of Sublandlord's parking spaces at the Building at no cost during the Sublease Term. The number of parking spaces and the location of reserved parking spaces, if any, available for Subtenant's use under the current parking program for the Building are set forth on Exhibit C attached hereto and incorporated herein.
 9. Condition, Acceptance and Use of Subleased Premises
 - A. Sublandlord will deliver the Subleased Premises with certain improvements having been constructed based upon plans and specifications previously approved by the parties. Upon the Commencement Date, Subtenant shall accept the Subleased Premises in their existing condition and state of repair. Sublandlord and Subtenant acknowledge that the Subleased Premises contains certain furniture, fixtures and/or equipment ("Existing FF&E") which is the property of Landlord, an inventory of which is set forth on Exhibit D attached hereto and incorporated herein. Without payment of additional rent, Subtenant shall have the right to use the Existing FF&E during the Sublease Term. At the expiration of the Sublease Term, the Existing FF&E shall be delivered to Landlord in condition substantially the same as its condition as of the effective date hereof, with the exception of normal wear and tear. Subtenant acknowledges that no representations, statements or warranties, express or implied, have been made by or on behalf of the Sublandlord in respect to the condition of the Subleased Premises, or the use or occupation that may be made thereof, and that Sublandlord shall in no event whatsoever be liable for any latent defects in the Subleased Premises or in the Existing FF&E. Sublandlord shall enforce the provisions of the Lease with regard to Landlord's obligations to provide services to the Subleased Premises and common areas.
 - B. Acceptance of the Subleased Premises by Subtenant shall be construed as recognition that the Subleased Properties are in a good state of repair and in sanitary condition. Sublandlord shall not be liable for any losses or damages incurred by Subtenant due to failure of operation of the heating, cooling, or other utility equipment or due to the necessity of repair of the same.

-
- C. The Subleased Premises shall be used or occupied by Subtenant solely for executive and general office uses as permitted in Section 6 of the Lease and shall not be used for any other purpose. Subtenant shall not use or occupy the Subleased Premises for any unlawful purpose nor place any excessive or unreasonable demands upon the Building.
- D. Subtenant shall surrender the Subleased Premises at the expiration of the Sublease Term, or upon earlier termination thereof, in the same condition as when Subtenant took possession, reasonable wear and tear excepted.
- E. Except as specifically provided herein, Sublandlord shall have no responsibility whatsoever with respect to the Subleased Premises, the condition thereof or Subtenant's property situated therein, except for loss, injury or damage caused by Sublandlord's gross negligence or willful misconduct. Sublandlord shall not be liable for the failure by Landlord to keep and perform, according to the terms of the Lease, Landlord's duties, covenants, agreements, obligations, restrictions, conditions and provisions, nor for any delay or interruption in Landlord's keeping and performing the same. Sublandlord hereby assigns to Subtenant, for so long as this Sublease shall be in force and effect, any and all rights of Sublandlord under the Lease with respect to the Subleased Premises and causes of action which Sublandlord may have against Landlord with respect to the Subleased Premises because of any default by Landlord under the Lease, excluding, however, any right of self-help or rent abatement. Sublandlord agrees to cooperate with and join Subtenant in any claims or suits brought by Subtenant against Landlord under the Lease, provided that such participation shall be without cost or expense to Sublandlord. Subtenant has inspected the Subleased Premises and its contents to its satisfaction and, except as specifically set forth herein, agrees to accept the Subleased Premises and its contents in its "as-is, where-is" condition without any obligations on Sublandlord to repair or modify the same.
- F. Sublandlord and Subtenant, and each of their affiliates, shall have a shared right to use the reception area(s), conference room(s) and kitchen facilities within Suite 410 and shall cooperate with each other to establish reasonable requirements for advance scheduling (the parties acknowledging that the rentable square footage of Suite 410 upon which Basic Rent and operating expenses are determined has been reduced to reflect this right). Sublandlord reserves the right to use and to grant other persons a license to use the exterior hallway of Suite 110, the door to which shall remain unlocked at all times.
10. Default Under Superior Leases.
- A. Subtenant agrees to assume and perform, according to the terms of the Lease, all of the duties, covenants, agreements and obligations of Sublandlord under the Lease, as and when required by the Lease, with respect to the Subleased Premises, except Sublandlord's duty to make rent payments to Landlord. Subtenant further agrees to keep and obey, according to the terms of the Lease, all of the rules, restrictions, conditions and provisions which pertain to the Subleased Premises, and are imposed by the terms of the Lease upon Sublandlord with respect to the Subleased Premises or upon the use of the Subleased Premises. Subtenant agrees that it will take good care of the Subleased Premises, and will commit no waste, and will not do, suffer, or permit to be done any injury to the same. It is hereby understood and agreed that Subtenant's rights to use, possess and enjoy the Subleased Premises are subject to the terms, conditions, rules and regulations of the Lease and the rights and remedies of Landlord thereunder. Subtenant agrees to indemnify, defend, and protect Sublandlord against, and to hold Sublandlord

harmless from, any liability, damages, costs or expenses of any kind or nature, including court costs and reasonable attorneys' fees, resulting from any failure by Subtenant to perform, keep and obey the terms of this Sublease and the requirements of the Lease with respect to the Subleased Premises. Any failure by Subtenant to perform, keep and obey the same shall be a default by Subtenant hereunder.

- B. Subtenant shall not act in any manner which would cause a default under the terms of the Lease. Within five (5) business days of Sublandlord's receipt of notice of any default under the Lease which may jeopardize Subtenant's quiet enjoyment of the Subleased Premises, Sublandlord shall notify Subtenant of the nature of the default and of Sublandlord's intention to cure such default. In the event Subtenant or Sublandlord receives a notice of default from Landlord as a direct result of Subtenant's actions, then Subtenant shall have all the rights to cure such event of default that Sublandlord enjoys under the Lease; provided, however, that in the event Subtenant fails to timely cure any event of default, Sublandlord shall have the right to terminate this Sublease and Subtenant shall vacate the Subleased Premises within thirty (30) days (or such lesser period as may be required to effect a cure of the default under the Lease). Further, Sublandlord shall have the right to recover from Subtenant all damages to which Sublandlord is entitled including, without limitation, reletting expenses (vacancy, commissions, improvements, etc.) and any unpaid rent due hereunder up until the time of the reletting of the Subleased Premises; provided, that Sublandlord's re-occupying of the Subleased Premises will be deemed a reletting with respect to such portion of the space as is re-occupied by Sublandlord.
 - C. Subtenant shall be in default of this Sublease to the extent that Subtenant fails to abide by the terms or conditions of this Sublease and/or the Lease, with Subtenant being afforded the rights as to notice of default and curing of default as set forth above. Furthermore, if any default under the Lease shall occur with respect to Subtenant, or if Subtenant fails to perform of any of its own covenants and obligations under this Sublease, then and in any of said cases, Subtenant shall be deemed in default, and Sublandlord shall have the right to exercise all remedies set forth in the Lease as if Sublandlord were "Landlord" and Subtenant were "Tenant" thereunder.
 - D. Subtenant hereby waives trial by jury in any action, proceeding, claim or counterclaim brought by Landlord or Sublandlord with respect to any matter whatsoever arising out of or in any way connected with this Sublease, the relationship between Sublandlord and Subtenant, and/or Subtenant's use or occupancy of the Subleased Premises. Subtenant further waives receipt of any notice to quit the Subleased Premises in the event of any default hereunder.
 - E. In the event either party files suit at law or equity to enforce the terms of this Sublease, the party substantially prevailing in such action shall recover from the other party its reasonable expenses, including, but not limited to, court costs and reasonable attorneys' fees. All such expenses shall bear interest at the highest rate allowable under the laws of the Commonwealth of Virginia until paid in full by the substantially non-prevailing party.
11. Insurance. During the Sublease Term, Subtenant shall maintain insurance in force with a company licensed to do business in Virginia, with policy limits of at least Two Million Dollars (\$2,000,000.00) general liability and One Million Dollars (\$1,000,000.00) property damage. Sublandlord shall be named as an additional insured thereunder and Subtenant shall provide Sublandlord with a certificate of such insurance prior to the Commencement Date. Subtenant and

Sublandlord each hereby waive any and all rights of recovery against the other, or against the officers, employees, agents, members, managers and representatives of the other, for loss of or damage to such waiving party or its property of the property of other under its control to the extent that such loss or damage is insured against under any insurance policy in force at the time of such loss or damage and such loss or damage has been paid by the insurance company. The insuring party shall, upon obtaining the policies of insurance required hereunder, give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Sublease.

12. Notices. Every notice, approval, consent or other communication authorized or required by this Sublease (“Notice”) shall not be effective unless same shall be in writing and sent postage prepaid by the United States registered or certified mail, return receipt requested, or delivered by hand, and a written receipt acknowledging such postal or hand delivery obtained for each designated recipient (or proof of refusal), directed to the other party at the following addresses (indicating the date and to whom delivered), or such other address as either party may designate by Notice given from time to time in accordance with this paragraph:

If to Subtenant: Comstock Property Management, L.C.
11465 Sunset Hills Road
Suite 410
Reston, Virginia 20190
Attention: Gregory Benson

With a copy to: Comstock Homebuilding Companies, Inc.
11465 Sunset Hills Road
Suite 410
Reston, Virginia 20190
Attention: Jubal Thompson

If to Sublandlord: Comstock Asset Management, L.C.
11465 Sunset Hills Road
Suite 400
Reston, VA 20190
Attention: Christopher Clemente

13. Security. Upon full execution of the Sublease, Sublandlord shall deliver to Subtenant a reasonable number of suite entry keys for the Subleased Premises and a reasonable number of Building perimeter security access cards, at no cost to Subtenant.
14. Identity. Sublandlord shall obtain Landlord’s consent, if necessary, for Subtenant’s Building Directory strips.
15. Landlord Approval. In the event the Lease requires the prior written consent of Landlord prior to an action by Subtenant, then Sublandlord, on behalf of Subtenant, shall initiate action to gain consent from Landlord within ten (10) days of Subtenant’s notice to Sublandlord concerning such proposed action. The preceding sentence notwithstanding, in the event the Lease specifies the time period in which Landlord must respond to such a request for consent, then such specified time period shall control.
16. Quiet Enjoyment. Subtenant shall have the peaceful and quiet use of the Subleased Premises, and all rights, servitude and privileges belonging or in anywise appertaining thereto or granted thereby, for the Sublease Term, without hindrance or interruption by Sublandlord. Sublandlord warrants that it has the full right and authority to enter into this Sublease for the full term hereof.

-
17. Security Deposit. Upon Sublease execution, Subtenant shall provide or cause to be provided to Sublandlord a Security Deposit in the amount of \$50,000.00. Subtenant may satisfy this requirement by delivery of a promissory note guaranteed by Comstock Homebuilding Companies, Inc.
 18. Holdover. If Tenant shall hold over possession of the Subleased Premises after the end of the Sublease Term, then in such event this Sublease shall continue on a month-to-month basis at 150% of the Basic Rent, adjusted to a monthly basis, and subject to all the other conditions, provisions and obligations of this Sublease insofar as the same are applicable, or as the same shall be adjusted, to a month-to-month tenancy.
 19. Communications. Subtenant agrees that all communications regarding the tenancy under this Sublease shall be directed or copied to the Sublandlord who will in the case of property management issues contact Landlord.
 20. Entire Agreement. This Sublease, together with the Exhibits attached hereto, contains and embodies the entire agreement of the parties hereto, and no representations, inducements or agreements, oral or otherwise, between the parties not contained in this Sublease and the Exhibits, shall be of any force and effect. This Sublease may not be modified, changed or terminated in whole or in part in any manner other than by an agreement in writing duly signed by the parties hereto.

IN WITNESS WHEREOF, this Agreement of Sublease has been executed by the parties as of the date first hereinabove written.

SUBLANDLORD:

SUBTENANT:

Comstock Asset Management, L.C.

Comstock Property Management, L.C.

By: Comstock Homebuilding Companies, Inc.

By: _____
Christopher Clemente, Manager

By: _____
Gregory Benson, Chief Operating Officer

* * *

GUARANTY

For value received, the undersigned hereby absolutely, unconditionally, jointly and severally guarantees performance of Subtenant's obligations under the Sublease, including but not limited to full payment of all amounts coming due under this Sublease (including all reasonable attorneys fees and collection expenses), waives notice demand and any reporting requirement, and agrees that this guaranty is an obligation independent of the obligations of Subtenant hereunder that may be enforced by Sublandlord pursuant to a separate action regardless of whether any action is first brought against Subtenant.

GUARANTOR:

[Corporate Seal]

Comstock Homebuilding Companies, Inc.,
a Delaware corporation

By: _____
Name: _____
Title: _____

By: _____
Gregory Benson
Chief Operating Officer

LANDLORD'S CONSENT AND AGREEMENT

11465 SH I, LC, a Virginia limited liability company, as "Landlord" under the Lease hereby consents to the foregoing Agreement of Sublease between Comstock Asset Management, L.C. and Comstock Property Management, L.C. dated December 31, 2009 and the terms and conditions thereunder. Landlord's consent herein shall not modify or affect the Lease or relieve Sublandlord from any liability thereunder.

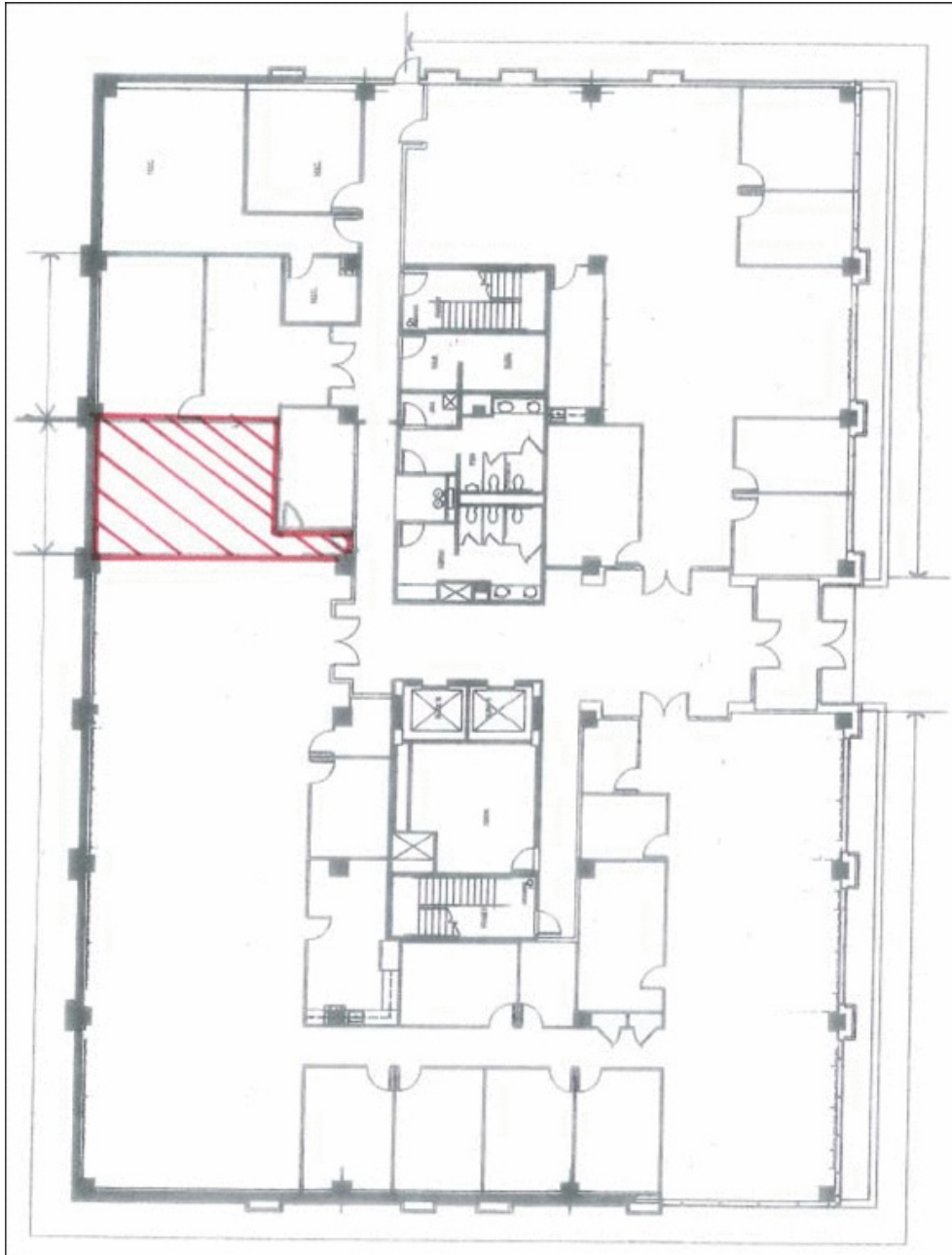
11465 SH I, LC

By: _____
Christopher Clemente, Manager

Date: _____

EXHIBIT A

Subleased Premises
(continued)



SUITE 110

EXHIBIT B

Form of Commencement Memorandum

Commencement and Expiration Date Memorandum

This Commencement and Expiration Date Memorandum is dated as of _____, 20____ between Comstock Asset Management, L.C. (“Sublandlord”) and Comstock Property Management, L.C., a Virginia limited liability company (“Subtenant”).

WITNESSETH:

WHEREAS, Sublandlord and Subtenant are parties to that certain Agreement of Sublease dated _____, 20____ (the “Sublease”) relating to premises in the Building located at 11465 Sunset Hills Road in Reston, Virginia.

NOW THEREFORE, Sublandlord and Subtenant hereby confirm as follows:

1. The Sublease Commencement Date is _____, 20____.
2. The scheduled Expiration Date is _____, 20____.
3. The Rentable Area of the Subleased Premises is _____ square feet.
4. Landlord may rely upon the foregoing statements.

IN WITNESS WHEREOF, Sublandlord and Subtenant have caused this Memorandum to be executed by their respective duly authorized managers, members, partners or officers as of the date first set forth above.

SUBLANDLORD:

Comstock Asset Management, L.C.

By: _____
Christopher Clemente, Manager

SUBTENANT:

Comstock Property Management, L.C.

By: Comstock Homebuilding Companies, Inc.

By: _____
Gregory Benson, President

EXHIBIT C

Number and Location of Parking Spaces

<u>Category/Type of Space</u>	<u>Number of Spaces</u>
Reserved and Assigned to Tenant:	5
Reserved for Tenants Only, but Unassigned:	10
Unreserved and Unassigned:	8
Total Spaces:	23
Reserved Spaces:	To be assigned by Landlord

Landlord reserves the right to reconfigure the parking for the Property by establishing or relocating reserved parking spaces, subject to and in accordance with the Lease.

EXHIBIT D

Existing FF&E

[Final approved list of Existing FF&E to be attached following occupancy.]

Item

Quantity

EXHIBIT E

Lease

[To be attached.]

11465 – CPM Sublease

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Builder's Co-Pilot Software License Agreement

This License Agreement dated January 1, 2010 governs the use by Comstock Homebuilding Companies, Inc. (hereafter "Licensee"), 11465 Sunset Hills Road #500 Reston VA 20190 (Phone: 703-883-1700) of the Builder's Co-Pilot software and system which is owned and licensed by I-Connect, L.C., with a principal place of business at 11465 Sunset Hills Road, Suite 400, Reston, Virginia 20190 (hereafter "ICG"). Subject to the timely payment by Licensee of the fees and charges set forth on the attached "Schedule of Fees and Usage Rights," Licensee shall have the following rights:

1. Definitions

(a) "Software" or "System" refers to the Builder's Co-Pilot brand of real estate development data management software program supplied by ICG herewith, and corresponding documentation, associated media, printed materials, and online or electronic documentation. (b) "Computer" means computer, workstation, terminal, handheld PC, pager, "smart phone," or other digital electronic device. (c) "User Manual" means a compendium of operating instructions and system features that is provided to Licensee upon installation and configuration of the System. The User Manual addresses most, but not all, features and functions of the System and Licensee understands and agrees that the User Manual can and will be updated by ICG from time to time. It is agreed that upon provision to Licensee of an updated version of the User Manual, that updated User Manual will supersede and replace the earlier User Manual, which update will be effective when Licensee actually receives the updated User Manual.

2. License

(a) Licensee may install, use, access, display, run, or otherwise interact with as many versions of the Software as is authorized on the attached "Schedule of Fees and Usage Rights."

(b) Licensee may make one additional copy of the Software in machine-readable form solely for backup purposes. Licensee must reproduce on any such copy all copyright notices and any other proprietary legends on the original copy of the Software.

(c) Licensee agrees that ICG may audit use of the Software for compliance with these terms at any time, upon reasonable notice. Audit rights include access to network and system log data and other resources capable of detailing the use of the Software by Licensee.

(d) Licensee's rights under this Agreement are non-exclusive.

Additional Terms for Managed Service Deployment

Where Licensee elects to operate the System locally and on its computers and network, except for the express support obligations agreed to by ICG herein, Licensee is and shall at all times remain responsible for data retention and related data protection and back up procedures.

In the event Licensee chooses the managed service deployment option, where the System is operated and Licensee's data is stored and processed on ICG controlled computers and networks, ICG shall use current and industry approved commercially reasonable efforts to protect Licensee's data and to ensure that Licensee's authorized users are able to access and use the System 24 hours a day, 7 days a week and throughout the calendar year. In undertaking to make the System and Licensee's data continuously available, Licensee recognizes that 1) interruptions can occur that are beyond the reasonable control of ICG arising from hardware, software and network issues, and 2) routine maintenance and upgrades to the System will necessarily require that the System and Licensee's data be temporarily unavailable. ICG



shall undertake and use its commercially reasonable efforts to minimize all such interruptions and as to Licensee's data shall cause periodic and regular backups to be made using ICG's established on-site and off-site data protection procedures.

3. License Grant. Other than as set forth in Section 2, Licensee may not make or distribute copies of the Software, or electronically transfer the Software from one computer to another or over a network. Licensee may not alter, merge, modify, adapt or translate the Software, or decompile, reverse engineer, disassemble, or reduce the Software to a human-perceivable form. Unless otherwise provided herein, Licensee may not rent, lease, or sublicense the Software. Licensee may transfer its rights hereunder to a successor entity provided ICG is notified in advance of and approves such transfer. Unless specifically agreed to by ICG in writing or otherwise provided herein, Licensee may not modify the Software or create derivative works based upon the Software. Licensee may receive the Software in more than one medium but shall only install or use one medium. Licensee shall comply with the User Manual and with all reasonable instructions provided by ICG when using the System and processing data on ICG data storage facility. In the event Licensee fails to comply with any material provision of this Agreement, ICG may terminate the license, all Licensee usage rights shall cease and Licensee must destroy all copies of the Software (with all other rights of ICG and provisions protecting ICG surviving any such termination arising from breach by Licensee).

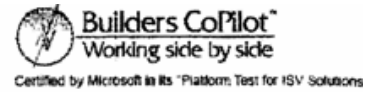
4. Ownership. Licensee is authorized to make use the Software and, if applicable, the ICG network and data storage capacities. This license is non-exclusive and ICG retains all right, title and interest, including all copyright and intellectual property rights, in and to, the Software and System. All rights not specifically granted in this Agreement, including US and International Copyrights, are reserved to ICG.

5. LIMITED WARRANTY AND DISCLAIMER

(a) ICG warrants that, for a period of ninety (90) days from the date of delivery, and when used with a recommended hardware configuration, the Software will, subject to the following, perform in substantial conformance with the User Manual documentation supplied with the Software.

(b) THE SOFTWARE AND SYSTEM IS PROVIDED "AS IS" AND ICG EXPRESSLY DISCLAIMS ALL WARRANTIES AND ALL LIABILITIES ASSOCIATED WITH DATA INPUTTED, PROCESSED, STORED OR MADE AVAILABLE BY OR THROUGH THE SOFTWARE OR PURSUANT TO ANY DATA STORAGE OR ACCESS SERVICES OFFERED BY ICG HEREUNDER. EXCEPT AS SET FORTH IN THE FOREGOING LIMITED WARRANTY, ICG AND ITS SUPPLIERS DISCLAIM ALL OTHER WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WHILE REASONABLE EFFORTS HAVE BEEN MADE, ICG DOES NOT WARRANT THAT THE SOFTWARE IS COMPLETELY ERROR-FREE. SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY.

6. Exclusive Remedy. Licensee exclusive remedy for any breach of warranty is to return the Software to ICG. Provided that any non-compliance with the above warranty is reported in writing to ICG no more than ninety (90) days following delivery of the Software, ICG will use reasonable commercial efforts to supply Licensee with a replacement copy of the Software that substantially conforms to the User Manual documentation, provide a replacement for defective media, or refund the purchase price for the



Software, at ICG's sole option. ICG shall have no responsibility if the Software has been altered in any way, if the media has been damaged by misuse, accident, abuse, modification or misapplication, or if the failure arises out of use of the Software with other than a recommended hardware configuration. Any misuse, accident, abuse, modification or misapplication of the Software voids all warranties. **THIS REMEDY IS THE SOLE AND EXCLUSIVE REMEDY AVAILABLE FOR BREACH OF EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE SOFTWARE AND RELATED DOCUMENTATION.**

7. LIMITATION OF LIABILITY. NEITHER ICG NOR ITS SUPPLIERS SHALL BE LIABLE TO LICENSEE OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, COVER OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR THE INABILITY TO USE EQUIPMENT OR ACCESS DATA, LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION OR THE LIKE), ARISING OUT OF THE USE OF, OR INABILITY TO USE, THE SOFTWARE AND BASED ON ANY THEORY OF LIABILITY INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, BREACH OF COPYRIGHT, INFRINGEMENT OR INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES INCLUDING BUT NOT LIMITED TO ANY RIGHTS HELD BY OWNERS OF WEBSITES AGAINST WHICH THE SOFTWARE IS APPLIED OR USED, OR OTHERWISE, EVEN IF ICG OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. ICG'S TOTAL LIABILITY TO LICENSEE FOR ACTUAL DAMAGES FOR ANY CAUSE WHATSOEVER WILL BE LIMITED TO THE GREATER OF \$2000 OR THE AMOUNT PAID FOR THE SOFTWARE THAT CAUSED SUCH DAMAGE.

8. Basis of Bargain. The Limited Warranty and Disclaimer, Exclusive Remedies and Limited Liability set forth above are fundamental elements of the basis of the agreement between ICG and Licensee. ICG would not be able to provide the Software on an economic basis without such limitations. Such Limited Warranty and Disclaimer, Exclusive Remedies and Limited Liability inure to the benefit of ICG's licensors.

9. No Distinction between End Users. The foregoing limitations or exclusions of warranties and liability contained in this Agreement affect all users regardless of type or size.

10. General. This Agreement shall be governed by the internal laws of the Commonwealth of Virginia, without giving effect to principles of conflict of laws. Licensee hereby consents to the exclusive jurisdiction and venue of the state courts or federal courts sitting in the Commonwealth of Virginia, to resolve any disputes arising under this Agreement. In each case this Agreement shall be construed and enforced without regard to the United Nations Convention on the International Sale of Goods.

This Agreement contains the complete agreement between the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements or understandings, whether oral or written. Licensee agree that any varying or additional terms contained in any purchase order or other written notification or document issued in relation to the Software licensed hereunder shall be of no effect. The failure or delay of ICG to exercise any of its rights under this Agreement or upon any breach of this



Agreement shall not be deemed a waiver of those rights or of the breach.

No amendment may be made to this Agreement unless by writing signed by both parties.

If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law that provision will be enforced to the maximum extent permissible and the remaining provisions of this Agreement will remain in full force and effect.

Notice to a party shall be as follows:

I-Connect, L.C.
Attn: Amitesh Sinha
11465 Sunset Hills Road
Suite 410
Reston, Virginia 20190
Fax: (703) 471-3982
Email: amitesh@iconnectgroup.com

Comstock Homebuilding Companies, Inc.
Attn: Zerrick Pearson
11465 Sunset Hills Road #500
Reston, VA 20190
Fax: (703) 760-1520
Email: zpearson@comstockhomebuilding.com

With a copy to:

Comstock Homebuilding Companies, Inc.
Attn: Jubal Thompson
11465 Sunset Hills Road #500
Reston, VA 20190
Fax: (703) 760-1520
Email: jthompson@comstockhomebuilding.com

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Confidential

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ACCEPTED:

I-Connect, LC

By: /s/ Amitesh Sinha

Name: Amitesh Sinha

Title:

Comstock Homebuilding Companies, Inc.

By: /s/ Christopher Clemente

Name: Christopher Clemente

Title: CEO

Confidential

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Schedule of Fees and Usage Rights

Initial Deposit and Payment: Upon execution of this Agreement Licensee shall pay a \$ 0 initial payment for license fees and for any additional services requested from ICG.

License Fees: Licensee shall compensate ICG for use of the software and the system by paying Usage Fees based upon the number of "Neighborhoods" set up and used by Licensee in each month of use. For each Month, Licensee shall pay to I-Connect \$6,000 for an unlimited number of Neighborhoods. As used herein, Neighborhood means the neighborhood or Community where homes are being built or completed building by Licensee or agents of Licensee by the Licensee or agents of Licensee.

ECard / eBlast / Internet Marketing via Emails Charges: Included

Confidential

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Comstock Homebuilding Companies, Inc.

Effective on or about December 23, 2009, Stonehenge Funding, LC (“Stonehenge”) exercised its option to purchase that certain Senior Note and Amended and Restated Indenture dated March 14, 2008 by and between Comstock Homebuilding Companies, Inc. (“CHCI”) and JPMorgan Chase Funding, Inc, as successor (the “JP Morgan Note”). Based upon a request by the independent members of the Board of Directors of CHCI for a modification of the JP Morgan Note, the terms below are a binding agreement to modify the terms and conditions of the JP Morgan Note. The parties shall negotiate and execute definitive documentation that shall contain the substantive terms hereof together with such other terms and conditions as the parties shall agree. The parties agree to use reasonable best efforts to complete such documentation as promptly as practicable following the date of the execution and delivery hereof. Neither this commitment nor any subsequent modification agreement of the JP Morgan Note is intended to violate any restrictions imposed upon CHCI or Stonehenge by CHCI’s lenders. **Stonehenge and CHCI will hereafter commit the necessary resources to document and report the modifications agreed hereby.**

Borrower: Comstock Homebuilding Companies, Inc.

Noteholder/Lender: Stonehenge Funding, LC. (Lender or Noteholder).

Guarantors: In consideration of Stonehenge entering into this agreement and modifying the terms of the JP Morgan Note, CHCI hereby reaffirms its guaranty. Stonehenge shall not require any additional guarantees.

Principal Balance Adjustment: It is understood that the current unpaid principal balance due Noteholder under the JP Morgan Note is \$9,000,000 (not including past due interest of approximately \$874,800 as of December 31, 2009). Upon satisfaction of the Principal Reduction Conditions, set forth below, the Principal Balance shall be reduced by 50% to \$4,500,000 (Reduced Principal Balance). The JP Morgan Note may be prepaid, in part or in whole, at anytime by Borrower without penalty or premium, subject however, to the restrictions imposed by the existing lenders to the Borrower or Borrower’s subsidiaries secured project lenders. It is understood that the Borrower is currently carrying the value of the JP Morgan Note on its books at approximately \$12,742,650.

Forgiveness of Accrued Interest: It is understood that the accrued but unpaid outstanding interest due Noteholder under the JP Morgan Note as of December 31, 2009 was approximately \$874,800. Upon execution and delivery of this agreement, all outstanding interest, late fees and penalties up through December 31, 2009 (Past Due Interest), are hereby forgiven in full and Stonehenge shall enter into such reasonable confirmatory documentation to evidence same, as may be requested by CHCI’s auditors and/or lenders. It is understood and agreed that the Principal Reduction Conditions set forth below shall not apply to the Forgiveness of the Past Due Interest.

Interest Rate: Effective as of January 1, 2010 the interest rate under the JP Morgan Note is hereby reduced by approximately 50% to be 300 basis points above the 1-year Libor Rate (currently approximately 1.00%) on a floating basis, adjusted monthly (Reduced Interest Rate), which shall accrue on the Reduced Principal Balance of only \$4,500,000 until the earlier of (i) Maturity, or (ii) 90 days after the prohibitions applicable to interest payments being paid to Stonehenge under the Key & Guggenheim Subordination Agreements expire. However, on a quarterly basis within 5 days of the date that an interest payment would have been due under the JP Morgan Note, Stonehenge may elect to receive shares of Class A common stock of CHCI (or warrants for the purchase thereof) with a cumulative value equal to the value of the scheduled interest payment rather than allowing

such scheduled payment of interest to continue to accrue. Notwithstanding the foregoing, in the event a petition of bankruptcy (voluntarily or involuntary) is filed by or against CHCI prior to the full repayment of amounts due under the JP Morgan Note, as modified, this interest rate reduction provision shall be null and void as it relates to any accrued but unpaid interest accruing after January 1, 2010.

Existing Warrants

CHCI understands that Stonehenge has acquired the previously issued warrants to purchase 1,500,000 shares of CHCI Class A common stock ("Existing Warrant") issued to JP Morgan on March 14, 2008. Concurrent with the execution hereof, Stonehenge agrees to provide promptly for the cancellation of 500,000 shares under the Existing Warrant owned by Stonehenge. CHCI will thereafter re-issue to Stonehenge, or its assigns, one or more warrants for the purchase, in the aggregate, of up to 1,000,000 shares of CHCI Class A common stock on identical terms as set forth in the Existing Warrant.

It is understood by Stonehenge that CHCI will then issue 500,000 stock options to managers/employees of CHCI, as approved by the Compensation Committee of the Board of CHCI, in consultation with its tax advisors.

Maturity Date:

It is understood that the current Maturity Date under the JP Morgan Note is March 14, 2013 ("Current Maturity Date"). The parties hereby agree to modify the Maturity Date to be as follows: the sooner of (i) 90 days after the restrictions applicable to interest payments under the Key and Guggenheim Subordination Agreements expire, (ii) the date the JP Morgan Note would become subject to mandatory prepayment with the next available proceeds of future equity or debt financings, or (iii) Current Maturity Date (collectively the "Modified Maturity Date"), subject to the automatic extensions provided for in the following section titled "Interest Reclassification and Automatic Maturity Extensions".

Interest Reclassification and Automatic Maturity Extension:

It is understood that in the event current prohibitions by Key or Guggenheim upon CHCI making principal or interest payments to Stonehenge under the JP Morgan Note continue to be effective on the Current Maturity Date, then in such event CHCI shall not be required to make payments on the Current Maturity Date, and in such event the Interest Reclassification and Automatic Extensions described in this section shall apply. CHCI shall be entitled to two (2) Interest Reclassification and Automatic Extension Periods, each for a period of six (6) months. Within 30 days of each Interest Reclassification and Automatic Maturity Extension period commencing (the 30th day of each six month extension period) CHCI shall deliver to Stonehenge, at no cost to Stonehenge, warrants for the purchase of Class A common stock with a net cumulative value (the value above the cumulative exercise price applicable to the warrants) equal to 9% of the then outstanding balance due Stonehenge under the JP Morgan Note as of the day such warrants are freely tradable by Stonehenge. Such warrants shall expire 7 years after the date of issuance if not exercised prior to such date and shall be in addition to the then current applicable Reduced Interest Rate which would continue to be due under the JP Morgan Note. The parties will confer with their respective tax experts and counsel in an effort to structure this provision in a manner that is most advantageous to CHCI with regards to cost recognition and applicable tax code. Stonehenge understands that if both Interest Reclassification and Automatic Extensions are elected by CHCI that Stonehenge may not receive repayment of the Reduced Principal Balance prior to March 14, 2014.

Principal Reduction Conditions	<p>The loan modifications contemplated hereby shall provide for the principal amount due under the JP Morgan Note to be reduced to the Reduced Principal Balance upon):</p> <p>Stonehenge receiving a written waiver of restrictions imposed upon Stonehenge from JP Morgan regarding the modifications contemplated herein; such waiver currently anticipated to be received by the end of January, 2010, or the payment of the deferred purchase price due JP Morgan by Stonehenge under its agreement to acquire the JP Morgan Note.</p>
Subordination:	<p>It is understood by Stonehenge that Stonehenge may from time to time be required to reaffirm the subordination agreements entered into by the parties with Key Bank and Guggenheim Corporate Funding in connection with loans advanced and currently outstanding on Borrower's subsidiaries Eclipse property and Penderbrook property, the forms of which are attached hereto as <u>Exhibit A</u>. Stonehenge further agrees to reasonably subordinate the JP Morgan Note to future project lenders of CHCI or its subsidiaries.</p>
Financial Covenants:	<p>Stonehenge shall forbear upon the enforcement of all financial covenants contained in the JP Morgan Note for so long as there is no other event of Default occurring thereunder, including but not limited to the covenants regarding:</p> <ul style="list-style-type: none"> • Borrower maintaining a Net Worth in excess of \$35 million • Borrower maintaining a Leverage Ratio of no more than 3:1 • Borrower maintaining a Fixed Charge Ratio of less than 5:1 • Borrower maintaining a Fixed Charge Coverage Ratio of no less than 2:1
Other Covenants/Limitations:	<p>Stonehenge and CHCI will work in good faith with each other to reach definitive agreement regarding modification to various other terms contained in the JP Morgan Note, including but not limited to:</p> <ul style="list-style-type: none"> • Modify governing law and proper jurisdiction from the State of New York to the Commonwealth of Virginia. • Remove Borrower requirement to obtain opinion of counsel letters throughout Loan except for as of the closing date. • Remove requirement to name/use a Trustee. • Remove Borrower restriction on issuance of new debt if there is an Event of Default by Borrower under the Loan, provided such new debt is subordinate in all respects to the JP Morgan Note.
Certain Covenants Not subject to Modification:	<p>CHCI understands and agrees that certain covenants of the JP Morgan Note shall not be modified, including but not necessarily limited to:</p> <ul style="list-style-type: none"> • The requirement that Borrower deposit monies if there is a change in control of Borrower. • The requirement that Borrower notice Lender and obtain Lender's consent to any change of control. • The requirement that Borrower obtain Lender consent to merger of Borrower.

Events of Default:

Those set forth in the JP Morgan Note, except as contemplated to be modified as set forth herein, or otherwise agreed to by the parties hereto.

Change of Control:

It is understood by CHCI that Stonehenge's willingness to execute on the purchase of the JP Morgan Note and to modify the note in a manner beneficial to the Borrower is strictly based on CHCI being under the guidance and control of the two majority vote controlling shareholders, Chris Clemente and Greg Benson (Controlling Shareholders). Should a change of control occur for any reason whatsoever, the JP Morgan Note shall accelerate and shall become immediately due and payable, provided however, a merger with an affiliate for the purpose of completing a corporate change of domicile shall not be deemed a change of control for the purposes of this provision.

Confidentiality:

This Summary of Terms and Conditions is delivered to you with the understanding that, neither this term sheet nor any of its terms or substance shall be disclosed, directly or indirectly to any other person except (i) to your employees and advisors who are directly involved in the consideration of this matter or (ii) as disclosure may be determined necessary or advisable by CHCI counsel under applicable securities or corporate disclosure laws or as may be compelled in a judicial or administrative proceeding or as otherwise required by law.

The parties hereto, intending to be legally bound, have caused this agreement to be effective as of the last date set forth below; subject only to the formal approval of the independent members of the Board of Directors of CHCI.

[SIGNATURES FOLLOW]

Comstock Homebuilding Companies, Inc.

By: _____
Name: _____
Title: _____

Date: ___/___/2010

Stonehenge Funding, LC:

By: _____
Name: _____
Title: _____

Date: ___/___/2010

SUBORDINATION AND STANDSTILL AGREEMENT

**NOTICE:
THIS SUBORDINATION AND STANDSTILL AGREEMENT
RESULTS IN YOUR PRIORITY OF PAYMENT BECOMING
SUBJECT TO AND OF LOWER PRIORITY
THAN THE PRIORITY AND LIEN
OF SOME OTHER OR LATER INSTRUMENT**

THIS SUBORDINATION AND STANDSTILL AGREEMENT (this "Agreement") is made this _____ day of December, 2009, by and among **COMSTOCK HOMEBUILDING COMPANIES, INC.**, a Delaware corporation ("Guarantor"), **KEYBANK NATIONAL ASSOCIATION**, a national banking association ("KeyBank"), individually and as agent for itself and the Senior Lenders (as hereinafter defined) ("Agent"), and **STONEHENGE FUNDING, L.C.**, a Virginia limited liability company ("Subordinate Lender").

WITNESSETH:

WHEREAS, Guarantor has executed that certain Amended and Restated Indenture and amended Senior Note due 2013 dated as of March 14, 2008, in the principal sum of \$9,000,000 in favor of Subordinate Lender (collectively, the "Subordinate Note"); and

WHEREAS, pursuant to the Senior Loan Agreement (as hereinafter defined), the Senior Lenders (as hereinafter defined) provided a credit facility to Borrower (as hereinafter defined);

WHEREAS, Guarantor has executed a certain Senior Guaranty (as hereinafter defined) in favor of Agent pursuant to the Senior Loan Agreement, which Senior Guaranty is secured by the Senior Assignment of Interests (as hereinafter defined);

WHEREAS, the obligations of Borrower and Guarantor under the Senior Loan Documents (as hereinafter defined) are secured by, among other things, the Senior Security Documents (as hereinafter defined);

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which consideration are hereby acknowledged, it is hereby declared, understood and agreed as follows:

1. Definitions.

(a) "Agent" has the meaning given such term in the introductory paragraph to this Agreement. Unless otherwise specified herein, "Agent" shall mean KeyBank National Association in its capacity as agent under the Senior Loan Agreement.

(b) "Bankruptcy Code" means Title 11, United States Code, as amended from time to time, or any successor statute thereto.

(c) "Borrower" means, collectively, Comstock Station View, L.C., a Virginia limited liability company, and Comstock Potomac Yard, L.C., a Virginia limited liability company.

(d) "Cash Collateral Agreement" shall mean that certain Cash Collateral and Control Agreement dated October 30, 2009 and executed by Borrower in favor of Agent for the benefit of the Senior Lenders, and as may be further amended, modified, increased, consolidated, restated or replaced.

(e) “Collateral” means all of the real, personal and other property now or hereafter encumbered by or securing the Senior Note, the Senior Loan Agreement, the Senior Security Documents, the Cash Collateral Agreement or the Senior Guaranty, or any documents now or hereafter entered into or delivered in connection with any of them, and all of each Obligor’s right, title and interest in and to such property, whether existing or future, and all security interests, security titles, liens, claims, pledges, encumbrances, conveyances, endorsements and guaranties of whatever nature now or hereafter securing any Obligor’s obligations under the Senior Loan Documents or any part thereof, and all products and proceeds of the foregoing.

(f) “Enforcement Action” means the commencement of any litigation or proceeding at law or in equity, the commencement of any foreclosure proceeding, the exercise of any statutory or non-judicial power of sale, the taking of a deed or assignment in lieu of foreclosure, seeking to obtain a judgment, seeking the appointment of or the obtaining of a receiver or the taking of any other enforcement action against, or the taking of possession or control of, or the exercise of any rights or remedies with respect to, any Obligor or the Collateral, any other property or assets of any Obligor or any portion thereof.

(g) “Insolvency Proceeding” means any proceeding, whether voluntary or involuntary, under the Bankruptcy Code, or any other bankruptcy, insolvency, liquidation, reorganization, composition, extension, arrangement, adjustment or other similar proceeding concerning any Obligor, any action for the winding-up or dissolution of any Obligor, any proceeding (judicial or otherwise) concerning the application of the assets of any Obligor for the benefit of its creditors, the appointment of or any proceeding seeking the appointment of a trustee, receiver or other similar custodian for all or any substantial part of the assets of any Obligor, a general assignment for the benefit of creditors or any proceeding or action seeking the marshaling of the assets and liabilities of any Obligor, or any other action concerning the adjustment of the debts of any Obligor or the cessation of business by any Obligor, in each case under any applicable domestic or foreign federal or state law. For the purposes hereof, an “Insolvency Proceeding” shall also include the taking, seeking or approving of any action in any proceeding described in the foregoing sentence by, against or concerning any other Person that could adversely affect any Obligor, any other obligor with respect to the Subordinate Loan, the Collateral, the Senior Loan Documents, the Agent, the Senior Lenders or any Enforcement Action under the Senior Security Documents or any other Senior Loan Document.

(h) “KeyBank” means KeyBank National Association.

(i) “Obligors” means Borrower and Guarantor, and each other guarantor or obligor of or with respect to any part of the Senior Debt.

(j) “Required Lenders” means, individually or collectively (as the context may require or permit), the “Majority Lenders” under and as defined in the Senior Loan Agreement.

(k) “Senior Assignment of Interests” means that certain Assignment of Interests dated March 14, 2008 executed by Guarantor in favor of Agent for the benefit of the Senior Lenders, as amended by that certain First Amendment to Assignment of Interests dated October 30, 2009, and as the same may be further amended, extended, supplemented, consolidated, renewed, restated or otherwise modified from time to time.

(l) “Senior Debt” means the (i) principal of, premium, if any, and interest on the Senior Note or pursuant to the Senior Loan Agreement (whether payable under the Senior Note, the Senior Loan Agreement, or the Senior Guaranty or any other Senior Loan Document), (ii) prepayment fees, exit fee, yield maintenance charges, breakage costs, late charges, default interest, agent’s fees, costs of collection, protective advances, advances to cure defaults, and indemnities, (iii) any other amount or obligations (including any fee or expense) due or payable with respect to the Senior Loan or any of the Senior Loan Documents (including interest and any other of the foregoing amounts accruing after the commencement of any Insolvency Proceeding, and any other interest that would have accrued but for the commencement of such Insolvency Proceeding, whether or not any such interest is allowed as an enforceable claim in such Insolvency Proceeding and regardless of the value of the Collateral at the time of such accrual), whether outstanding on the date of this Agreement or hereafter incurred, whether as a secured claim, undersecured claim, unsecured claim, deficiency claim or otherwise, and all renewals, modifications, amendments, supplements, consolidations, restatements, extensions, refinances, and refundings of any thereof.

(m) “Senior Guaranty” means that certain Unconditional Guaranty of Payment and Performance dated as of March 14, 2008 executed by Guarantor in favor of Agent for the benefit of the Senior Lenders, as amended by that certain First Amendment to Unconditional Guaranty of Payment and Performance dated October 30, 2009, and as the same may be from time to time amended, extended, supplemented, consolidated, renewed, restated or otherwise modified.

(n) “Senior Lenders” means “Lenders” as defined in the Senior Loan Agreement.

(o) “Senior Loan” means the up to \$40,391,200.00 credit facility provided pursuant to the Senior Loan Agreement, as the same may be amended, modified, increased, consolidated, restated or replaced as provided herein.

(p) “Senior Loan Agreement” means that certain Loan Agreement dated as of March 14, 2008 executed by Borrower and KeyBank National Association, individually and as Agent for the Senior Lenders, and certain other parties now or hereafter a party thereto, as modified by that certain First Amendment to Loan Agreement dated as of October 30, 2009, and as may be further amended, modified, increased, consolidated, restated or replaced.

(q) “Senior Loan Documents” means the Senior Security Documents, the Senior Note, the Senior Loan Agreement, the Senior Guaranty, the Senior Assignment of Interests, the Cash Collateral Agreement and any other documents, agreements or instruments now or hereafter executed and delivered by or on behalf of any Obligor or any other person or entity in connection with the Senior Loan, and any documents, agreements or instruments hereafter executed and delivered by or on behalf of any Obligor or any other person or entity in connection with any refinancing of the Senior Loan, as any of the same may be from time to time amended, extended, supplemented, consolidated, renewed, restated or otherwise modified.

(r) “Senior Note” means that certain Amended and Restated Note dated March 14, 2008 executed by Borrower in favor of KeyBank National Association, as originally executed, or if varied, extended, supplemented, consolidated, amended, replaced, renewed, modified, or restated from time to time as so varied, extended, supplemented, consolidated, amended, replaced, renewed, modified or restated.

(s) "Senior Security Documents" means the "Security Documents" as defined in the Senior Loan Agreement, the Cash Collateral Agreement and each other Senior Loan Document securing any or all of the Senior Loan, together with any and all acknowledgments, powers, certificates, UCC financing statements or other documents or instruments executed and delivered in connection therewith.

(t) "Subordinate Debt" means the principal amount of the indebtedness evidenced by the Subordinate Note, together with any interest, premium, yield maintenance charges, breakage costs, late charges, default interest, costs of collection, protective advances, advances to cure defaults, indemnities, reimbursement obligations and any other amount or obligation (including any fee or expense) due thereon or payable with respect thereto or pursuant to the Subordinate Loan Documents, whether outstanding on the date of this Agreement or hereafter incurred, and all permitted renewals, modifications, amendments, supplements, consolidations, restatements, extensions, refinances and refundings of any thereof.

(u) "Subordinate Loan Documents" means the Subordinate Note and any other document, agreement or instrument now or hereafter executed and delivered by or on behalf of Guarantor in connection with the indebtedness evidenced by the Subordinate Note, as any of the same may be from time to time amended, extended, supplemented, consolidated, renewed, restated or otherwise modified as permitted herein.

(v) Except as otherwise provided herein, capitalized terms used herein that are not otherwise defined herein shall have the meanings set forth in the Senior Loan Agreement.

2. Effectiveness of Agreement. This Agreement shall be deemed effective as of the date of execution.

3. Priority of Collateral and Payments. Guarantor and Subordinate Lender covenant and agree that the payment of the Subordinate Debt is hereby unconditionally and expressly made junior, subordinate and subject in right and time of payment and in all other respects to the indefeasible prior payment in full in cash of all Senior Debt. Without limiting the foregoing, the Subordinate Loan Documents, as well as all of the rights and remedies of Subordinate Lender under the Subordinate Loan Documents or otherwise in and to the Collateral or other property or assets of the Obligors, are hereby unconditionally and expressly made subject and subordinate in lien and subordinate in payment to the Senior Debt, and to all of the rights and remedies, of KeyBank, as agent under the Senior Loan Agreement, and the Senior Lenders, under the Senior Loan Documents and to the Collateral or other property or assets of the Obligors. In addition, in furtherance of and without limiting the foregoing, Subordinate Lender agrees that:

(a) Subordinate Lender shall have no right, lien or claim in and to the Collateral and the proceeds thereof (including, without limitation, any rights with respect to insurance proceeds and condemnation awards), or any other property or assets of any Obligor until such time as the period described in Paragraph 4 hereof shall have lapsed;

(b) Subordinate Lender hereby expressly waives any rights to require or request that the Agent and the Senior Lenders marshal the Collateral in favor of Subordinate Lender or to equitably subordinate the rights, liens or security interests of Agent and the Senior Lenders under the Senior Loan Documents, whether pursuant to the Bankruptcy Code or otherwise. Agent and the Senior Lenders shall have the right at any and all times to determine the order in which, or whether, (i) recourse is sought against any Obligor or any other obligor with respect to the Senior Debt, or (ii) any or all of the collateral security for the indebtedness and obligations under the Senior Loan Documents in which a lien has been granted to or obtained by Agent shall be enforced. Subordinate Lender hereby waives any and all rights to require that Agent and/or the Senior Lenders pursue or exhaust any rights or remedies with respect to any Obligor or any other party prior to exercising their rights and remedies with respect to the Collateral or any other property or assets of the Obligors. Agent and the Senior Lenders may forbear collection, grant indulgences, release, compromise or settle the Senior Debt, or sell, take, exchange, surrender or release collateral or security therefor, consent to or waive any breach of, or any act, omission or default under, any of the Senior Loan Documents, apply any sums received by or realized upon by Agent and the Senior Lenders against liabilities of the Obligors to Agent and the Senior Lenders in such order as Agent and the Senior Lenders shall determine in their sole discretion, and otherwise deal with any and all parties and the Collateral or other property or assets of the Obligors as they deem appropriate. Agent and the Senior Lenders shall have no liability to Subordinate Lender for, and Subordinate Lender hereby waives any claim, right, action or cause of action which it may now or hereafter have against Agent and the Senior Lenders arising out of, any waiver, consent, release, indulgence, extension, delay or other action or omission, any release of any Obligor, release of any of the Collateral securing such indebtedness and obligations, the failure to realize upon any Collateral or other property or assets of any Obligor, or the failure to exercise any rights or remedies of Agent and the Senior Lenders under the Senior Loan Documents;

(c) Subordinate Lender hereby expressly consents to and authorizes, at the option of the Senior Lenders the acceptance of additional Senior Security Documents, or the release of any Obligor. Subordinate Lender hereby expressly consents to and authorizes, at the option of the Agent, the amendment, extension, restatement, consolidation, increase, renewal, refinance or other modification, in whole or in part, of all or any of the Senior Loan Documents, including, without limitation, increasing or decreasing the stated principal amount of the Senior Loan, extending or shortening the term of the Senior Loan, increasing or decreasing the interest rate payable as provided in the Senior Loan Agreement or altering any other payment terms under the Senior Loan Documents;

(d) Subordinate Lender hereby absolutely and irrevocably waives, to the fullest extent permitted by law, any rights they may have, by contract, at law or in equity, to be subrogated to the Agent's and the Senior Lenders' rights against the Obligors under the Senior Loan Documents or to the Agent's liens and security interests on any of the Collateral. If Subordinate Lender shall acquire by indemnification, subrogation or otherwise, any lien, estate, right or other interest in or with respect to the Collateral or other property or assets of any Obligor, that lien, estate, right or other interest shall be subordinate to the Senior Security Documents and the other Senior Loan Documents as provided herein and shall be held in trust for the benefit of, and assigned to, Agent in accordance with this Agreement;

(e) Subordinate Lender agrees that it shall not agree to, and nothing herein or in the Senior Loan Documents shall be deemed to evidence approval of Agent or the Senior Lenders of, any increase to the Subordinate Note, or any other amendment or modification of the Subordinate Loan Documents except for modifications or amendments that do not negatively impact Agent or the Senior Lenders and are of the general type set forth on Schedule A attached hereto and made a part hereof; provided, however, that no amendment or modification to the Subordinate Loan Documents shall in any event (i) increase the stated principal amount of the Subordinate Debt, (ii) shorten the term of the Subordinate Debt, (iii) increase the interest rate on the Subordinate Debt, (iv) provide collateral or other security for the Subordinate Debt, (v) provide for additional obligors of the Subordinate Debt or (vi) include more restrictive covenants, conditions or defaults than those existing as of the date hereof. Subordinate Lender and Guarantor shall promptly provide to Agent a fully executed copy of any amendment or modification to the Subordinate Note;

(f) Subordinate Lender acknowledges that Agent and Senior Lenders have not made nor do they now make any representations or warranties, express or implied, nor do they assume any liability to Subordinate Lender, with respect to the creditworthiness or financial condition of Guarantor, any Obligor or any other Person. Subordinate Lender acknowledges that it has, independently and without reliance upon Agent or any Senior Lender, and based upon such information and documents as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement and the Subordinate Loan. Subordinate Lender will, independently and without reliance upon Agent or any Senior Lender, based upon such information and documents as it deems appropriate at the time, continue to make its own credit analysis and decisions in taking or not taking action under this Agreement and the Subordinate Loan Documents. None of Agent or any Senior Lender shall have any duty or responsibility, either initially or on a continuing basis, to provide Subordinate Lender with any credit or other information with respect to Guarantor or any other Obligor, whether coming into its possession before the making of the Senior Loan or at any time or times thereafter. Subordinate Lender agrees that none of Agent or any Senior Lender owes any fiduciary duty to Subordinate Lender in connection with the administration of the Senior Loan and the Senior Loan Documents and Subordinate Lender agrees not to assert any such claim;

(g) Unless the "Majority Lenders" (as defined in the Senior Loan Agreement) shall have consented in writing to such modification or amendment, no modification or amendment of the Subordinate Loan Documents shall be binding except for modifications or amendments that do not negatively impact Agent or the Senior Lenders and are of the general type set forth on Schedule A attached hereto and made a part hereof; provided, however, that no amendment or modification to the Subordinate Loan Documents shall in any event (i) increase the stated principal amount of the Subordinate Debt, (ii) shorten the term of the Subordinate Debt, (iii) increase the interest rate on the Subordinate Debt, (iv) provide collateral or other security for the Subordinate Debt, (v) provide for additional obligors of the Subordinate Debt or (vi) include more restrictive covenants, conditions or defaults than those existing as of the date hereof. Subordinate Lender and Guarantor shall promptly provide to Agent a fully executed copy of any amendment or modification to the Subordinate Note;

(h) If, notwithstanding the provisions of this Agreement, any payment or distribution of any kind or character (whether in cash, securities, or other property) shall be received by Subordinate Lender directly or indirectly from any Obligor (whether out of or in connection with the Collateral, upon any payment or distribution of the assets of any Obligor of any kind or character to creditors upon or in connection with any Insolvency Proceeding or otherwise) in contravention of the terms of this Agreement, such payment, distribution or

security shall not be commingled with any asset of Subordinate Lender, but rather shall be held in trust for the benefit of, and shall be paid over or delivered and transferred to, the Agent or its representative, for application to the payment of the Senior Debt remaining unpaid, until all of the Senior Debt shall have been indefeasibly paid in full in cash. In any such event, Agent may, but it shall not be obligated to, demand, claim and collect any such payment or distribution that would, but for the subordination provisions, be payable or deliverable with respect to the Subordinate Debt.

(i) Notwithstanding anything to the contrary set forth herein, Subordinate Lender shall not be permitted to receive any payments with respect to the Subordinate Debt until such time as the Senior Debt shall have been indefeasibly paid in full in cash, and Senior Lenders have no further obligation to make advances under the Senior Loan Documents. All payments or distributions upon or with respect to the Subordinate Debt which are received by Subordinate Lender contrary to the provisions of this Agreement shall be received and held in trust by the Subordinate Lender for the benefit of Senior Lenders and shall be paid over to Agent in the same form as so received (with any necessary endorsement) to be applied (in the case of cash) to, or held as collateral (in the case of non-cash property or securities) for performance of the Senior Debt in accordance with the terms of the Senior Loan Documents.

4. Certain Actions Regarding Subordinate Debt. Until such time as the Senior Debt shall have been indefeasibly paid in full in cash, and Senior Lenders have no further obligation to make advances under the Senior Loan Documents, Subordinate Lender shall not take any of the following actions with respect to the Subordinate Debt until one (1) year and one (1) day following the indefeasible payment in full of the Senior Debt in cash without the prior written consent of the "Majority Lenders" (as defined in the Senior Loan Agreement):

(a) Declare a default or event of default under the Subordinate Loan Documents, accelerate all or any portion of the Subordinate Debt or exercise any of its remedies (including, without limitation, any Enforcement Action) under the Subordinate Loan Documents or at law or in equity;

(b) Commence, directly or indirectly, any legal or other proceedings against any Obligor, or commence any Enforcement Action;

(c) Consent to or enter into any amendment or modification of any of the Subordinate Loan Documents except for modifications or amendments that do not negatively impact Agent or the Senior Lenders and are of the general type set forth on Schedule A attached hereto and made a part hereof; provided, however, that no amendment or modification to the Subordinate Loan Documents shall in any event (i) increase the stated principal amount of the Subordinate Debt, (ii) shorten the term of the Subordinate Debt, (iii) increase the interest rate on the Subordinate Debt, (iv) provide collateral or other security for the Subordinate Debt, (v) provide for additional obligors of the Subordinate Debt or (vi) include more restrictive covenants, conditions or defaults than those existing as of the date hereof. Subordinate Lender and Guarantor shall promptly provide to Agent a fully executed copy of any amendment or modification to the Subordinate Note; or

(d) Commence, directly or indirectly, or consent to any Insolvency Proceeding by or against any Obligor.

5. Bankruptcy Issues.

(a) The provisions of this Agreement shall be applicable both before and after the commencement, whether voluntary or involuntary, of any Insolvency Proceeding by or against any Obligor and all references herein to any Obligor shall be deemed to apply to any such Obligor as a debtor-in-possession and to any trustee in bankruptcy for the estate of any such Obligor. Furthermore, this Agreement and the subordinations contained herein shall apply notwithstanding the fact that all or any part of the Senior Debt or any claim for or with respect to the Senior Debt is subordinated, avoided or disallowed, in whole or in part, in any Insolvency Proceeding or by other applicable federal, state or foreign law; provided, however, that if the subordination or disallowance of the claims of the Senior Lenders are predicated on gross misconduct or bad faith of the Senior Lenders, then the subordination provisions set forth herein shall not apply. Without limiting the foregoing, Subordinate Lender expressly covenants and agrees that this Agreement is enforceable under applicable bankruptcy law and should be enforced under Section 510(a) of the Bankruptcy Code. Until such time as the Senior Debt has been indefeasibly paid in full in cash and Senior Lenders have no further obligation to make any advances under the Senior Loan Documents, Subordinate Lender shall not, and shall not solicit any person or entity to: (i) seek, commence, file, institute, consent to or acquiesce in any Insolvency Proceeding with respect to any Obligor or the Collateral; (ii) seek to consolidate any Obligor with any other person or entity in any Insolvency Proceeding; or (iii) take any action in furtherance of any of the foregoing.

(b) Subordinate Lender hereby agrees that it shall not make any election, give any consent, commence any action or file any motion, notice or application or take any other action in any Insolvency Proceeding (including, without limitation, any action under Section 105 of the Bankruptcy Code) with respect to the Subordinate Debt or the other Subordinate Loan Documents in any case by or against any Obligor or their property without the prior written consent of Senior Lenders, which may be granted or withheld in Senior Lenders' sole and absolute discretion; provided, however, that with respect to any such Insolvency Proceeding, (i) the Subordinate Lender may file a proof of claim, (ii) the Agent may vote in any such Insolvency Proceeding any and all claims of Subordinate Lender, and Subordinate Lender hereby appoints the Agent as its agent, and grants to the Agent an irrevocable power of attorney coupled with an interest, and its proxy, for the purpose of exercising any and all rights and taking any and all actions available to the Subordinate Lender in connection with any case by or against any Obligor or their property in any Insolvency Proceeding, including without limitation, the right to vote to accept or reject a plan, to make any election under Section 1111(b) of the Bankruptcy Code; provided, however, that with respect to any proposed plan of reorganization in respect of which creditors are voting, Agent or Senior Lenders may vote on behalf of such Subordinate Lender only if Agent's or Senior Lender's claim is included in a class of claims that is "impaired" as contemplated by Section 1124 of the Bankruptcy Code under the proposed plan of reorganization, in Agent's sole and absolute discretion, and (iii) Subordinate Lender shall not challenge the validity or amount of any claim submitted in such Insolvency Proceeding by the Agent or the Senior Lenders or any valuations of the Collateral submitted by the Agent or the Senior Lenders, in such Insolvency Proceeding or take any other action in such Insolvency Proceeding, which is adverse to their enforcement of any claim or receipt of adequate protection (as that term is defined in the Bankruptcy Code). In furtherance of the foregoing, Subordinate Lender hereby assigns to the Agent the right to vote all of Subordinate Lender's claims against Obligors, including the right to approve or object to any plan of reorganization, in any

Insolvency Proceeding with respect to the Subordinate Debt or the other Subordinate Loan Documents in any case by or against any Obligor, provided, however, that with respect to any proposed plan of reorganization in respect of which creditors are voting, Agent or Senior Lenders may vote on behalf of such Subordinate Lender only if Agent's or Senior Lender's claim is included in a class of claims that is "impaired" as contemplated under Section 1124 of the Bankruptcy Code under the proposed plan of reorganization, in Agent's sole and absolute discretion. In the event that such assignment shall be held invalid or unenforceable, then the provisions hereof prohibiting the right of Subordinate Lender to make any election, vote on any plan of reorganization, give any consent, commence any action or file any motion, notice or application or take any other action in any proceeding without the prior written consent of Senior Lenders shall not be affected thereby. To the extent not prohibited by the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure or other applicable law, the Agent shall be free to exercise such voting rights as the Agent shall determine in its sole and absolute discretion, and the Agent shall have no duty or obligation to file, prosecute, pursue or protect any such claim and shall otherwise have no duties, liabilities or obligations to Subordinate Lender with respect thereto. Subordinate Lender hereby appoints the Agent as its agent, and grants to Senior Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising any and all rights and taking any and all actions available to Subordinate Lender in connection with the assignment to Senior Lender of the voting rights described herein. Without in any way limiting the generality of Paragraph 8 hereof, Subordinate Lender hereby agrees that, upon the request of the Agent, Subordinate Lender shall do, execute, acknowledge and deliver to Senior Lender all and every such further acts, deeds, conveyances and instruments as the Agent may request for the better assuring and evidencing of the foregoing appointment and grant and assignment of such voting rights.

(c) In the event that Subordinate Lender shall fail to file a proof of claim with respect to the Subordinated Debt after ten (10) days written notice from the Agent, the Agent shall have the right to file such proof of claim on behalf of Subordinate Lender. Notwithstanding the foregoing and any provisions contained herein to the contrary, the Subordinate Lender may (i) take any action, which is not adverse to the priority status of the Agent or Senior Lenders or to the Agent's or Senior Lenders' exercise of their remedies, to protect and preserve the Subordinate Lender's claim, and (ii) file any necessary responses or pleadings in opposition to any pleading objecting to or seeking to disallow or reduce the Subordinate Lender's claim.

(d) To the extent any transfer, payment or distribution of assets with respect to the Senior Debt (whether in cash, property or securities and whether by or on behalf of any Obligor as proceeds of security or enforcement of any right of setoff or otherwise) is declared to be fraudulent or preferential, set aside or required to be paid to any Obligor, the estate in bankruptcy thereof, any third party, or a trustee, receiver or other similar party under any bankruptcy, insolvency, receivership or similar law, then if such payment is recovered by, or paid over to, Borrower or any other Obligor, the estate in bankruptcy thereof, any third party, or such trustee, receiver or other similar party, the Senior Debt or part thereof originally intended to be satisfied shall be deemed to be reinstated to the extent of the amount actually paid by the Agent or Senior Lenders with respect to the Senior Debt (the "Repayment") to any Obligor, the estate in bankruptcy thereof, any third party, or a trustee, receiver or other similar party under any bankruptcy, insolvency, receivership or similar law, and outstanding as if such payment or distribution had not occurred, and this Agreement and the agreements and subordination contained herein shall be reinstated with respect to any such transfer, payment or distribution to the extent of such Repayment. The Agent shall not be required to contest any such declaration or obligation to return such payment or distribution.

6. Approvals and Waivers of Subordinate Lender. Subordinate Lender declares, covenants, agrees, and acknowledges that:

(a) It consents to and authorizes all provisions of the Senior Security Documents and each of the other Senior Loan Documents.

(b) It intentionally and unconditionally subordinates the Subordinate Debt to the Senior Debt in accordance with the foregoing and understands that in reliance upon, and in consideration of, this subordination and the other agreements and representations set forth herein, specific loans and advances are being and will be made and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this subordination and the other agreements and representations set forth herein.

(c) It, in its capacity as the holder of the Subordinate Debt, intentionally and unconditionally waives and relinquishes any right to challenge the validity, enforceability and binding effect of any of the Senior Security Documents or the other Senior Loan Documents, and any lien, encumbrance, claim or security interest now or hereafter created thereunder, or the attachment, perfection or priority thereof, regardless of the order of recording or filing of any thereof, or compliance by Agent or the Senior Lenders with the terms of any of the Senior Security Documents or the other Senior Loan Documents, by reason of any matter, cause or thing now or hereafter occurring, nor shall Subordinate Lender raise any such matter, cause or thing as a defense to the enforcement thereof.

(d) It acknowledges and agrees that the agreements herein shall be effective at all times notwithstanding taking of possession of any of the Collateral or other property or assets of any Obligor by Agent or the order in which any loan, advance or extension of credit included in the obligations evidenced or secured by the Senior Security Documents and the other Senior Loan Documents or evidenced by the Subordinate Loan Documents is made (Subordinate Lender hereby waiving the benefits of any statute or rule of law which would produce a result contrary to or in conflict with the foregoing).

(e) It expressly waives notice of the acceptance of the subordinations and other agreements set forth herein, notice of reliance on such subordinations and other agreements, and notice of the creation of any Senior Debt after the date hereof.

(f) It, in its capacity as the holder of the Subordinate Debt, waives any right to receive notice from Agent or the Senior Lenders of the occurrence of a default under the Senior Loan Documents or the commencement of an Enforcement Action.

(g) It, in its capacity as the holder of the Subordinate Debt, agrees that it will not in any manner challenge, oppose, object to, interfere with or delay (i) the validity or enforceability of this Agreement, including without limitation, any provisions regarding the relative priority of the rights and duties of Agent and Senior Lenders and the Subordinate Lender, or (ii) Agent's or any Senior Lender's security interest in, liens on and rights as to the Obligors, and any Collateral or any other property or assets of any Obligor, or any Enforcement Actions of Agent or any Senior Lender (including, without limitation, any efforts by Agent to obtain relief from the automatic stay under Section 362 of the Bankruptcy Code).

(h) It acknowledges that any default, material misrepresentation or breach of warranty by it under this Agreement shall constitute an Event of Default under the Senior Loan Agreements.

7. Representations. Subordinate Lender represents and warrants to, and covenants and agrees with, the Agent as follows:

(a) It has all requisite power and authority to execute, deliver and perform its duties and obligations under this Agreement;

(b) It is the owner and holder of the Subordinate Debt;

(c) The execution, delivery and performance by it of this Agreement has been duly authorized by all requisite action;

(d) The outstanding principal balance of the Subordinate Debt is \$ _____ as the date hereof;

(e) This Agreement constitutes a valid and legally binding obligation of Subordinate Lender in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights generally;

(f) The Subordinate Debt is a general unsecured obligation of Guarantor, Subordinate Lender has no liens, claims, charges, pledges or security interests or other encumbrances, whether by contract, operation of law or otherwise, upon any property or right of Borrower or any other Obligor to secure the Subordinate Debt, and until the indefeasible payment in full in cash of the Senior Debt, and the Senior Lenders have no further obligation to make advances under the Senior Loan Documents, Subordinate Lender shall not obtain or claim, or seek to obtain, any lien, claim, charge, pledge, security interest or other encumbrance upon any of the property or rights of Borrower, any Obligor or any other Person; and

(g) There are no documents, agreements, instruments or understandings, oral or written, evidencing, securing or otherwise relating to the Subordinate Debt other than the Subordinate Note.

8. Further Assurance. Subordinate Lender hereby agrees that, within five (5) Business Days after request by Agent, it shall do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances and instruments, in recordable form, as Agent may reasonably request for the better assuring and evidencing of the foregoing subordinations and agreements.

9. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the Commonwealth of Virginia (excluding the laws applicable to conflicts or choice of law).

10. Entire Agreement. This Agreement shall be the whole and only agreement with regard to the subordination of the Subordinate Debt to the Senior Debt and the subordination of other liens, rights and claims of Subordinate Lender to the liens, rights and claims of Agent and Senior Lenders, and shall supersede any prior agreements as to such subordination.

11. Notices. All notices, demands, requests and other communications made hereunder shall be in writing and shall be properly given and deemed delivered on the date of delivery if sent by personal delivery or nationally recognized overnight courier and on the third business day following mailing if sent by certified or registered mail, postage prepaid, return receipt requested, as follows:

If to Agent: KeyBank National Association, As Agent
1200 Abernathy Road, N.E.
Suite 1550
Atlanta, Georgia 30328
Attn: Ms. Jennifer Wells
Telecopy No.: (770) 510-2195

With a copy to: McKenna Long & Aldridge LLP
Suite 5300
303 Peachtree Street, N.E.
Atlanta, Georgia 30308
Attn: William F. Timmons, Esq.
Telecopy No.: (404) 527-4198

If to Guarantor: Comstock Homebuilding Companies, Inc.
11465 Sunset Hills Road, 5th Floor
Reston, Virginia 20190
Attn: Christopher Clemente
Telecopy No.: (703) 760-1520

With a copy to: Comstock Homebuilding Companies, Inc.
11465 Sunset Hills Road, 5th Floor
Reston, Virginia 20190
Attn: Jubal Thompson, Esq.
Telecopy No.: (703) 760-1520

If to Subordinate Lender:

With a copy to:

or to such other addresses as any party hereto may request by notice served as required hereunder.

12. Changes to this Agreement. This Agreement may not be changed, terminated or modified, nor shall any provision of this Agreement be waived, except by an agreement in writing, signed by each of the parties hereto. No waiver shall extend to or affect any obligation not expressly waived or impair any right consequent thereon. No course of dealing or delay or omission on the part of the Agent in exercising any right shall operate as a waiver thereof or otherwise be prejudicial thereto. No notice to or demand upon Subordinate Lender shall entitle Subordinate Lender to other or further notice or demand in similar or other circumstances.

13. Waiver of Jury Trial. GUARANTOR, AGENT, AND SUBORDINATE LENDER HEREBY WAIVE THEIR RESPECTIVE RIGHT TO A JURY TRIAL WITH RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THE SENIOR GUARANTY, THE SENIOR LOAN AGREEMENT OR ANY OTHER SENIOR LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (VERBAL OR WRITTEN) OR ACTIONS BY EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR AGENT AND SENIOR LENDERS TO ENTER INTO CERTAIN WAIVERS AND AGREEMENTS GIVEN IN CONNECTION WITH THE SENIOR LOAN DOCUMENTS. SUBORDINATE LENDER (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF AGENT HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT AGENT WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (B) ACKNOWLEDGE THAT AGENT AND SENIOR LENDERS HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND CERTAIN WAIVERS AND AGREEMENTS RELATED TO THE SENIOR LOAN DOCUMENTS TO WHICH EACH IS A PARTY BY, AMONG OTHER THINGS, THE WAIVERS AND CERTIFICATIONS CONTAINED HEREIN.

14. No Third-Party Beneficiary. No person or entity (including, without limitation, any Obligor) is intended to be a third-party beneficiary of, and no one other than the Agent, the Senior Lenders, Subordinate Lender and its respective successors and assigns shall have any rights under this Agreement.

15. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Agent, Senior Lenders, Subordinate Lender and their respective successors, successors-in-title and assigns.

16. Counterparts. This Agreement may be executed in any number of counterparts, all of which counterparts, when taken together, shall constitute one original agreement.

17. Actions by Agent and Senior Lenders: Consent of Agent and Senior Lenders. Any consent required of Agent or Senior Lenders in this Agreement may be given or withheld in the sole and unfettered discretion of Agent or Senior Lenders, as applicable.

18. Time of Essence. Time is of the essence with respect to each and every covenant, agreement and obligation of the parties hereto under this Agreement.

19. Transfer. Each Senior Lender may sell, assign, transfer, pledge, encumber, hypothecate or enter into participations for all or any part of its respective interests in the Senior Loan Documents and the Senior Debt. The Subordinate Lender may not sell, assign, transfer, pledge, encumber, hypothecate or enter into participations for all or any part of its interest in the Subordinate Loan Documents or the Subordinate Debt, and any attempted sale, assignment, transfer, pledge, encumbrance, hypothecation or participation shall be void and of no force and effect; provided, however, that so long as the total aggregate amount of cash equity contributed to, and maintained with, the Subordinate Lender by Christopher Clemente and/or Gregory Benson, or their respective immediate family members or trusts established for their benefit, or

any entity owned or controlled by Mr. Clemente and/or Mr. Benson, is equal to or greater than One Million and No/100ths Dollars (\$1,000,000) (“Equity Contribution”), the Subordinate Lender may participate out or otherwise sell, assign, transfer, pledge, encumber, or hypothecate portions of the its interest in the Subordinate Loan Documents or the Subordinate Debt so long as the Equity Contribution is maintained for so long as the Senior Debt remains outstanding and provided further that any such subsequent transfer is made subject to all of the terms, conditions and restrictions of this Agreement.

20. No Joint Venture; No Fiduciary Relationship. This Agreement shall not be construed to create a partnership or joint venture between the parties hereto. Nothing contained in this Agreement or otherwise is intended to create an agency, trustee or fiduciary relationship between Subordinate Lender, on the one hand, and Agent or the Senior Lenders, on the other hand.

21. NOT A LOAN; NO DUTY TO PURCHASE. THIS AGREEMENT SHALL IN NO WAY BE CONSTRUED AS PROVIDING AN EXTENSION OF CREDIT BY ANY PARTY TO ANY OTHER OF THE PARTIES. NO PARTY SHALL HAVE THE OBLIGATION TO PURCHASE THE LOAN OF ANY OTHER PARTY HERETO UPON ANY DEFAULT BY BORROWER, GUARANTOR OR ANY OTHER PERSON UNDER ANY OF THE SUBORDINATE LOAN DOCUMENTS OR IN ANY OTHER EVENT WHATSOEVER.

22. Judicial Interpretation. In the event the provisions of this Agreement require judicial or other interpretation, it is agreed that the court interpreting or construing same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be more strictly construed against a party who by itself or through its agents prepared the same, it being agreed that all parties to this Agreement participated in the preparation of this Agreement.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the day and year first set forth above.

AGENT:

KEYBANK NATIONAL ASSOCIATION,
individually and as Agent

By: _____
Name: _____
Title: _____

[Signatures Continued On Next Page]

GUARANTOR:

Comstock Homebuilding Companies, Inc., a
Delaware corporation

By: _____
Name: Christopher Clemente
Title: Chief Executive Officer

[Signatures Continued On Next Page]

SUBORDINATE LENDER:

STONEHENGE FUNDING, LC, a Virginia limited liability company

By: _____
Name: _____
Title: _____

SCHEDULE A

Waiver or Forbearance of Defaults or Events of Default
Reduction or Debt Forgiveness of Interest
Reduction or Debt Forgiveness of Principal
Conversion of Debt to Stock
Elimination or Modification of Existing Warrants for Purchase of Stock
Elimination or Modifications to Covenants that do not negatively impact Senior Lender
Extension of Maturity Date
Reduction of Interest Rate
Acknowledgement of Subordination

SUBORDINATION AND STANDSTILL AGREEMENT

**NOTICE:
THIS SUBORDINATION AND STANDSTILL AGREEMENT
RESULTS IN YOUR PRIORITY OF PAYMENT BECOMING
SUBJECT TO AND OF LOWER PRIORITY
THAN THE PRIORITY AND LIEN
OF SOME OTHER OR LATER INSTRUMENT**

THIS SUBORDINATION AND STANDSTILL AGREEMENT (this "Agreement") is made this _____ day of December, 2009, by and among **COMSTOCK HOMEBUILDING COMPANIES, INC.**, a Delaware corporation ("Guarantor"), and **GUGGENHEIM CORPORATE FUNDING, LLC**, as administrative agent ("Agent") for the benefit of the several banks and other financial institutions or entities from time-to-time parties to the Senior Loan Agreement, defined below ("Senior Lenders"), and **STONEHENGE FUNDING, LC**, a Virginia limited liability company ("Subordinate Lender").

WITNESSETH:

WHEREAS, Guarantor has executed that certain Amended and Restated Indenture and amended Senior Note due 2013 dated as of March 14, 2008, in the principal sum of \$9,000,000 in favor of Subordinate Lender (collectively, the "Subordinate Note"); and

WHEREAS, pursuant to the Senior Loan Agreement (as hereinafter defined), the Senior Lenders (as hereinafter defined) provided a credit facility to Borrower (as hereinafter defined);

WHEREAS, Guarantor has executed a certain Senior Guaranty (as hereinafter defined) in favor of Agent pursuant to the Senior Loan Agreement;

WHEREAS, the obligations of Borrower and Guarantor under the Senior Loan Documents (as hereinafter defined) are secured by, among other things, the Senior Security Documents (as hereinafter defined);

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which consideration are hereby acknowledged, it is hereby declared, understood and agreed as follows:

1. Definitions.

(a) "Agent" has the meaning given such term in the introductory paragraph to this Agreement. Unless otherwise specified herein, "Agent" shall mean Guggenheim Corporate Funding, LLC in its capacity as agent under the Senior Loan Agreement.

(b) "Bankruptcy Code" means Title 11, United States Code, as amended from time to time, or any successor statute thereto.

(c) "Borrower" means Comstock Penderbrook, L.C., a Virginia limited liability company.

(d) "Cash Collateral Agreement" shall mean that certain Cash Collateral Agreement dated December 22, 2009 and executed by Borrower in favor of Agent for the benefit of the Senior Lenders, and as may be further amended, modified, increased, consolidated, restated or replaced.

(e) "Collateral" means all of the real, personal and other property now or hereafter encumbered by or securing the Senior Note, the Senior Loan Agreement, the Senior Security Documents, the Cash Collateral Agreement or the Senior Guaranty, or any documents

now or hereafter entered into or delivered in connection with any of them, and all of each Obligor's right, title and interest in and to such property, whether existing or future, and all security interests, security titles, liens, claims, pledges, encumbrances, conveyances, endorsements and guaranties of whatever nature now or hereafter securing any Obligor's obligations under the Senior Loan Documents or any part thereof, and all products and proceeds of the foregoing.

(f) "Enforcement Action" means the commencement of any litigation or proceeding at law or in equity, the commencement of any foreclosure proceeding, the exercise of any statutory or non-judicial power of sale, the taking of a deed or assignment in lieu of foreclosure, seeking to obtain a judgment, seeking the appointment of or the obtaining of a receiver or the taking of any other enforcement action against, or the taking of possession or control of, or the exercise of any rights or remedies with respect to, any Obligor or the Collateral, any other property or assets of any Obligor or any portion thereof.

(g) "Insolvency Proceeding" means any proceeding, whether voluntary or involuntary, under the Bankruptcy Code, or any other bankruptcy, insolvency, liquidation, reorganization, composition, extension, arrangement, adjustment or other similar proceeding concerning any Obligor, any action for the winding-up or dissolution of any Obligor, any proceeding (judicial or otherwise) concerning the application of the assets of any Obligor for the benefit of its creditors, the appointment of or any proceeding seeking the appointment of a trustee, receiver or other similar custodian for all or any substantial part of the assets of any Obligor, a general assignment for the benefit of creditors or any proceeding or action seeking the marshaling of the assets and liabilities of any Obligor, or any other action concerning the adjustment of the debts of any Obligor or the cessation of business by any Obligor, in each case under any applicable domestic or foreign federal or state law. For the purposes hereof, an "Insolvency Proceeding" shall also include the taking, seeking or approving of any action in any proceeding described in the foregoing sentence by, against or concerning any other Person that could adversely affect any Obligor, any other obligor with respect to the Subordinate Loan, the Collateral, the Senior Loan Documents, the Agent, the Senior Lenders or any Enforcement Action under the Senior Security Documents or any other Senior Loan Document.

(h) "Obligors" means Borrower and Guarantor, and each other guarantor or obligor of or with respect to any part of the Senior Debt.

(i) "Senior Assignment of Interests" means that certain Amended and Restated Deed of Trust With Absolute Assignment Of Leases And Rents, Security Agreement and Fixture Filing executed by Borrower, as Grantor, in favor of the Agent and Senior Lenders, as beneficiaries, and as the same may be further amended, extended, supplemented, consolidated, renewed, restated or otherwise modified from time to time,.

(j) "Senior Debt" means the (i) principal of, premium, if any, and interest on the Senior Note or pursuant to the Senior Loan Agreement (whether payable under the Senior Note, the Senior Loan Agreement, or the Senior Guaranty or any other Senior Loan Document), (ii) prepayment fees, exit fee, yield maintenance charges, breakage costs, late charges, default interest, agent's fees, costs of collection, protective advances, advances to cure defaults, and indemnities, (iii) any other amount or obligations (including any fee or expense) due or payable with respect to the Senior Loan or any of the Senior Loan Documents (including interest and any other of the foregoing amounts accruing after the commencement of any Insolvency Proceeding,

and any other interest that would have accrued but for the commencement of such Insolvency Proceeding, whether or not any such interest is allowed as an enforceable claim in such Insolvency Proceeding and regardless of the value of the Collateral at the time of such accrual), whether outstanding on the date of this Agreement or hereafter incurred, whether as a secured claim, undersecured claim, unsecured claim, deficiency claim or otherwise, and all renewals, modifications, amendments, supplements, consolidations, restatements, extensions, refinances, and refundings of any thereof.

(k) "Senior Guaranty" means, collectively, that certain Limited Guaranty executed by the Guarantor and that certain Completion Guaranty executed by the Guarantor, each dated as of February 22, 2007 in favor of Agent for the benefit of the Senior Lenders, and as the same may be from time to time amended, extended, supplemented, consolidated, renewed, restated or otherwise modified.

(l) "Senior Lenders" means "Lenders" as defined in the Senior Loan Agreement.

(m) "Senior Loan" means the up to \$28,000,000 credit facility provided pursuant to the Senior Loan Agreement, as the same may be amended, modified, increased, consolidated, restated or replaced as provided herein.

(n) "Senior Loan Agreement" means that certain Loan Agreement dated as of February 22, 2007 executed by Borrower, Guarantor and Agent, and certain other parties now or hereafter a party thereto, and as may be further amended, modified, increased, consolidated, restated or replaced.

(o) "Senior Loan Documents" means the Senior Security Documents, the Senior Note, the Senior Loan Agreement, the Senior Guaranty, the Senior Assignment of Interests, the Cash Collateral Agreement and any other documents, agreements or instruments now or hereafter executed and delivered by or on behalf of any Obligor or any other person or entity in connection with the Senior Loan, and any documents, agreements or instruments hereafter executed and delivered by or on behalf of any Obligor or any other person or entity in connection with any refinancing of the Senior Loan, as any of the same may be from time to time amended, extended, supplemented, consolidated, renewed, restated or otherwise modified.

(p) "Senior Note" means that certain note which may be executed by Borrower in favor of Agent and Senior Lenders pursuant to the Senior Loan Agreement, as originally executed, or if varied, extended, supplemented, consolidated, amended, replaced, renewed, modified, or restated from time to time as so varied, extended, supplemented, consolidated, amended, replaced, renewed, modified or restated.

(q) "Senior Security Documents" means the Senior Assignment of Interests and each and every other security document as referenced in the Senior Loan Agreement, the Cash Collateral Agreement and each other Senior Loan Document securing any or all of the Senior Loan, together with any and all acknowledgments, powers, certificates, UCC financing statements or other documents or instruments executed and delivered in connection therewith.

(r) "Subordinate Debt" means the principal amount of the indebtedness evidenced by the Subordinate Note, together with any interest, premium, yield maintenance charges, breakage costs, late charges, default interest, costs of collection, protective advances, advances to cure defaults, indemnities, reimbursement obligations and any other amount or obligation (including any fee or expense) due thereon or payable with respect thereto or pursuant to the Subordinate Loan Documents, whether outstanding on the date of this Agreement or hereafter incurred, and all permitted renewals, modifications, amendments, supplements, consolidations, restatements, extensions, refinances and refundings of any thereof.

(s) "Subordinate Loan Documents" means the Subordinate Note and any other document, agreement or instrument now or hereafter executed and delivered by or on behalf of Guarantor in connection with the indebtedness evidenced by the Subordinate Note, as any of the same may be from time to time amended, extended, supplemented, consolidated, renewed, restated or otherwise modified as permitted herein.

(t) Except as otherwise provided herein, capitalized terms used herein that are not otherwise defined herein shall have the meanings set forth in the Senior Loan Agreement.

2. Effectiveness of Agreement. This Agreement shall be deemed effective as of the date of execution.

3. Priority of Collateral and Payments. Guarantor and Subordinate Lender covenant and agree that the payment of the Subordinate Debt is hereby unconditionally and expressly made junior, subordinate and subject in right and time of payment and in all other respects to the indefeasible prior payment in full in cash of all Senior Debt. Without limiting the foregoing, the Subordinate Loan Documents, as well as all of the rights and remedies of Subordinate Lender under the Subordinate Loan Documents or otherwise in and to the Collateral or other property or assets of the Obligors, are hereby unconditionally and expressly made subject and subordinate in lien and subordinate in payment to the Senior Debt, and to all of the rights and remedies, of Agent and the Senior Lenders under the Senior Loan Agreement under the Senior Loan Documents and to the Collateral or other property or assets of the Obligors. In addition, in furtherance of and without limiting the foregoing, Subordinate Lender agrees that:

(a) Subordinate Lender shall have no right, lien or claim in and to the Collateral and the proceeds thereof (including, without limitation, any rights with respect to insurance proceeds and condemnation awards), or any other property or assets of any Obligor until such time as the period described in Paragraph 4 hereof shall have lapsed;

(b) Subordinate Lender hereby expressly waives any rights to require or request that the Agent and the Senior Lenders marshal the Collateral in favor of Subordinate Lender or to equitably subordinate the rights, liens or security interests of Agent and the Senior Lenders under the Senior Loan Documents, whether pursuant to the Bankruptcy Code or otherwise. Agent and the Senior Lenders shall have the right at any and all times to determine the order in which, or whether, (i) recourse is sought against any Obligor or any other obligor with respect to the Senior Debt, or (ii) any or all of the collateral security for the indebtedness and obligations under the Senior Loan Documents in which a lien has been granted to or obtained by Agent shall be enforced. Subordinate Lender hereby waives any and all rights to require that Agent and/or the Senior Lenders pursue or exhaust any rights or remedies with respect to any Obligor or any other party prior to exercising their rights and remedies with respect to the Collateral or any other property or assets of the Obligors. Agent and the Senior Lenders may forbear collection, grant indulgences, release, compromise or settle the Senior Debt, or sell, take,

exchange, surrender or release collateral or security therefor, consent to or waive any breach of, or any act, omission or default under, any of the Senior Loan Documents, apply any sums received by or realized upon by Agent and the Senior Lenders against liabilities of the Obligors to Agent and the Senior Lenders in such order as Agent and the Senior Lenders shall determine in their sole discretion, and otherwise deal with any and all parties and the Collateral or other property or assets of the Obligors as they deem appropriate. Agent and the Senior Lenders shall have no liability to Subordinate Lender for, and Subordinate Lender hereby waives any claim, right, action or cause of action which it may now or hereafter have against Agent and the Senior Lenders arising out of, any waiver, consent, release, indulgence, extension, delay or other action or omission, any release of any Obligor, release of any of the Collateral securing such indebtedness and obligations, the failure to realize upon any Collateral or other property or assets of any Obligor, or the failure to exercise any rights or remedies of Agent and the Senior Lenders under the Senior Loan Documents;

(c) Subordinate Lender hereby expressly consents to and authorizes, at the option of the Senior Lenders the acceptance of additional Senior Security Documents, or the release of any Obligor. Subordinate Lender hereby expressly consents to and authorizes, at the option of the Agent, the amendment, extension, restatement, consolidation, increase, renewal, refinance or other modification, in whole or in part, of all or any of the Senior Loan Documents, including, without limitation, increasing or decreasing the stated principal amount of the Senior Loan, extending or shortening the term of the Senior Loan, increasing or decreasing the interest rate payable as provided in the Senior Loan Agreement or altering any other payment terms under the Senior Loan Documents;

(d) Subordinate Lender hereby absolutely and irrevocably waives, to the fullest extent permitted by law, any rights they may have, by contract, at law or in equity, to be subrogated to the Agent's and the Senior Lenders' rights against the Obligors under the Senior Loan Documents or to the Agent's liens and security interests on any of the Collateral. If Subordinate Lender shall acquire by indemnification, subrogation or otherwise, any lien, estate, right or other interest in or with respect to the Collateral or other property or assets of any Obligor, that lien, estate, right or other interest shall be subordinate to the Senior Security Documents and the other Senior Loan Documents as provided herein and shall be held in trust for the benefit of, and assigned to, Agent in accordance with this Agreement;

(e) Subordinate Lender agrees that it shall not agree to, and nothing herein or in the Senior Loan Documents shall be deemed to evidence approval of Agent or the Senior Lenders of, any increase to the Subordinate Note, or any other amendment or modification of the Subordinate Loan Documents except for modifications or amendments that do not negatively impact Agent or the Senior Lenders and are of the general type set forth on Schedule A attached hereto and made a part hereof; provided, however, that no amendment or modification to the Subordinate Loan Documents shall in any event (i) increase the stated principal amount of the Subordinate Debt, (ii) shorten the term of the Subordinate Debt, (iii) increase the interest rate on the Subordinate Debt, (iv) provide collateral or other security for the Subordinate Debt, (v) provide for additional obligors of the Subordinate Debt or (vi) include more restrictive covenants, conditions or defaults than those existing as of the date hereof. Subordinate Lender and Guarantor shall promptly provide to Agent a fully executed copy of any amendment or modification to the Subordinate Note;

(f) Subordinate Lender acknowledges that Agent and Senior Lenders have not made nor do they now make any representations or warranties, express or implied, nor do they assume any liability to Subordinate Lender, with respect to the creditworthiness or financial condition of Guarantor, any Obligor or any other Person. Subordinate Lender acknowledges that it has, independently and without reliance upon Agent or any Senior Lender, and based upon such information and documents as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement and the Subordinate Loan. Subordinate Lender will, independently and without reliance upon Agent or any Senior Lender, based upon such information and documents as it deems appropriate at the time, continue to make its own credit analysis and decisions in taking or not taking action under this Agreement and the Subordinate Loan Documents. None of Agent or any Senior Lender shall have any duty or responsibility, either initially or on a continuing basis, to provide Subordinate Lender with any credit or other information with respect to Guarantor or any other Obligor, whether coming into its possession before the making of the Senior Loan or at any time or times thereafter. Subordinate Lender agrees that none of Agent or any Senior Lender owes any fiduciary duty to Subordinate Lender in connection with the administration of the Senior Loan and the Senior Loan Documents and Subordinate Lender agrees not to assert any such claim;

(g) Unless the Agent and Senior Lenders shall have consented in writing to such modification or amendment, no modification or amendment of the Subordinate Loan Documents shall be binding except for modifications or amendments that do not negatively impact Agent or the Senior Lenders and are of the general type set forth on Schedule A attached hereto and made a part hereof; provided, however, that no amendment or modification to the Subordinate Loan Documents shall in any event (i) increase the stated principal amount of the Subordinate Debt, (ii) shorten the term of the Subordinate Debt, (iii) increase the interest rate on the Subordinate Debt, (iv) provide collateral or other security for the Subordinate Debt, (v) provide for additional obligors of the Subordinate Debt or (vi) include more restrictive covenants, conditions or defaults than those existing as of the date hereof. Subordinate Lender and Guarantor shall promptly provide to Agent a fully executed copy of any amendment or modification to the Subordinate Note;

(h) If, notwithstanding the provisions of this Agreement, any payment or distribution of any kind or character (whether in cash, securities, or other property) shall be received by Subordinate Lender directly or indirectly from any Obligor (whether out of or in connection with the Collateral, upon any payment or distribution of the assets of any Obligor of any kind or character to creditors upon or in connection with any Insolvency Proceeding or otherwise) in contravention of the terms of this Agreement, such payment, distribution or security shall not be commingled with any asset of Subordinate Lender, but rather shall be held in trust for the benefit of, and shall be paid over or delivered and transferred to, the Agent or its representative, for application to the payment of the Senior Debt remaining unpaid, until all of the Senior Debt shall have been indefeasibly paid in full in cash. In any such event, Agent may, but it shall not be obligated to, demand, claim and collect any such payment or distribution that would, but for the subordination provisions, be payable or deliverable with respect to the Subordinate Debt.

(i) Notwithstanding anything to the contrary set forth herein, Subordinate Lender shall not be permitted to receive any payments with respect to the Subordinate Debt until such time as the Senior Debt shall have been indefeasibly paid in full in cash, and Senior Lenders have no further obligation to make advances under the Senior Loan Documents. All payments or distributions upon or with respect to the Subordinate Debt which are received by Subordinate Lender contrary to the provisions of this Agreement shall be received and held in trust by the Subordinate Lender for the benefit of Senior Lenders and shall be paid over to Agent in the same form as so received (with any necessary endorsement) to be applied (in the case of cash) to, or held as collateral (in the case of non-cash property or securities) for performance of the Senior Debt in accordance with the terms of the Senior Loan Documents.

4. Certain Actions Regarding Subordinate Debt. Until such time as the Senior Debt shall have been indefeasibly paid in full in cash, and Senior Lenders have no further obligation to make advances under the Senior Loan Documents, Subordinate Lender shall not take any of the following actions with respect to the Subordinate Debt until one (1) year and one (1) day following the indefeasible payment in full of the Senior Debt in cash without the prior written consent of the Agent and Senior Lenders:

(a) Declare a default or event of default under the Subordinate Loan Documents, accelerate all or any portion of the Subordinate Debt or exercise any of its remedies (including, without limitation, any Enforcement Action) under the Subordinate Loan Documents or at law or in equity;

(b) Commence, directly or indirectly, any legal or other proceedings against any Obligor, or commence any Enforcement Action;

(c) Consent to or enter into any amendment or modification of any of the Subordinate Loan Documents except for modifications or amendments that do not negatively impact Agent or the Senior Lenders and are of the general type set forth on Schedule A attached hereto and made a part hereof; provided, however, that no amendment or modification to the Subordinate Loan Documents shall in any event (i) increase the stated principal amount of the Subordinate Debt, (ii) shorten the term of the Subordinate Debt, (iii) increase the interest rate on the Subordinate Debt, (iv) provide collateral or other security for the Subordinate Debt, (v) provide for additional obligors of the Subordinate Debt or (vi) include more restrictive covenants, conditions or defaults than those existing as of the date hereof. Subordinate Lender and Guarantor shall promptly provide to Agent a fully executed copy of any amendment or modification to the Subordinate Note; or

(d) Commence, directly or indirectly, or consent to any Insolvency Proceeding by or against any Obligor.

5. Bankruptcy Issues.

(a) The provisions of this Agreement shall be applicable both before and after the commencement, whether voluntary or involuntary, of any Insolvency Proceeding by or against any Obligor and all references herein to any Obligor shall be deemed to apply to any such Obligor as a debtor-in-possession and to any trustee in bankruptcy for the estate of any such Obligor. Furthermore, this Agreement and the subordinations contained herein shall apply notwithstanding the fact that all or any part of the Senior Debt or any claim for or with respect to the Senior Debt is subordinated, avoided or disallowed, in whole or in part, in any Insolvency Proceeding or by other applicable federal, state or foreign law; provided, however, that if the subordination or disallowance of the claims of the Senior Lenders are predicated on gross

misconduct or bad faith of the Senior Lenders, then the subordination provisions set forth herein shall not apply. Without limiting the foregoing, Subordinate Lender expressly covenants and agrees that this Agreement is enforceable under applicable bankruptcy law and should be enforced under Section 510(a) of the Bankruptcy Code. Until such time as the Senior Debt has been indefeasibly paid in full in cash and Senior Lenders have no further obligation to make any advances under the Senior Loan Documents, Subordinate Lender shall not, and shall not solicit any person or entity to: (i) seek, commence, file, institute, consent to or acquiesce in any Involuntary Proceeding with respect to any Obligor or the Collateral; (ii) seek to consolidate any Obligor with any other person or entity in any Insolvency Proceeding; or (iii) take any action in furtherance of any of the foregoing.

(b) Subordinate Lender hereby agrees that it shall not make any election, give any consent, commence any action or file any motion, notice or application or take any other action in any Insolvency Proceeding (including, without limitation, any action under Section 105 of the Bankruptcy Code) with respect to the Subordinate Debt or the other Subordinate Loan Documents in any case by or against any Obligor or their property without the prior written consent of Senior Lenders, which may be granted or withheld in Senior Lenders' sole and absolute discretion; provided, however, that with respect to any such Insolvency Proceeding, (i) the Subordinate Lender may file a proof of claim, (ii) the Agent may vote in any such Insolvency Proceeding any and all claims of Subordinate Lender, and Subordinate Lender hereby appoints the Agent as its agent, and grants to the Agent an irrevocable power of attorney coupled with an interest, and its proxy, for the purpose of exercising any and all rights and taking any and all actions available to the Subordinate Lender in connection with any case by or against any Obligor or their property in any Insolvency Proceeding, including without limitation, the right to vote to accept or reject a plan, to make any election under Section 1111(b) of the Bankruptcy Code; provided, however, that with respect to any proposed plan of reorganization in respect of which creditors are voting, Agent or Senior Lenders may vote on behalf of such Subordinate Lender only if Agent's or Senior Lender's claim is included in a class of claims that is "impaired" as contemplated by Section 1124 of the Bankruptcy Code under the proposed plan of reorganization, in Agent's sole and absolute discretion, and (iii) Subordinate Lender shall not challenge the validity or amount of any claim submitted in such Insolvency Proceeding by the Agent or the Senior Lenders or any valuations of the Collateral submitted by the Agent or the Senior Lenders, in such Insolvency Proceeding or take any other action in such Insolvency Proceeding, which is adverse to their enforcement of any claim or receipt of adequate protection (as that term is defined in the Bankruptcy Code). In furtherance of the foregoing, Subordinate Lender hereby assigns to the Agent the right to vote all of Subordinate Lender's claims against Obligors, including the right to approve or object to any plan of reorganization, in any Insolvency Proceeding with respect to the Subordinate Debt or the other Subordinate Loan Documents in any case by or against any Obligor, provided, however, that with respect to any proposed plan of reorganization in respect of which creditors are voting, Agent or Senior Lenders may vote on behalf of such Subordinate Lender only if Agent's or Senior Lender's claim is included in a class of claims that is "impaired" as contemplated under Section 1124 of the Bankruptcy Code under the proposed plan of reorganization, in Agent's sole and absolute discretion. In the event that such assignment shall be held invalid or unenforceable, then the provisions hereof prohibiting the right of Subordinate Lender to make any election, vote on any plan of reorganization, give any consent, commence any action or file any motion, notice or application or take any other action in any proceeding without the prior written consent of Senior Lenders shall not be affected thereby. To the extent not prohibited by the Bankruptcy Code, the

Federal Rules of Bankruptcy Procedure or other applicable law, the Agent shall be free to exercise such voting rights as the Agent shall determine in its sole and absolute discretion, and the Agent shall have no duty or obligation to file, prosecute, pursue or protect any such claim and shall otherwise have no duties, liabilities or obligations to Subordinate Lender with respect thereto. Subordinate Lender hereby appoints the Agent as its agent, and grants to Senior Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising any and all rights and taking any and all actions available to Subordinate Lender in connection with the assignment to Senior Lender of the voting rights described herein. Without in any way limiting the generality of Paragraph 8 hereof, Subordinate Lender hereby agrees that, upon the request of the Agent, Subordinate Lender shall do, execute, acknowledge and deliver to Senior Lender all and every such further acts, deeds, conveyances and instruments as the Agent may request for the better assuring and evidencing of the foregoing appointment and grant and assignment of such voting rights.

(c) In the event that Subordinate Lender shall fail to file a proof of claim with respect to the Subordinated Debt after ten (10) days written notice from the Agent, the Agent shall have the right to file such proof of claim on behalf of Subordinate Lender. Notwithstanding the foregoing and any provisions contained herein to the contrary, the Subordinate Lender may (i) take any action, which is not adverse to the priority status of the Agent or Senior Lenders or to the Agent's or Senior Lenders' exercise of their remedies, to protect and preserve the Subordinate Lender's claim, and (ii) file any necessary responses or pleadings in opposition to any pleading objecting to or seeking to disallow or reduce the Subordinate Lender's claim.

(d) To the extent any transfer, payment or distribution of assets with respect to the Senior Debt (whether in cash, property or securities and whether by or on behalf of any Obligor as proceeds of security or enforcement of any right of setoff or otherwise) is declared to be fraudulent or preferential, set aside or required to be paid to any Obligor, the estate in bankruptcy thereof, any third party, or a trustee, receiver or other similar party under any bankruptcy, insolvency, receivership or similar law, then if such payment is recovered by, or paid over to, Borrower or any other Obligor, the estate in bankruptcy thereof, any third party, or such trustee, receiver or other similar party, the Senior Debt or part thereof originally intended to be satisfied shall be deemed to be reinstated to the extent of the amount actually paid by the Agent or Senior Lenders with respect to the Senior Debt (the "Repayment") to any Obligor, the estate in bankruptcy thereof, any third party, or a trustee, receiver or other similar party under any bankruptcy, insolvency, receivership or similar law, and outstanding as if such payment or distribution had not occurred, and this Agreement and the agreements and subordination contained herein shall be reinstated with respect to any such transfer, payment or distribution to the extent of such Repayment. The Agent shall not be required to contest any such declaration or obligation to return such payment or distribution.

6. Approvals and Waivers of Subordinate Lender. Subordinate Lender declares, covenants, agrees, and acknowledges that:

(a) It consents to and authorizes all provisions of the Senior Security Documents and each of the other Senior Loan Documents.

(b) It intentionally and unconditionally subordinates the Subordinate Debt to the Senior Debt in accordance with the foregoing and understands that in reliance upon, and in consideration of, this subordination and the other agreements and representations set forth herein,

specific loans and advances are being and will be made and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this subordination and the other agreements and representations set forth herein.

(c) It, in its capacity as the holder of the Subordinate Debt, intentionally and unconditionally waives and relinquishes any right to challenge the validity, enforceability and binding effect of any of the Senior Security Documents or the other Senior Loan Documents, and any lien, encumbrance, claim or security interest now or hereafter created thereunder, or the attachment, perfection or priority thereof, regardless of the order of recording or filing of any thereof, or compliance by Agent or the Senior Lenders with the terms of any of the Senior Security Documents or the other Senior Loan Documents, by reason of any matter, cause or thing now or hereafter occurring, nor shall Subordinate Lender raise any such matter, cause or thing as a defense to the enforcement thereof.

(d) It acknowledges and agrees that the agreements herein shall be effective at all times notwithstanding taking of possession of any of the Collateral or other property or assets of any Obligor by Agent or the order in which any loan, advance or extension of credit included in the obligations evidenced or secured by the Senior Security Documents and the other Senior Loan Documents or evidenced by the Subordinate Loan Documents is made (Subordinate Lender hereby waiving the benefits of any statute or rule of law which would produce a result contrary to or in conflict with the foregoing).

(e) It expressly waives notice of the acceptance of the subordinations and other agreements set forth herein, notice of reliance on such subordinations and other agreements, and notice of the creation of any Senior Debt after the date hereof.

(f) It, in its capacity as the holder of the Subordinate Debt, waives any right to receive notice from Agent or the Senior Lenders of the occurrence of a default under the Senior Loan Documents or the commencement of an Enforcement Action.

(g) It, in its capacity as the holder of the Subordinate Debt, agrees that it will not in any manner challenge, oppose, object to, interfere with or delay (i) the validity or enforceability of this Agreement, including without limitation, any provisions regarding the relative priority of the rights and duties of Agent and Senior Lenders and the Subordinate Lender, or (ii) Agent's or any Senior Lender's security interest in, liens on and rights as to the Obligors, and any Collateral or any other property or assets of any Obligor, or any Enforcement Actions of Agent or any Senior Lender (including, without limitation, any efforts by Agent to obtain relief from the automatic stay under Section 362 of the Bankruptcy Code).

(h) It acknowledges that any default, material misrepresentation or breach of warranty by it under this Agreement shall constitute an Event of Default under the Senior Loan Agreements.

7. Representations. Subordinate Lender represents and warrants to, and covenants and agrees with, the Agent as follows:

(a) It has all requisite power and authority to execute, deliver and perform its duties and obligations under this Agreement;

(b) It is the owner and holder of the Subordinate Debt;

(c) The execution, delivery and performance by it of this Agreement has been duly authorized by all requisite action;

(d) The outstanding principal balance of the Subordinate Debt is \$9,000,000 as the date hereof;

(e) This Agreement constitutes a valid and legally binding obligation of Subordinate Lender in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights generally;

(f) The Subordinate Debt is a general unsecured obligation of Guarantor, Subordinate Lender has no liens, claims, charges, pledges or security interests or other encumbrances, whether by contract, operation of law or otherwise, upon any property or right of Borrower or any other Obligor to secure the Subordinate Debt, and until the indefeasible payment in full in cash of the Senior Debt, and the Senior Lenders have no further obligation to make advances under the Senior Loan Documents, Subordinate Lender shall not obtain or claim, or seek to obtain, any lien, claim, charge, pledge, security interest or other encumbrance upon any of the property or rights of Borrower, any Obligor or any other Person; and

(g) There are no documents, agreements, instruments or understandings, oral or written, evidencing, securing or otherwise relating to the Subordinate Debt other than the Subordinate Note.

8. Further Assurance. Subordinate Lender hereby agrees that, within five (5) Business Days after request by Agent, it shall do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances and instruments, in recordable form, as Agent may reasonably request for the better assuring and evidencing of the foregoing subordinations and agreements.

9. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the Commonwealth of Virginia (excluding the laws applicable to conflicts or choice of law).

10. Entire Agreement. This Agreement shall be the whole and only agreement with regard to the subordination of the Subordinate Debt to the Senior Debt and the subordination of other liens, rights and claims of Subordinate Lender to the liens, rights and claims of Agent and Senior Lenders, and shall supersede any prior agreements as to such subordination.

11. Notices. All notices, demands, requests and other communications made hereunder shall be in writing and shall be properly given and deemed delivered on the date of delivery if sent by personal delivery or nationally recognized overnight courier and on the third business day following mailing if sent by certified or registered mail, postage prepaid, return receipt requested, as follows:

If to Agent:

Guggenheim Corporate Funding, LLC
135 East 57th Street
New York, New York 10022
Attention: Fund Controller
Facsimile Number: (212) 644-8396
Telephone: (212) 651-0840

With a copy to: LeClairRyan
999 Waterside Drive, Suite 2525
Norfolk, Virginia 23510
Attention: Ray W. King, Esq.
Facsimile Number: (757) 624-3773
Telephone: (757) 441-8929

If to Guarantor: Comstock Homebuilding Companies, Inc.
11465 Sunset Hills Road, 4th Floor
Reston, Virginia 20190
Attn: Christopher Clemente
Telecopy No.: (703) 760-1520

With a copy to: Comstock Homebuilding Companies, Inc.
11465 Sunset Hills Road, 4th Floor
Reston, Virginia 20190
Attn: Jubal Thompson, Esq.
Telecopy No.: (703) 760-1520

If to Subordinate Lender: Stonehenge Funding, L.C.
11465 Sunset Hills Road, 4th Floor
Reston, Virginia 20190
Attn: Beau Schweikert
Telecopy No.: (703) 230-1465

With a copy to: Stonehenge Funding, L.C.
11465 Sunset Hills Road, 4th Floor
Reston, Virginia 20190
Attn: Phil London, Esq.
Telecopy No.: (703) 230-1465

or to such other addresses as any party hereto may request by notice served as required hereunder.

12. Changes to this Agreement. This Agreement may not be changed, terminated or modified, nor shall any provision of this Agreement be waived, except by an agreement in writing, signed by each of the parties hereto. No waiver shall extend to or affect any obligation not expressly waived or impair any right consequent thereon. No course of dealing or delay or omission on the part of the Agent in exercising any right shall operate as a waiver thereof or otherwise be prejudicial thereto. No notice to or demand upon Subordinate Lender shall entitle Subordinate Lender to other or further notice or demand in similar or other circumstances.

13. Waiver of Jury Trial. GUARANTOR, AGENT, AND SUBORDINATE LENDER HEREBY WAIVE THEIR RESPECTIVE RIGHT TO A JURY TRIAL WITH RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THE SENIOR GUARANTY, THE SENIOR LOAN AGREEMENT OR ANY OTHER SENIOR LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (VERBAL OR WRITTEN) OR ACTIONS BY EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR AGENT AND SENIOR LENDERS TO ENTER INTO CERTAIN WAIVERS AND AGREEMENTS GIVEN IN CONNECTION WITH THE SENIOR LOAN DOCUMENTS. SUBORDINATE LENDER

(A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF AGENT HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT AGENT WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (B) ACKNOWLEDGE THAT AGENT AND SENIOR LENDERS HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND CERTAIN WAIVERS AND AGREEMENTS RELATED TO THE SENIOR LOAN DOCUMENTS TO WHICH EACH IS A PARTY BY, AMONG OTHER THINGS, THE WAIVERS AND CERTIFICATIONS CONTAINED HEREIN.

14. No Third-Party Beneficiary. No person or entity (including, without limitation, any Obligor) is intended to be a third-party beneficiary of, and no one other than the Agent, the Senior Lenders, Subordinate Lender and its respective successors and assigns shall have any rights under this Agreement.

15. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Agent, Senior Lenders, Subordinate Lender and their respective successors, successors-in-title and assigns.

16. Counterparts. This Agreement may be executed in any number of counterparts, all of which counterparts, when taken together, shall constitute one original agreement.

17. Actions by Agent and Senior Lenders; Consent of Agent and Senior Lenders. Any consent required of Agent or Senior Lenders in this Agreement may be given or withheld in the sole and unfettered discretion of Agent or Senior Lenders, as applicable.

18. Time of Essence. Time is of the essence with respect to each and every covenant, agreement and obligation of the parties hereto under this Agreement.

19. Transfer. Each Senior Lender may sell, assign, transfer, pledge, encumber, hypothecate or enter into participations for all or any part of its respective interests in the Senior Loan Documents and the Senior Debt. The Subordinate Lender may not sell, assign, transfer, pledge, encumber, hypothecate or enter into participations for all or any part of its interest in the Subordinate Loan Documents or the Subordinate Debt, and any attempted sale, assignment, transfer, pledge, encumbrance, hypothecation or participation shall be void and of no force and effect; provided, however, that so long as the total aggregate amount of cash equity contributed to, and maintained with, the Subordinate Lender by Christopher Clemente and/or Gregory Benson, or their respective immediate family members or trusts established for their benefit, or any entity owned or controlled by Mr. Clemente and/or Mr. Benson, is equal to or greater than One Million and No/100ths Dollars (\$1,000,000) ("Equity Contribution"), the Subordinate Lender may participate out or otherwise sell, assign, transfer, pledge, encumber, or hypothecate portions of the its interest in the Subordinate Loan Documents or the Subordinate Debt so long as the Equity Contribution is maintained for so long as the Senior Debt remains outstanding and provided further that any such subsequent transfer is made subject to all of the terms, conditions and restrictions of this Agreement.

20. No Joint Venture; No Fiduciary Relationship. This Agreement shall not be construed to create a partnership or joint venture between the parties hereto. Nothing contained in this Agreement or otherwise is intended to create an agency, trustee or fiduciary relationship between Subordinate Lender, on the one hand, and Agent or the Senior Lenders, on the other hand.

21. NOT A LOAN; NO DUTY TO PURCHASE. THIS AGREEMENT SHALL IN NO WAY BE CONSTRUED AS PROVIDING AN EXTENSION OF CREDIT BY ANY PARTY TO ANY OTHER OF THE PARTIES. NO PARTY SHALL HAVE THE OBLIGATION TO PURCHASE THE LOAN OF ANY OTHER PARTY HERETO UPON ANY DEFAULT BY BORROWER, GUARANTOR OR ANY OTHER PERSON UNDER ANY OF THE SUBORDINATE LOAN DOCUMENTS OR IN ANY OTHER EVENT WHATSOEVER.

22. Judicial Interpretation. In the event the provisions of this Agreement require judicial or other interpretation, it is agreed that the court interpreting or construing same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be more strictly construed against a party who by itself or through its agents prepared the same, it being agreed that all parties to this Agreement participated in the preparation of this Agreement.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the day and year first set forth above.

AGENT:

GUGGENHEIM CORPORATE FUNDING, LLC,
as Administrative Agent

By: _____ (SEAL)

Name: _____

Title: _____

[Signatures Continued On Next Page]

GUARANTOR:

Comstock Homebuilding Companies, Inc., a
Delaware corporation

By: _____
Name: Christopher Clemente
Title: Chief Executive Officer

[Signatures Continued On Next Page]

SUBORDINATE LENDER:

STONEHENGE FUNDING, LC, a
Virginia limited liability company

By: _____
Name: _____
Title: _____

SCHEDULE A

Waiver or Forbearance of Defaults or Events of Default
Reduction or Debt Forgiveness of Interest
Reduction or Debt Forgiveness of Principal
Conversion of Debt to Stock
Elimination or Modification of Existing Warrants for Purchase of Stock
Elimination or Modifications to Covenants that do not negatively impact Senior Lender
Extension of Maturity Date
Reduction of Interest Rate
Acknowledgement of Subordination

SEVENTH LOAN MODIFICATION AGREEMENT

THIS SEVENTH LOAN MODIFICATION AGREEMENT (this “**Agreement**” or this “**Modification**”) is made effective as of the ____ day of February, 2010 (the “**Effective Date**”), by and among: **COMSTOCK HOMEBUILDING COMPANIES, INC.**, a Delaware corporation (the “**Borrower**,” whether one or more) and **BANK OF AMERICA, N.A.**, a national banking association, its successors and assigns (the “**Lender**”).

RECITALS:

WHEREAS, pursuant to the terms of that certain Revolving Line of Credit Note dated as of February 22, 2006, by and between Borrower and Lender (and as the same may be further modified, renewed, supplemented or restated, the “**Note**”), Lender made a loan (the “**Loan**”) to Borrower in the original principal amount of Fifteen Million and No/100 Dollars (\$15,000,000.00), as evidenced by the Note;

WHEREAS, pursuant to that certain Loan Modification Agreement dated August 22, 2006 (the “**First Loan Modification**”), Borrower and Lender agreed to modify the Loan to, among other things, (i) reduce the maximum outstanding principal amount of the Loan to Ten Million and No/100 Dollars (\$10,000,000.00); (ii) extend the Maturity Date of the Loan to November 22, 2006 and (iii) make certain other changes in connection with the Loan;

WHEREAS, pursuant to the terms of that certain Second Loan Modification Agreement dated as of November 22, 2006 (the “**Second Loan Modification**”), Borrower and Lender agreed to, among other things, (i) state that no further advances could be made under the Loan; (ii) reduce the maximum outstanding principal amount of the Loan to Five Million and No/100 Dollars (\$5,000,000.00); (iii) extend the Maturity Date of the Loan to December 28, 2007; (iv) modify the payment terms of the Loan; and (v) and make certain other changes in connection with the Loan;

WHEREAS, pursuant to the terms of that certain Third Loan Modification Agreement dated June 28, 2007 (the “**Third Loan Modification**”), Borrower and Lender agreed to, among other things, (i) extend the Maturity Date of the Loan and (ii) modify the payment terms of the Loan (the “**Third Modification Agreement**”);

WHEREAS, in consideration of Lender entering into, among other things, the Third Modification Agreement, Highland Avenue (as hereinafter defined) and Homes of Atlanta (as hereinafter defined) agreed, pursuant to the terms of certain modification agreements dated June 28, 2007 to secure the Loan with the Highland Property (as hereinafter defined) and the Atlanta Property (as hereinafter defined);

WHEREAS, pursuant to the terms of that certain Fourth Modification Agreement dated December 27, 2007 (the “**Fourth Loan Modification**”), Borrower and Lender agreed to modify certain payment terms of the Loan;

WHEREAS, pursuant to the terms of that certain Fifth Modification Agreement dated February 27, 2008 (the “**Fifth Loan Modification**”), Borrower and Lender agreed to modify certain payment terms of the Loan;

WHEREAS, pursuant to the terms of that certain Sixth Modification Agreement dated November 26, 2008 (the “**Sixth Loan Modification**”), Borrower and Lender agreed to modify certain payment terms of the Loan;

WHEREAS, the outstanding principal balance under the Loan as of the date hereof is Three Million One Hundred Twenty Thousand and No/100 Dollars (\$3,120,000.00);

WHEREAS Lender last received a loan payment from Borrower on May 28, 2008, and interest on the Loan has continued to accrue from and after such date;

WHEREAS, in addition to being the holder of the Loan, Lender was also the holder of: (i) a certain loan made by Lender to Highland Avenue Properties, LLC (“**Highland Avenue**”) in the original principal amount of Four Million Eight Hundred Fifty One Thousand Two Hundred Thirty-Five and No/100 Dollars (\$4,851,235.00) (as the same has been or may be amended, renewed, supplemented or restated from time to time, the “**Highland Loan**”) which Highland Loan is secured by, among other things, certain property located in Atlanta, Georgia (the “**Highland Property**”) and (ii) a certain loan made by Lender to Comstock Homes of Atlanta, LLC (“**Homes of Atlanta**”) in the original principal amount of Seven Million Five Hundred Thousand and No/100 Dollars (\$7,500,000.00) (as the same has been or may be amended, renewed, supplemented or restated from time to time, the “**Atlanta Loan**”) which Atlanta Loan is secured by, among other things, certain property located in Jackson County and Paulding County, Georgia (the “**Atlanta Property**”); all of which has been successfully foreclosed upon by Lender;

WHEREAS, Borrower, Highland Avenue, Homes of Atlanta and Lender have all entered into that certain Forbearance and Conditional Release Agreement (the “**Forbearance Agreement**”) dated November 26, 2008, whereby Lender agreed to release and hereby does release Borrower, Highland Avenue and Homes of Atlanta from their obligations under the Highland Loan and Atlanta Loan, and forbear from the exercise of its right and remedies against Borrower, Highland Avenue and Homes of Atlanta under such loans;

WHEREAS, at the request of the Borrower, Lender has agreed to, among other things, modify certain payment terms of the Loan;

WHEREAS, Borrower’s obligations under the Note and the other Loan Documents (hereinafter defined) are hereinafter collectively called the “**Obligations**”; the Note and all other documents and any modification agreement previously, now or hereafter executed and delivered to evidence, secure, guarantee, or in connection with, the Obligations, as the same has been or may be amended, renewed, extended, amended, supplemented or restated, are hereinafter collectively called the “**Loan Documents**”; and all liens, security interests, assignments, superior titles, rights, remedies, powers, equities and priorities securing the Note or providing recourse to Lender with respect thereto, are hereinafter collectively called the “**Liens**”; and

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by all parties, the parties agree as follows:

1. Recitals. The recitals set forth above are a material part of this Agreement, and are incorporated herein as if restated in full.

2. Definitions. All capitalized terms herein, unless otherwise defined herein, shall have the same meaning ascribed to such terms as in the Loan Documents.

3. Interest Rate. Interest on the Loan shall continue to accrue in accordance with the terms of the Note, including and without limitation, the following provisions:

The unpaid principal balance of this Note from day to day outstanding which is not past due, shall bear interest at a rate equal to the "Stated Rate" (hereinafter defined) computed on the "Annual Basis" (hereinafter defined). As used herein, the term "**Stated Rate**" means a fluctuating rate of interest equal to the BBA LIBOR Daily Floating Rate (hereinafter defined) plus Two Hundred Twenty (220) basis points per annum. The Stated Rate shall change with each change in the BBA LIBOR Daily Floating Rate as of the date of any such change, without any requirement that the Lender provide notice to the Borrower. As used herein (i) the term "**Annual Basis**" means computation of interest for the actual number of days elapsed and as if each year were composed of 360 days, and (ii) the term "**BBA LIBOR Daily Floating Rate**" shall mean a fluctuating rate of interest per annum equal to the British Bankers Association LIBOR Rate ("**BBA LIBOR**"), as published by Reuters (or other commercially available source providing quotations of BBA LIBOR as selected by Lender from time to time) as determined for each Business Day at approximately 11:00 a.m. London time two (2) London Banking Days prior to the date in question, for U.S. Dollar deposits (for delivery on the first day of such interest period) with a one month term, as adjusted from time to time in Lender's sole discretion for governmental reserve requirements, deposit insurance assessment rates and other regulatory costs. If such rate is not available at such time for any reason, then a comparable rate will be reasonably selected by Lender. "**Business Day**" shall mean a day on which Lender is open for the conduct of substantially all of its banking business at its office in the city in which this Note is payable (excluding Saturdays and Sundays). A "**London Banking Day**" is a day on which banks in London are open for business and dealing in offshore dollars.

If Lender determines that no adequate basis exists for determining the BBA LIBOR Daily Floating Rate, or that any applicable law or regulation or compliance therewith by Lender prohibits or restricts or makes impossible the charging of interest based on the BBA LIBOR Daily Floating Rate and Lender so notifies Borrower, then until Lender notifies Borrower that the circumstances giving rise to such suspension no longer exist, interest shall accrue and be payable on the unpaid principal balance of this Note from the date Lender so notifies Borrower until the Maturity Date of this Note (whether by acceleration, declaration, extension or otherwise) at a fluctuating rate of interest equal to the Prime Rate of Lender computed on the Annual Basis. As used herein, (i) the term "Annual Basis" means computation of interest for the actual number of days elapsed and as if each year were composed of 360 days and (ii) the term "**Prime Rate**" means, on any day, the rate of interest per annum then most recently established by Lender as its "prime rate." Any such rate is a general reference rate of interest, may not be related to any other rate, and may not be the lowest or best rate actually charged by Lender to any customer or a favored rate and may not correspond with future increases or decreases in interest rates charged by other lenders or market rates in general, and that Lender may make various business or other loans at rates of interest having no relationship to such rate. Each time the Prime Rate changes, the per annum rate of interest on this Note shall change immediately and contemporaneously with such change in the Prime Rate. If Lender (including any subsequent holder of this Note) ceases to exist or to establish or publish a prime rate from which the Prime Rate is then determined, the applicable variable rate from which the Prime Rate is determined

thereafter shall be instead the prime rate reported in The Wall Street Journal (or the average prime rate if a high and a low prime rate are therein reported), and the Prime Rate shall change without notice with each change in such prime rate as of the date such change is reported.

4. Maturity. All of the Obligations, including (without limitation) all outstanding principal, accrued and unpaid interest, outstanding late charges, unpaid fees, and all other amounts outstanding under the Note and the other Loan Documents, shall be due and payable in full on December 28, 2018 (the "**Maturity Date**"). The Maturity Date may not be further extended by the Borrower. All amounts due under the Loan are due in full on the Maturity Date. All references to the Maturity Date contained in the Loan Documents shall refer to the Maturity Date as defined in this Agreement.

5. Payments. Payments of principal and interest under the Loan shall be due and payable as follows:

(a) No payments of principal or interest shall be due prior to January 28, 2011 ("**First Interest Payment Date**").

(b) On the First Interest Payment Date, Borrower shall make a payment of all then accrued and unpaid interest on the Loan at the Stated Rate;

(c) On February 28, 2011 and on the 28th of each month thereafter (each such date, a "**Payment Date**") through and including Maturity Date, Borrower shall make monthly payments of all accrued and unpaid interest on the Loan at the Stated Rate.

(d) Commencing January 28, 2012 and continuing on each and every successive Payment Date thereafter through November 28, 2018, in addition to monthly payments of interest, Borrower shall make consecutive monthly payments of principal in the amount of Thirty-Seven Thousand One Hundred Forty Two and 86/100 Dollars (\$37,142.86) each.

(e) On the Maturity Date, Borrower shall pay the entire outstanding principal balance of the Loan, together with all accrued but unpaid interest thereon at the Stated Rate, and all other amounts due under this Agreement or any other Loan Document.

6. Modification Fees. Borrower shall pay a modification fee to the Lender in connection with this Modification in the amount of One Hundred Thousand and No/100 Dollars (\$100,000.00) (the "**Seventh Loan Modification Fee**"), which fee shall be paid in full on the Effective Date hereof by wire transfer. Borrower has previously agreed to pay a modification fee to the Lender in connection with the Sixth Modification in the amount of Four Hundred Ninety-One Thousand Nine Hundred Eighty-Eight and No/100 Dollars (\$491,988.00) (the "**Sixth Loan Modification Fee**"), which fee shall accrue interest at the Stated Rate from the date of the Sixth Modification until paid in full; such repayment terms being hereafter restated in this Modification. The Sixth Loan Modification Fee shall continue to be due and payable as follows:

(a) On the First Interest Payment Date, Borrower shall make a payment of all then accrued and unpaid interest on the Sixth Loan Modification Fee.

(b) On each and every successive Payment Date thereafter through and including the Maturity Date, Borrower shall make monthly payments of all accrued and unpaid interest on the Sixth Loan Modification Fee.

(c) Commencing January 28, 2012 and continuing on each and every successive Payment Date thereafter through November 28, 2018, in addition to monthly payments of interest on the Sixth Loan Modification Fee, Borrower shall make monthly payments of a portion of the Sixth Loan Modification Fee in the amount of Five Thousand Eight Hundred Fifty-Seven and 00/100 Dollars (\$5,857.00) each.

(d) On the Maturity Date, Borrower shall pay the entire unpaid balance of the Sixth Loan Modification Fee, together with all accrued but unpaid interest thereon at the Stated Rate.

7. Past Due Rate. Any principal of, and to the extent permitted by applicable law, any interest on such principal, and any other sum payable hereunder, which is not paid when due, including, without limitation, the Sixth Loan Modification Fee, shall bear interest from the date due and payable until paid, payable on demand, at a rate per annum (the “**Past Due Rate**”) equal to the Stated Rate plus four percent (4%).

8. Late Charges. If Borrower fails to make any payment under the terms of the Loan as modified herein within fifteen (15) days after the date such payment is due, including and without limitation, the Sixth Loan Modification Fee, Borrower shall pay to Lender on demand a late charge equal to four percent (4%) of such payment. Such fifteen (15) day period shall not be construed as in any way extending the due date of any payment. The “late charge” is imposed for the purpose of defraying the expenses of the Lender incident to handling such delinquent payment. This charge shall be in addition to, and not in lieu of, the Past Due Rate and any other remedy Lender may have, whether authorized herein or by law, and is in addition to any fees and charges of any agents or attorneys which Lender may employ upon the occurrence of a Default.

9. Default. Upon the occurrence of any default under the Loan that is not cured within any applicable cure period, at Lender’s election, the full principal amount of the Loan together with all accrued and unpaid interest thereon and the full Sixth Loan Modification Fee, together with all accrued and unpaid interest thereon and any applicable fees as set forth herein or in any of the other Loan Documents, shall be immediately due and payable in full.

10. Borrower’s Representations and Warranties. The Borrower hereby represents and warrants that: (a) the execution and delivery of this Agreement does not contravene, result in a breach of, or constitute a default under, any deed of trust, loan agreement, indenture or other contract or agreement to which Borrower is a party or by which Borrower or any of its properties may be bound (nor would such execution and delivery constitute such a default with the passage of time or the giving of notice or both), and does not violate or contravene any law, order, decree, rule, regulation or restriction to which Borrower or any of Borrower’s property is subject; (b) this Agreement constitutes the legal, valid and binding obligations of Borrower enforceable in accordance with its terms; (c) the execution and delivery of, and performance under, this Agreement are within Borrower’s power and authority without the joinder or consent of any other party and have been duly authorized by all requisite action, and are not in contravention of any law, or of any indenture, agreement or undertaking to which Borrower is a party or by which it is bound; (d) there are no offsets, claims or defenses with respect to the Obligations; and (e) Borrower is duly organized and legally existing under the laws of the state of its organization and is duly qualified to do business in the Commonwealth of Virginia. Except as set forth on **Exhibit A** hereto or otherwise disclosed in its public filings from time to time, the Borrower further represents and warrants that there is no material suit, judicial or administrative action, claim, investigation, inquiry, proceeding or demand pending (or, to Borrower’s knowledge, threatened) against (i) Borrower, or (ii) which affects

title to any of Borrower's property or the Borrower's title to any of Borrower's property, or (iii) which affects the validity enforceability or priority of any of the Loan Documents. Borrower agrees to indemnify and hold the Lender harmless against any loss, claim damage, liability or expense (including, without limitation, attorneys' fees) incurred as a result of any representation or warranty made by Borrower herein which proves to be untrue or inaccurate in any respect, and any such occurrence shall constitute a default under the Loan Documents.

11. Renewal; Lien Continuation; No Novation. Borrower hereby renews the Obligations and promises to pay and perform all Obligations as modified by this Agreement. All Obligations evidenced by the Note are hereby ratified and confirmed as valid, subsisting and the Liens are hereby ratified and confirmed as valid, subsisting and securing the Obligations, as modified hereby. Nothing herein shall in any manner diminish, impair, waive or extinguish the Note, the Obligations or the Liens. The execution and delivery of this Agreement shall not constitute a novation of the debt evidenced and secured by the Loan Documents.

12. Expenses. Borrower shall pay all attorneys fees, costs and expenses incurred by Lender in connection with (i) this Agreement or (ii) the restructuring of the Loan.

13. Authorization. At the time of execution of this Agreement, Borrower shall, if and to the extent requested by Lender, deliver to Lender (a) an opinion of Borrower's counsel dated the date hereof, in form and substance satisfactory to Lender, that this Agreement has been duly authorized, executed and delivered by Borrower and is binding on, and enforceable against, the Borrower in accordance with its terms; and (b) such other evidence of due authorization and execution by the Borrower as the Lender may require.

14. Further Assurances. The Borrower agrees to execute and deliver to the Lender, promptly upon request from Lender, such additional documents as may be necessary or appropriate to consummate the transactions contemplated herein or to perfect, or continue the perfection of, the Liens.

15. No Defenses. Borrower represents and warrants that Borrower has no claims, actions, causes of action, defenses, counterclaims or setoffs of any kind or nature which Borrower can assert against Lender in connection with the making, closing, administration, collection or enforcement by Lender of the Loan Documents, this Agreement or any related agreements.

16. No Waiver by Lender. Borrower acknowledges and agrees that the execution of this Agreement by the Lender is not intended nor shall it be construed as (a) an actual or implied waiver of any, default under the Note, any Deed to Secure Debt which encumbered the Highland Property or the Atlanta Property or any other Loan Document, or (b) an actual or implied waiver of any condition or obligation imposed upon the Borrower pursuant to the Note, any Deed to Secure Debt which encumbered the Highland Property or the Atlanta Property or any other Loan Document.

17. Borrower's Performance. If Borrower should fail to comply with any of the agreements, covenants or obligations of the Borrower under this or any other Loan Document, then Lender (in Borrower's name or in its own name) may, but is under no obligation to, perform them or cause them to be performed for the account of Borrower at Borrower's sole expense. Any and all expenses thus incurred or paid by Lender shall be Borrower's demand obligations to Lender and shall bear interest, from the date of Lender's payment of any such obligation or expense for Borrower's account until the date on which Borrower repays it to Lender, at the default rate of interest set forth in the Note. Upon making any such payment or incurring any such expense, Lender shall be

fully subrogated to all of the rights of the person or entity receiving such payment. Any amounts owing by Borrower to Lender pursuant to this provision or any other provision of this Agreement shall automatically and without notice constitute a portion of the Obligations evidenced by the Note secured by any Deed to Secure Debt which encumbered the Highland Property or the Atlanta Property and the other Loan Documents. The amount and nature of any such expense and the time when paid shall be fully established by the affidavit of Lender or any of Lender's officers or agents.

18. Release. Upon the Effective Date, and in consideration of Lender's entering into this Agreement, Borrower, for itself and its affiliates, heirs, executors, successors and assigns, hereby fully and forever release, relinquish, discharge, settle and compromise any and all claims, cross-claims, counterclaims, causes, damages and actions of every kind and character, and all suits, costs, damages, expenses, compensation and liabilities of every kind, character and description, whether direct or indirect, known or unknown, in law or in equity, which it has, had, may have, or will have against Lender, and/or any of its affiliates, parents, directors, agents, representatives, officers, employees, attorneys, consultants, or contractors (collectively, the "Lender Parties") on account of, arising, or resulting from, or in any manner incidental to, any and every thing or event occurring or failing to occur at any time in the past up to and including the Effective Date hereof, including, without limitation, any claims relating to the Loan, the Loan Documents, this Agreement, any act and event relating to Lender's administration of the Loans or any other obligations related thereto, any other transaction contemplated by this Agreement, and any act and event at any time in the past up to and including the Effective Date hereof, relating to any Lender Parties (collectively, the "Claims"). In addition, Borrower covenants not to sue any of the Lender Parties on account of any Claims.

19. Miscellaneous. To the extent of any conflict between the Note (or any earlier modification of it) and this Agreement, this Agreement shall control. Except as hereby expressly modified, all terms of the Note and all other Loan Documents (as any of them may have been previously modified by any written agreement) remain in full force and effect. This Agreement (a) shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns (provided, however, no party other than the Lender shall assign its rights hereunder without the prior written consent of the Lender); (b) may be modified or amended only by a writing signed by the Lender and the Borrower; (c) SHALL BE GOVERNED BY (INCLUDING BUT NOT LIMITED TO ITS VALIDITY, ENFORCEMENT AND INTERPRETATION) THE LAWS OF THE COMMONWEALTH OF VIRGINIA AND UNITED STATES FEDERAL LAW; (d) may be executed in several counterparts, and by the parties hereto on separate counterparts, and each counterpart, when executed and delivered, shall constitute an original agreement enforceable against all who signed it without production of or accounting for any other counterpart, and all separate counterparts shall constitute the same agreement; and (e) embodies the entire agreement and understanding between the parties with respect to modifications of documents provided for herein and supersedes all prior conflicting or inconsistent agreements, consents and understandings relating to such subject matter. "Borrower" shall include, in their individual capacities and jointly, all parties hereinabove named as the Borrower. The duties, covenants, conditions, obligations, and warranties of the Borrower in this Agreement shall be joint and several obligations of the Borrower and, if more than one, of each party named as the Borrower hereinabove, and each such party's heirs, legal representatives, successors and assigns. If any Borrower is a corporation, partnership or other legal entity, the Borrower and the person or persons signing for it represent and warrant to the Lender that this Agreement is duly executed, acknowledged and delivered by the Borrower's duly authorized representatives. Whenever used herein, the singular number shall include the plural and the plural the singular, and any gender shall

be applicable to all genders. The use of the words “herein”, “hereof”, “hereunder” and other similar compounds of the word “here” shall refer to this entire Agreement and not to any particular section, paragraph or provision. The headings in this Agreement shall be accorded no significance in interpreting it.

20. Financing Statements. Borrower authorizes the Lender, from time to time and without expense to the Lender, to file in such filing office or offices as the Lender may select, any financing statements and extensions, renewals or amendments thereof, naming the Borrower as debtor and in such form as the Lender may require, in order to further evidence or perfect Lender’s security interests granted pursuant to the Loan Documents.

[Signatures to Follow On Next Page]

EXECUTED ON THE DATE OR DATES OF THE ACKNOWLEDGMENTS HEREOF, BUT EFFECTIVE AS OF THE DATE FIRST STATED IN THIS AGREEMENT.

WITNESS:

BORROWER:

COMSTOCK HOMEBUILDING COMPANIES, INC.,
a Delaware corporation

Print Name:

By: _____
Print Name:
Print Title:

[SEAL]

COMMONWEALTH OF VIRGINIA)
) ss:
COUNTY OF _____)

I, _____, a Notary Public in and for the aforesaid said jurisdiction, do hereby certify that _____, who is personally well known to me as (or satisfactorily proven to me to be) the person who signed the foregoing instrument executed this ____ day of _____, 2010, personally appeared before me in said jurisdiction and acknowledged that he is the _____ of **COMSTOCK HOMEBUILDING COMPANIES, INC.**, a Delaware corporation which is a party to the foregoing instrument; that he has been duly authorized to execute and deliver the foregoing instrument for the purposes therein contained and that the same is his act and deed and the act and deed of **COMSTOCK HOMEBUILDING COMPANIES, INC.**, a Delaware corporation.

IN WITNESS WHEREOF, I have set my hand and Notarial Seal, this ____ day of _____, 2010.

(SEAL)

Notary Public
My Commission expires:

[signatures continue on the next page]

WITNESS:

LENDER:

BANK OF AMERICA, N.A.

Print Name:

By:

Print Name:

Print Title:

[CORPORATE SEAL]

STATE OF CONNECTICUT

)

) ss:

COUNTY OF FAIRFIELD

)

I, _____, a Notary Public in and for the aforesaid said jurisdiction, do hereby certify that _____, who is personally well known to me as (or satisfactorily proven to me to be) the person who signed the foregoing instrument executed this ____ day of _____, 2010, personally appeared before me in said jurisdiction and acknowledged that he is the _____ of **BANK OF AMERICA, N.A.**, a national banking association; that he has been duly authorized to execute and deliver the foregoing instrument for the purposes therein contained and that the same is his act and deed and the act and deed of **BANK OF AMERICA, N.A.**

IN WITNESS WHEREOF, I have set my hand and Notarial Seal, this ____ day of _____, 2010.

(SEAL)

Notary Public

My Commission expires:

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

COMSTOCK POTOMAC YARD, L.C,)	
)	
Plaintiff,)	
)	
V.)	Civil Action No. 1:08-cv-894
)	
BALFOUR BEATTY CONSTRUCTION,)	
LLC)	
)	
Defendant.)	

MEMORANDUM OPINION

This is an action for breach of contract arising out of a “multi-use” condominium construction project located in Arlington, Virginia. The parties to the contract are Plaintiff/Counter-Defendant Comstock Potomac Yard, L.C. (“Comstock”) and Defendant/Counter-Plaintiff Balfour Beatty Construction, LLC (“Balfour Beatty”).

I. Background and Undisputed Factual History

On or about November 12, 2004, Comstock, a developer, entered into a \$92 million contract with Centex Construction Co., LLC for the construction of a multi-use condominium complex called The Eclipse on Center Park Condominium (“the Project”) located in Arlington, Virginia. The Project involved the construction of two high rise towers (“the East and West Towers”), a below-ground parking garage, some 465 residential units, and 80,000 square feet of commercial retail space. Compl. ¶ 6; Answer ¶ 6. Balfour Beatty later acquired the rights to this General Conditions Contract. Pursuant to the Contract, Centex (later Balfour Beatty) served as the general contractor on the Project, contracting with and supervising specialized subordinate contractors throughout construction of the complex. For its part, Comstock entered into a contract with Davis Carter Scott, Ltd. (“DCS”) on November 17, 2004, to retain DCS’ services as the Project architect. (BB Ex. 97).

Among its primary obligations under the General Conditions Contract, Balfour was required to achieve “Substantial Completion” of the Project “not later than Seven Hundred Sixty-Two (762) days from the date of commencement.” CPY Ex. 82, Contract § 3.3; Countercl. ¶ 11. This set December 16, 2006 as the projected date of substantial completion. Countercl. ¶ 12.

Throughout the pendency of construction, a number of disputes arose for which each party felt it incurred damages. Without delving into each of those issues, a number of these disputes centered on delays which prevented the Project’s full completion. On March 10, 2006, Balfour sent Comstock Schedule Update 16 (“PY16”), which covered the period ending February 28, 2006, showing that each milestone would not be met. CPY Ex. 116.

Balfour and Comstock ultimately negotiated a time extension in Change Order 15 on May 25, 2006,¹ for which Comstock paid additional funds to Balfour. CPY Ex. 89-A; BB Ex. 511; Tr. 115:14 - 117:18.

Complicating matters, in December of 2007, a subcontractor to Balfour Beatty named Atlas Comfort Systems, USA, LP (“Atlas”) filed two mechanic’s liens in the amount of approximately \$1.4 million against the Project. In an attempt to resolve some of the disputes that had arisen between the parties, and with the intention of removing these liens from the Project, Comstock and Balfour Beatty entered into a settlement agreement on January 30, 2008 called the Lien-Free Completion Agreement (“LFCA”), though the LFCA left some disputed issues open for further negotiation.

¹ Change Order 15 had an “effective date” of May 25, 2006, though it was signed on May 31, 2006 by Comstock and on June 1, 2006 by Balfour.

As part of the Agreement, Balfour Beatty agreed that it would “not at any time file or record a lien against the Project.” Balfour Beatty, however, after it formed a belief that Comstock breached the new deal, filed two mechanic’s liens against the Project. After those lien filings, Comstock initiated the instant lawsuit against Balfour Beatty, alleging breach of contract (Count I), slander of title (Count II), and abuse of process (Count III). Balfour Beatty responded by filing its own counterclaim asserting claims of breach of contract (Counterclaim Count I), breach of contract/specific performance (Counterclaim Count II), changes to the contract (Counterclaim Count III), breach of implied duty not to hinder or delay contract performance (Counterclaim Count IV), and enforcement of the mechanic’s liens (Counterclaim Count V).

II. Procedural Posture

Comstock initiated this action by filing a Complaint on September 3, 2008. Balfour Beatty filed its Answer and Counterclaims on October 14, 2008. On April 20, 2009, the Court issued an Order and Memorandum Opinion finding that (1) the Lien-Free Completion Agreement was supported by consideration; (2) the lien waiver provisions in the Agreement were unconditional; (3) Comstock did not breach the Agreement before Balfour Beatty filed the liens; and (4) the liens were invalid. Because the Court invalidated those liens, the claims related to the liens (*i.e.*, Counterclaim Count V and Third Party Complaint Count I) were dismissed with prejudice, which resulted in the termination of the hundreds of Third Party Defendants as parties to this case.

On July 7, 2009, both parties moved for partial summary judgment regarding Comstock's complaint, and Comstock moved for partial summary judgment on Balfour Beatty's counterclaims. On August 14, 2009, the Court granted Balfour Beatty's Motion for Summary Judgment regarding Comstock's Slander of Title (Count II) and Abuse of Process (Count III) claims and granted Comstock's Motion for Summary Judgment on the issue of whether Balfour Beatty breached the Lien-Free Completion as to the first two breach elements only and provided that Comstock may attempt to meet the third and final element by proving damages beyond a reasonable certainty at trial. The court also granted Comstock's Motion for Summary Judgment as to Balfour Beatty's delay claims, holding that Balfour Beatty may only pursue the six primary delay claims that were outlined in Balfour's expert's report.

A bench trial then proceeded before this Court from September 8 through September 16, 2009. Attached to and referenced throughout this Opinion is an addendum, detailing the Court's findings of facts.

III. **Conclusions of Law**

As a matter of law, this lengthy trial can be reduced to two claims for damages: 1) for breach of the contract to construct the Project ("the Construction Contract"); and 2) for breach of the contract which the parties refer to as the Lien Fee Completion Agreement. In both instances, the Court notes that the law in Virginia affords the words of a contract their full effect and does not allow a court to unjustifiably insert terms or obligations not contemplated by the contracting parties. *See Ames v. American Nat'l Bank*, 163 Va. 1,38 (1934).

i. Count I: Breach of the Construction Contract

As noted above, the evidence introduced at trial, in large measure, revolved around whether or when Balfour achieved “Substantial Completion” on the Project and who is responsible for any deviation from the Contract’s “Substantial Completion” date. Based on the foregoing findings of facts, the Court reaches the following conclusions of law.

a. The Contract, as Modified by Change Order 15, Controls

The initial source of authority controlling construction of the Project is the November 12, 2004 Contract executed by Comstock and Balfour. The Contract provides that Balfour’s work on the Project would meet certain interim milestones, and that failure to do so would result in Balfour’s payment of liquidated damages to Comstock. The Contract further provides that Balfour’s work on the entire project would meet a “Substantial Completion” deadline. Under the Contract, Substantial Completion constitutes:

- (i) Construction is complete, in accordance with the Contract Documents, so that [Comstock] can lawfully occupy or use the Work (or a designated portion thereof for the use for which it is intended),
- (ii) all remaining punch list items can be reasonably and ordinarily expected to be completed within thirty (30) days, and
- (iii) A Temporary Certificate of Occupancy (“TCO”) for the portion of the Work required to achieve Substantial Performance as set forth in the Contract Documents, including the Project Schedule, has been issued by Arlington County..., and
- (iv) 90% of individual condominium units and all associated common areas within each milestone are complete for turnover/delivery to unit owners.

Gen. Cond., § 8.1.3, CPY Ex. 82. The Contract also provides the process Balfour was to follow if circumstances arose which excusably delayed meeting the timelines set forth in the Contract. *Id.*

Change Order 15 (“CO15”) modified the contract. Comstock argues that CO15 acted as an accord and satisfaction for all delays through April 30, 2006. Generally, “[t]he doctrine of accord and satisfaction provides a method of discharging a contract or cause of action by which the parties may first agree to give and accept something other than that which is due in settlement of the claim or demand of one party against the other, and then perform their agreement.” WILLISTON ON CONTRACTS § 73:27; *see also Lindsay v. McEneaney Associates, Inc.*, 260 Va. 48, 54 (Va. 2000). In CO15, Comstock further committed to pay additional funds as consideration for the improvement of the revised interim milestones by two weeks. BB Ex. 511, ¶3(a)). These modified milestones were based on a revised schedule Balfour prepared called PYR2.

Importantly, although CO15 updated the Project’s timelines, it did not discard Balfour’s overarching requirement to achieve Substantial Completion as originally defined in the Contract.

b. Balfour Beatty is Responsible for the Delays in Meeting the Projected Substantial Completion Date

Change Order 15’s additional compensation and extension of “Substantial Completion” milestones were agreed to be “full consideration for any and all delays to the Project through April 30, 2006.” (CPY Ex. 89-A; BB Ex. 511). Thus, Balfour assumed responsibility for all delays to the Project through April 30, 2006 not provided for in CO15. It was abundantly clear from the evidence introduced at trial that the interim milestones and “Substantial Completion” dates were not ultimately met. Thus, the salient question for the Court is whether the contractual provisions which levy responsibility for these delays on Balfour remain in force or whether the occurrence of some fact relieves Balfour of that burden.

1. Balfour Beatty is Responsible for Those Delays Attributable to Poor Performance by Subcontractors

Under the Contract, Balfour was required to “supervise and direct the Work, using [Balfour’s] best skill and attention. [Balfour] shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work under the Contract...” CPY Ex. 82, Gen. Cond. §3.3.1. Specifically, even though Comstock paid certain subcontractors directly for design work, the Contract provides:

The Mechanical/Electrical/Plumbing portion of the Work is being performed by the Contractor on a design-build basis with Cherry Lane Electrical Service Company and Atlas Air Conditioning Company. Owner shall pay directly to Cherry Lane Electrical Service Company and Atlas Air Conditioning Company the design costs under their respective subcontracts with Contractor. Nevertheless, Contractor shall be responsible for performance of the MEP Work on a design-build basis in accordance with the Contract Documents.

CPY Ex. 82, Gen. Cond. §3.1.5.

Based on the attached findings of fact, the Court concludes that a central contributing factor to the delays incurred on the project after CO15 was Balfour’s inadequate supervision of independent contractors. Under the Contract, it was specifically Balfour’s responsibility to increase manpower, increase the number of working hours per shift or the number of shifts, in addition to advancing activities as needed to meet the milestones. Gen. Cond. §3.10.4. Moreover, as noted, it was Balfour’s contractual duty to oversee and direct the work of the subcontractors employed on the project. While Balfour points to the facts that Comstock directly paid Cherry Lane and Atlas, the Contract specifically provides that “[Balfour] shall be responsible for

performance of the MEP Work on a design-build basis in accordance with the Contract Documents.” CPY Ex. 82, Gen. Cond. §3.1.5. The Contract further states that Balfour was obligated to “supervise and direct the Work, using [Balfour’s] best skill and attention. [Balfour] shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work under the Contract, including coordination of the duties of all trades.” CPY Ex. 82, Gen. Cond. §3.3.1.

Comstock introduced a great deal of testimony and other evidence which demonstrated the inadequacy of the performance of these subcontractors. *See, e.g., Findings of Fact at ¶20,40,52.* Balfour’s efforts to introduce testimony which implied that responsibility for the performance of Atlas, Cherry Lane, and other subcontractors in building the Project was anything other than the province of Balfour proved unpersuasive.

2. Balfour Beatty’s Six (6) Grounds for Delay are Unavailing as Excusable Under the Contract

Pursuant to this Court’s August 14, 2009 Order and Memorandum Opinion, Balfour Beatty was restricted at trial to introducing evidence on its delay claims to the six primary delays listed in Dr. Harmon’s report. The grounds asserted in that report are: (1) delays caused by Comstock’s alleged failure to obtain a building permit in a timely manner; (2) delays caused by the alleged late approval of sprinkler drawings; (3) delays caused by a lack of utility services (*e.g.,* gas service) on the worksite that allegedly prevented Balfour Beatty from having the resources necessary to complete work; (4) delays caused by changes in the Fair Housing Act and Americans with Disabilities Act, which impacted, *inter alia*, the plumbing arrangement, cabinet installation, and wall

placement; (5) delays caused by incomplete drawings and plans regarding the landscaping areas surrounding the two towers and retail units; (6) delays caused by a window order requiring Balfour Beatty to fabricate, ship, and install new windows on East Tower floors eight through eleven, which were different than the lower windows.

As a preliminary matter, the Contract is clear on what constitutes an “excusable delay” and what procedures must be followed before a delay qualifies as “excusable.” To make a claim for Excusable Delay under the Contract, Balfour had to adhere to the following procedure:

If the Contractor wishes to make Claim for an increase in the Contract Time, including claims for Excusable Delay...written notice as provided herein shall be given. The Contractor’s Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary. No adjustment to the Contract Time shall be granted, unless the Contractor furnishes documentation and evidence satisfactory to the Owner (1) demonstrating that the impacted activities are on the critical path of the Project’s schedule consistent with any scheduling requirements in the Contract Documents: (2) establishing that the delay is beyond the control and not the fault of the Contractor, its Subcontractors or suppliers; and (3) demonstrating that the Contractor has complied with all claims and notice submission requirements in the Contract...

(CPY Ex. 82, Gen. Cond. § 4.3.8.1). In other words, in order to establish an “excusable delay”: (1) the impacted activities must have been on the critical path; (2) the delay must have been beyond Balfour’s control (and that of its Subcontractors or suppliers); and (3) Balfour had to comply with all claims and notice submission requirements under the Contract. Based on the Court’s Findings of Fact, the Court is convinced that Balfour failed to adhere to the Contract’s requirements pertaining to excusable delays and that none of the grounds proffered by Balfour suffice as an “excusable” delay under the Contract.

a. Delays caused by Comstock's alleged failure to obtain a building permit in a timely manner and the late approval of the sprinkler drawings.

Comstock's alleged failure to obtain a building permit in a timely manner was a central point of contention between the parties at trial. In Dr. Harmon's report, the first identified delay proceeds from the theory that the delay in obtaining a building permit kept Balfour from obtaining the Fire Sprinkler Permits. In turn, Dr. Harmon's second delay theorizes that because the Hydro inspections required a Fire Sprinkler Permit, all close-in approvals necessary to begin hanging drywall were consequently delayed due to the late approval of the sprinkler permit, which in turn, is attributable to Comstock's failure to obtain a building permit.

The Court declines to adopt this theory, however, because the evidence introduced at trial simply does not support the theory that Balfour was unable to obtain the sprinkler permits because of the lack of a building permit.² The testimony of J.D. Martin indicated that construction was permitted to proceed above street level prior to the issuance of the building permits on the Project and acquisition of the permits was not the driving force behind the Project's delays as Dr. Harmon represents. Tr. 260:1-8. Each trade, except the fire sprinkler work, attained at least some close-in inspection approvals before the County issued a building permit. Additionally, J.D. Martin's testimony revealed that he did not refuse to evaluate Atlas' sprinkler drawing because of the lack of a building permit.

² Moreover, the portion of Dr. Harmon's report dealing with the supposed Building Permit delays was based on the Modified PYR2 start dates for the Hanging Drywall Activity on the second floor (2W4070 and 2E4070, respectively). Tr. 1305:10-20, 1317:18 - 1318:6. Harmon used PYR2, the schedule that is "stated" through March 1, 2006 as opposed to PY18, the schedule that is stated through April 30, 2006, in order to calculate the delay inserted for the purpose of her analysis. Tr. 1319:4-13.

Despite Balfour's protests to the contrary, failure to obtain sprinkler permits in a timely manner was ultimately Atlas' responsibility as the design-build contractor under the Contract. Gen. Cond. §3.1.5. Martin testified that there were numerous reasons why the Atlas' drawings were rejected, none of which were the absence of a building permit. Tr. 517:13-17. Rather, Martin rejected Atlas' plans simply because they were not code-compliant. Tr. 517:18-20. Atlas' designs consistently contained defects, not the least of which was a discrepancy involving the size of the "fire" and "domestic" water lines³ coming into the buildings from the street. As Dan Strotman testified at trial, based on the civil engineer's drawings, which were complete when Atlas and Centex bid on the Project, the buildings were constructed with a six-inch fire line and a four-inch domestic line running into the building. Tr. 270:10-16. However, Atlas' design drawings for the fire sprinkler system allowed for an eight-inch fire line and a six-inch domestic water line. *Id.* This discrepancy caused significant delays, as detailed in the Court's Findings of Fact.

Further, the notion that delays in hanging drywall are attributable to this building permit-sprinkler permit delay theory is equally unpersuasive. Balfour points to the testimony of Dan Strotman which indicated "there was the possibility that the building permit delayed [Balfour] in some respects." Tr. 362:21-23. Strotman further stated that "it's possible that there were two to three to maybe four weeks of time that they could have been hanging drywall if they had a building permit in some areas. Not all areas, but in some." Tr. 379:22 – 380:1-4. Strotman's testimony on this point, however, struck the Court as far from certain. More importantly, when considered in conjunction with evidence of the County's willingness to approve plans without the building permit and of the other trade-related delays occurring on both Towers, the testimony of Strotman is all the more speculative.

³ Mr. Strotman clarified that "[d]omestic service is the water that runs out of your tap that you drink or runs into the toilet or runs into the kitchen sink... The fire, the fire service is, serves the fire sprinklers. And it is not, it's not tied into any kind of a meter, it goes directly to the fire pump out to the piping to the sprinkler heads if they are activated."

On the East Tower, the last close-in inspections on several upper floors were not for the fire sprinklers, but were for plumbing, electrical, mechanical, or gas work. Tr. 290:2-15; BB Ex. 1135, Tab 14. Accordingly, the argument that the hanging of drywall was delayed by anything other than Atlas' slow and deficient performance is unpersuasive. As the Court notes in its attached Findings of Fact, the same was true with close-in inspections on the upper level of the East Tower, where the plumbing and gas trades were the last to receive close-in approval. Tr. 290:16-20; BB Ex. 1135, Tab 14.

In light of the foregoing, Comstock's alleged failure to obtain a building permit in a timely manner was not an "excusable delay" under the Contract.

b. Delays caused by a lack of utility services on the worksite that allegedly prevented Balfour from having the resources necessary to complete work.

Balfour also argues that Comstock failed to install certain utilities which were a necessary precursor to Balfour completing certain tasks. Chief among these was the installation of gas service, which Balfour asserts it needed to test the hot water and heating systems and other punchlist work. Balfour also argues that Comstock failed to procure telephone service for the Project in a timely manner, and therefore Balfour could not perform tests of the fire/life safety system.

However, Balfour's expert, Dr. Harmon, opined that the lack of gas service related only to punchlist activities. No other testimony or evidence introduced by Balfour indicates to the Court that the lack of gas service actually impaired Balfour and its subcontractors' ability to perform work, punchlist or otherwise. As such, the Court

heard no credible evidence that if the gas service had been provided earlier, Balfour could have completed punchout work on time. Moreover, the temporary phone line Comstock proposed would have not have prevented testing if Balfour had actually completed all its other work and stood ready to start tests of the life safety systems. In the end, these issues were simply not factors contributing to delays on the Project.

c. Delays caused by CCB46 and 46R – changes in design to meet FHA and ADA requirements.

Another of Balfour's central grounds for excusable delay were the changes mandated in CCB46 and CCB 46R. These schedule updates dealt with redesigns of the condominium units to comply with ADA and FHA requirements, which the parties agree necessitated significant work, such as demolishing pipes, relocating risers, changing partition layouts, x-raying, and "core-drilling."

However, CCB46 was issued before CO15, and based on the evidence at trial, the Court is persuaded that any delays arising from the implementation of the CCB46 revisions were contemplated by the parties and subsumed within the CO15 agreement. Balfour further alleges that CCB46R delayed the progress of "rough in" work. As noted above, the Court finds that Atlas' "rough in" work was inconsistently paced and frequently delayed. CPY Exs. 262, 358; BB Ex. 1180; Tr. 1610:18 – 1612:13. Balfour argues that the CCB46R altered the fire sprinkler designs. However, as Comstock notes, Balfour failed to present any application drawing or calculation to demonstrate how CCB 46R actually altered the sprinkler design. Balfour's own expert did not perform any review of the CCB 46 and 46R drawings.

Balfour also argues that the changes required by CCB 46R to the design of the cabinets delayed the installation of those cabinets in the individual condominium units at the Project. However, the Court finds that Comstock mitigated the CCB 46R delays to cabinet fabrication by meeting with CAI, DCS and Balfour in Kansas City to review and approve revised cabinet shop drawings for CCB 46R changes, and also paying to expedite shipment of the cabinets. Tr. 295:15-23; CPY Ex. 335. The real delay in installing the cabinets in the individual condominiums was not due to any change in design before manufacturing, but due to the ongoing delays in hanging drywall at the time of the cabinets' delivery. Tr. 302:3-12

d. Delays caused by incomplete drawings and plans regarding the landscaping in CCB64 and by CCB 72.

Balfour also points to delays it attributes to changes necessitated by CCB64, which dealt with masonry work on two levels and was tied to landscape work and to CCB72, which required Balfour to fabricate and install new windows on the eighth through eleventh floors of the East tower. However, Balfour offered little testimony or evidence regarding CCB 64 and CCB 72, and on the evidence presented, the Court does not deem this a legitimate basis for delay of the Project by Balfour.

c. Comstock did not Order Balfour to Accelerate

Balfour argues that Comstock directed Balfour to accelerate by indicating its wish to close as many units as possible in 2006. BB Br. at 11-12. The Court fails to see, however, how that directive by Comstock did anything other than express what was already understood by the parties at the time of CO15's execution: that Comstock desired Balfour to recover delays reflected in its PY18 schedule update and make as much progress on the condominium units as possible.

Rather, § 3.10.4 of the Contract specifically provides that if it became apparent to Balfour that the Substantial Completion Date may not be met, unless the delays were excusable, Balfour was to:

- (a) Increase construction manpower to substantially eliminate the backlog of Work and overcome the delays to the Scheduled Substantial Completion Date;
- (b) Increase the number of working hours per shift, shifts per day or the amount of construction equipment or any combination of construction equipment or any combination of the foregoing...
- (c) Reschedule and expedite activities to overcome the delays to the Scheduled Substantial Completion Date.

CPY Ex. 82, Gen. Cond. § 3.10.4). Moreover, if Balfour failed to do any of the foregoing within three days from Comstock's request, Comstock could "take appropriate action to overcome the delays to the Scheduled Substantial Completion Date..." *Id.*

Because the Court holds that none of Balfour's reasons proffered constitute an excusable delay, Comstock's admonitions to Balfour to increase the pace of work at the project were not orders to accelerate entitling Balfour to the recovery of damages.

d. Damages

i. Liquidated Damages

The Contract provides that failure to complete its work within the Contract time, and interim milestones set forth in Exhibit K. to the Contract, would result in payment of liquidated damages by Balfour. Gen. Cond. § 8.1.4. The Contract also contains a clause which stated that the liquidated damages amounts were reasonable and did not function as a penalty. CPY Ex. 82; Gen. Cond. § 8.1.4. Under the Contract, if Balfour failed to meet the Substantial Completion dates set forth in the Project Schedule "due to the fault or neglect of [Balfour], [Balfour] shall pay to [Comstock] liquidated damages as follows":

West Tower:

- Floors 1-3 \$1,500 per day
- Floors 4-6 \$3,000 per day
- Floors 7-9 \$4,500 per day
- Floors 10-11 \$6,000 per day

East Tower:

Floors 1-3 \$1,500 per day
Floors 4-6 \$3,000 per day
Floors 7-9 \$4,500 per day
Floors 10-11 \$6,000 per day

CPY Ex. 82, Gen. Cond. § 8.1.4. The Contract also provided that liquidated damages owed on any calendar day shall not exceed \$12,000 in the aggregate.” In CO 15, the parties revamped the dates at which Balfour would begin payment of Liquidated Damages if it failed to reach Substantial Completion as follows:

West Tower:

Floors 2-3: 10/9/2006 \$1,500 per day
Floors 4-6: 11/17/2006 \$3,000 per day
Floors 7-9: 12/08/2006 \$4,500 per day
Floors 10-11: 12/20/2006 \$6,000 per day

East Tower:

Floors 2-3: 11/22/2006 \$1,500 per day
Floors 4-6: 12/20/2006 \$3,000 per day
Floors 7-9: 1/18/2007 \$4,500 per day
Floors 10-11: 2/8/2007 \$6,000 per day

Hoist & Trash Chute Units

West Tower

Levels 2-4 12/08/2006 \$4,500 per day
Levels 5-11 12/20/2006 \$6,000 per day

East Tower

Levels 1-4 1/18/2007 \$4,500 per day
Levels 5-11 2/8/2007 \$6,000 per day

BB Ex. 511. Thus, through CO15, the parties maintained the underlying obligation for Balfour to pay liquidated damages should Balfour fail to meet these milestones, but pushed those milestones back for each level. *Id.* Under Comstock’s suggested calculations, Balfour would owe \$9,069,000 in liquidated damages.

Balfour argues, however, that CO15 went further in altering the conditions of the Contract. Balfour contends that CO15 changed the agreement so that if “Owner Acceptance” – instead of “Substantial Completion” – was not achieved by the revised milestones, Balfour would begin paying liquidated damages. One paragraph of CO15, ¶2.e., states that “[i]f *Owner Acceptance* is not achieved by the revised times of Completion/Interim Milestones dates, [Balfour] shall begin payment of Liquidated Damages as established in Section 8.1.4 of [the Contract]” pursuant to the revised milestone dates listed above. B.B. Ex. 511 (emphasis added). On the other hand, the very first page of CO15, which appears to be a cover sheet of sorts, explicitly states “[t]he date of *Substantial Completion* as of the date of this Change Order therefore is 02/15/2007.” (emphasis added). Other paragraphs in CO15 state that:

1. a. Article 3, Section 3.3 of the Agreement is amended to change the Completion date of the Work by 60 Calendar Days to February 15, 2007.

...

b. In order to satisfy these required dates, all facilities, systems, and improvements must be in place per Article 8 of [the Contract], and a Certificate of Occupancy must have been issued by Arlington County.

Id. Attempting to give full effect to the term “Owner Acceptance” as it appears in CO15 leads to the issue of whether the term is ambiguous.

Of course, whether a term of a contract is ambiguous is a question of law. *Nextel WIP Lease Corp. v. Sounders*, 276 Va. 509, 516 (2008). Virginia adheres to the “plain meaning” rule and the Court gives full effect to all contractual language if it can be read in conjunction without conflicting. *Berry v. Klinger*, 225 Va. 201, 208 (Va. 1983). Thus, “meaning must be given to every clause. The contract must be read as a single document.” *Id.* “When determining a contract’s plain meaning, the words used are given

their usual, ordinary, and popular meaning.” *Pocahontas Mining Ltd. Liability Co. v. Jewell Ridge Coal Corp.*, 263 Va. 169, 173 (Va. 2002). Reading CO15 as a whole, it is clear “Owner Acceptance” is intended to represent a point of some significance in the Project’s progression, the nonoccurrence of which by a certain point in time would result in the levying of liquidated damages.

Further, while “contractual provisions are not ambiguous merely because the parties disagree about their meaning,” it is clear that Balfour and Comstock differ greatly in their interpretation of “Owner Acceptance” as it appears in CO15. *Dominion Savings Bank, FSB v. Costello*, 257 Va. 413,416 (Va. 1999). Comstock and Balfour offer different meanings for the term as it appears in CO15. Comstock notes that “Owner Acceptance” is not defined in the Contract or CO15, but also notes that the flow chart attached to CO15 indicates that “Owner Acceptance” would follow the completion of punchlist work and the issuance of Certificates of Occupancy, just as the Contract contemplated with “Substantial Completion.” Thus, Comstock argues, “Owner Acceptance” as used in CO15, is merely analogous to “Substantial Completion” in the Contract and does not alter the point at which liquidated damages should cease running. Balfour counters that liquidated damages cannot be imposed because “Owner Acceptance” occurred at some point prior to the dates provided in the Liquidated Damages chart appearing on page two of CO15.

Absent from Balfour’s briefing, however, is any reference as to when “Owner Acceptance” actually occurred, other than a vague reference stating that December 2008 was “two years after the initial Owner Acceptance dates.” B.B. Rebut, at 2. The contention, however, that Balfour had sufficiently met its contractual obligations in late

2006 so as to warrant tolling liquidated damages is completely implausible in the face of evidence presented at trial. For instance, on January 13, 2007, Comstock sent a letter to Balfour, threatening default termination of the Contract due to recurring delays and unacceptable performance. B.B. Ex. 825. Further, CO15 seem indicates that the parties sought to push all timelines back by approximately sixty days, making Balfour's proffered interpretation of "Owner Acceptance" completely inconsistent with that provision of CO15.

Ultimately, whether "Owner Acceptance" is sufficiently ambiguous to warrant the consideration of parol evidence or not, the result is the same. If unambiguous, the Court reads "Owner Acceptance" consistently with the rest of CO15 as pushing the Substantial Completion date back from December 16, 2006 to February 15, 2007, but not displacing the occurrence of "Substantial Completion" as the tolling event for liquidated damages. If the term is ambiguous, the Court would look to evidence such as the testimony of Mr. Williams which supports the proposition that CO15 did not revise "Substantial Completion" as the tolling event for liquidated damages. Tr. 118:22-119:1.

Balfour also raises a number of additional objections to the enforcement of the liquidated damages clause.

First, Balfour argues that Comstock failed to present sufficient evidence to establish the cause and duration of the delays needed to properly assess any delay damages. Balfour cites to *TechDyn Systems Corp. v. Whittaker Corp.*, 245 Va. 291, 296 (Va. 1993), in which the Virginia Supreme Court noted "that where there is evidence of damage from several causes, for a portion of which a defendant cannot be held liable, a plaintiff must present evidence that will show within a reasonable degree of certainty the

share of damages for which that defendant is responsible.” Balfour cites this *TechDyn* as if the Virginia Supreme Court were discussing the standard for establishing liability for liquidated damages specifically, when instead the court was discussing damages for delays generally.

It has long been held that:

Because of the difficulty of ascertaining with certainty the damages arising from failure to complete working contracts within the stipulated time, the parties to such contracts frequently provide for the payment of a specified amount as liquidated damages for failure to perform the contract in time and the courts have unhesitatingly upheld and enforced such provision.

Schmulbach v. Caldwell, 196 F. 16, 25 (4th Cir. 1912). Furthermore, “the purpose of a liquidated damages provision is to obviate the need for the nonbreaching party to prove actual damages.” *O’Brian v. Langley School*, 256 Va. 547, 552 (Va. 1998).

Only if Balfour were to establish that the liquidated damages sought by Comstock amounted to an unenforceable penalty would Comstock be forced to prove actual damages. *O’Brian*, 256 Va. at 552. Under Virginia law, a clause for liquidated damages “will be construed as a penalty when the damage resulting from a breach of contract is susceptible of definite measurement, or where the stipulated amount would be grossly in excess of actual damages.” *Brooks v. Bankson*, 248 Va. 197, 208 (Va. 1994). Thus, the “amount agreed upon will be construed as enforceable...when the actual damages contemplated *at the time of the agreement* are uncertain and difficult to determine with exactness, and when the amount fixed is not out of all proportion to the probable loss.” *Id.* (emphasis added). Analysis of these provisions “depends upon the intent of the parties as evidenced by the entire contract viewed in light of the circumstances under which the contract was made.” *Taylor v. Sanders*, 233 Va. 73, 75, 353 S.E.2d 745, 747 (1987). Importantly, the burden to prove the impropriety of enforcing the liquidated damages clause falls on Balfour as the breaching party. *Boots, Inc. v. Prempal Singh*, 274 Va. 513, 517 (Va. 2007).

Balfour does not argue that, at the time of contracting, Comstock's damages in event of default were certain and not "difficult to determine." *Id.* at 518. Rather, Balfour argues that since Comstock is at least partially responsible for delays to the project, liquidated damages cannot be assessed. However, given that the Court finds that Comstock was not responsible for delays to the project this argument falls under its own weight.

Rather, the most difficult aspect of enforcing the liquidated damages clause is that the Contract's benchmark for ending the imposition of liquidated damages – the issuance of certificates of Substantial Completion – never occurred. Thus, as each party tacitly agrees, if the Court is to impose liquidated damages, it must ascertain a "begin" and "end" date for the running of these damages.

Comstock suggests that calculation of liquidated damages should begin at the new milestone dates established in CO15 previously referenced and end on December 1, 2008. Comstock supports December 1, 2008 as the cutoff for liquidated damages based on Comstock President Gregory Benson's estimation that it should have taken an extra ninety days to complete the punchlist work from the date Balfour ceased its work on the Project in August of 2008. Tr. 680:7-18.

Balfour argues that the Court should instead look to: the County's issuance of Temporary Certificates of Occupancy ("TCO") or Certificates of Occupancy ("CO"); Comstock's "use" and sale of individual condominium units; and/or Comstock's "admissions" that the Project was substantially complete.

Regarding Comstock's purported "admissions" of substantial completion, none of the instances cited by Balfour suffice to toll the enforcement of the liquidated damages clause. Regarding Comstock's use and sale of some of the individual condominium units in the West Tower, the Contract provides for Comstock's occupancy of the Project without forgoing its entitlement to liquidated damages. Gen. Cond. § 8.1.4. If Balfour considered any of the units in the Project to be substantially complete, Balfour could have initiated the procedure provided by §9.8.2 of the Contract, but failed to do so here. Furthermore, the Contract's explicit prerequisites for Substantial Completion also include that the punchlist be reasonably capable of completion within 30 days and that 90% of the units be complete for turnover/delivery to unit owners. Gen. Cond. §8.1.3. Balfour's suggestion that the Court cease the running of liquidated damages at the issuance of TCOs/COs or Comstock's "use" and sale of some of the individual condominium units would disregard these contractual prerequisites.

Balfour cites to *Perini Corp. v. Greate Bay Hotel & Casino, Inc.*, 129 N.J. 479, 486, 610 A.2d 364, 367 (1992), *abrogated on other grounds by Tretina Printing, Inc. v. Fitzpatrick & Assocs.*, 135 N.J. 349, 640 A.2d 788 (1994) which discusses the general concept of substantial completion provisions in the construction industry. That court noted "[c]ourts have found that liquidated damages may not be imposed after the owner 'is able to put the project to its beneficial use or the owner has taken occupancy'" and that "liquidated damages otherwise would become a penalty because those damages are designed to approximate an owner's loss before occupancy." *Perini*, 610 A.2d at 367.

The fact that Comstock was able to “occupy” and sell some units does not indicate to the Court that Comstock was able to put the relevant portions of the Project to its “beneficial use.” Though Balfour notes that Comstock was able to sell a number of units by December 31, 2006 for a profit of some \$46 million, Comstock justifiably points out that it lost some \$70 million in sales revenue. BB. Ex. 1209; Tr. 679:4-21. In the end, regardless of the limited extent to which Comstock was able to use some of the condominiums, the conditions set forth in §8.1.3 of the Contract still had to be satisfied. In fact, the Contract specifically provides that “[u]nless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.” Gen. Cond. §9.9.3. Thus, enforcement of the liquidated damages clause does not constitute a penalty because the Court finds that the Project was not being sufficiently used for its intended purpose nor did Balfour comply with the Contract’s explicit prerequisites to substantial completion.

The issue of “use” and sale of the West Tower units dovetails with Balfour’s additional argument that Comstock’s “occupancy” of the individual units delayed Balfour’s performance and precludes Comstock’s collection of liquidated damages during that period. As noted, the Contract specifically provides that Comstock’s exercise of its option under the Contract to occupy all or any portion of the Project prior to Substantial Completion did not:

toll, waive or diminish in any way damages for which [Balfour] is responsible under this paragraph, except that if such occupancy further delays Substantial Completion of the Work, through no fault of [Balfour] or its Subcontractors, [Balfour] shall not be responsible for liquidated damages during the period of such additional delay.”

CPY Ex. 82, Gen. Cond. § 8.1.4. Balfour argues that Comstock did not properly occupy the units under the Contract because it failed to enter into an agreement pursuant to §9.9.1 of the Contract. That section provides:

The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.4.1.5 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damages to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractors to partial occupancy or use shall not be unreasonably withheld. The state of the progress of the Work shall be determined by written agreement between the Owner and Contractor, or if no agreement is reached, by decision of the Architect.

CPY Ex. 82, Gen. Cond. §9.9.1. Comstock emphasizes the portion reading “[w]hen the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2” as putting the onus on Balfour to satisfy any partial occupancy requirements. The Court agrees. Further, the Court looks to the final sentence which states that “[t]he state of the progress of the Work shall be determined by written agreement between the Owner and Contractor, or if no agreement is reached, by decision of the Architect” as indicative that this section is aimed at averting future disputes regarding the condition of units should Comstock decide to occupy some of them, which never occurred here. Failure to enter into an agreement as contemplated by this section is therefore not fatal. Furthermore, as noted above, the Court finds that Comstock’s occupancy of the units did not further any delay to the

Project. Thus, even if Comstock failed to strictly comply with §9.9.1, that failure was immaterial to the overall performance of the Contract and should certainly not work to excuse Balfour from its liquidated damages provision. *See, e.g., Horton v. Horton*, 254 Va. 111, 115 (Va. 1997) (“Generally, a party who... breach[es] ... a contract is not entitled to enforce the contract. An exception to this rule arises when the breach did not go to the ‘root of the contract’ but only to a minor part of the consideration.”).

Balfour further argues that liquidated damages cannot be imposed for delays to the East Tower because Comstock waived its claim to damages by agreeing to a change in the work schedule in a March 6, 2007 “Letter of Understanding.”⁴ However, that letter clearly stated that “the parties “could not come to an agreement as to the cause, responsibility, fees, damages and/or a succinct timeline for completion of the project.” BB Ex. 861. Rather, that letter, at most, memorialized the parties’ efforts to improve the pace of work on the Project and, by its own terms, was drafted as part of an effort to “come up with mutually agreeable goals and the process for schedule improvement.” *Id.* Balfour’s reliance on the letter is entirely misplaced and did not work to waive Comstock’s claim to liquidated damages.

Finally, there is some discussion in the briefs (and previous briefs incorporated by reference) that Comstock forfeited its claim to liquidated damages by failing to comply with a notice requirement which was a prerequisite to imposing liquidated damages. Balfour relies on §§4.2.1 and 4.3.2 which fall under the general rubric of “Claims and Disputes.” Specifically, §4.3.2 states that claims by either party must be initiated within

⁴ Balfour’s Post-Trial Brief references a March 6, 2006 Letter of Understanding, but based on its Proposed Findings of Fact, the Court is confident Balfour is referencing the Letter of Understanding marked as BB Ex. 861, which, as noted above, actually shows a drafting date of February 25, 2007, though it was emailed as an attachment on March 6, 2007.

twenty-one days of the occurrence of the event giving rise to the claim, unless otherwise provided in the Contract. Thus, Balfour argues, Comstock did not properly notice its demand for liquidated damages and is now barred from doing so under §4.3.2 of the Contract.

However, the Court cannot agree with Balfour that this provision limits Comstock's ability to recover liquidated damages here. Rather, the Court favors the reading of the Contract that "gives full effect to all contractual language if it can be read in conjunction without conflicting." *Berry*, 225 Va. at 208 (Va. 1983). The Court reads §8.1.4 as imposing liquidated damages automatically upon failure to meet the provided milestones, which is only logical given the entire purpose of a liquidated damages provision as discussed above. Thus, the Contract "provides otherwise" under the explicit language of §4.3.2. Furthermore, reading §4.3.2 to mandate a noticed "claim" for each day liquidated damages runs (and for each individual floor) would read into the contract an onerous and inherently conflicting requirement. The Court declines to do so.

Also problematic to Balfour's waiver argument is the aforementioned lack of DCS's issuance of Certificates of Substantial Completion and the other unmet prerequisites to Substantial Completion. Under §8.1.3, of the Contract, Comstock had a completely justifiable ground for believing that liquidated damages continued to run in the absence of these prerequisites being met, and thus the court is left to wonder when Balfour would have Comstock issue a notice of a "claim" under §4.3.2 when the "claim" was arguably still accruing through the pendency of this suit. Rather, the Court finds Comstock's February 14, 2007 Letter indicating that Balfour had failed to meet all interim milestones in Change Order 15 is sufficient notice to Balfour that it would assess liquidated damages for Balfour's late completion. CPY Ex. 844.

In light of the foregoing, the Court will enforce the liquidated damages provision of the Contract as suggested by Comstock, save one revision. Given that all contractual prerequisites for Substantial Completion were never met, one could argue that liquidated damages could continue running through the present date. That, however, would encroach too far into the realm of penalizing Balfour, which, of course, liquidated damages cannot do. *Gordonsville Energy, L.P. v. Virginia Elec. and Power, Co.* 257 Va. 344,355, (Va.1999)(“a liquidated damages provision may constitute a penalty and, therefore, be unenforceable when the amount agreed to is ‘out of all proportion to the probable loss.’” (citations omitted)).

Under the Contract, Substantial Completion was to occur at a point in time when, *inter alia*, “all remaining punch list items can be reasonably and ordinarily expected to be completed within thirty (30) days.” As mentioned, Comstock suggests December 1, 2008 as the cutoff for liquidated damages based on Comstock President Gregory Benson’s estimation that it should have taken an extra ninety days to complete the lingering punch list work from the point Balfour ceased its work on the Project in August of 2008. The Court gives great weight to this testimony by Mr. Benson, as he was on site almost daily once the delays began. Tr. 656: 2-6.

However, since the Substantial Completion was to be measured, not when all punch list was completed, but when the work was within *thirty days* of completion, November 1 is the more appropriate date for ceasing the imposition of liquidated damages. Given §8.1.4’s cap of \$12,000 in liquidated damages per day, the Court deducts \$360,000 from Comstock’s calculation of liquidated damages, resulting in a final amount of \$8,769,000.

In the end, the Court's holding does nothing more than confirm that "a 'liquidated damages' clause leaves in the hands of the parties the issue of likely actual owner damages to be sustained due to delayed completion, and contractors are presumed to have taken such clauses into consideration in pricing the contracts they accept." 5 BRUNER & O'CONNOR CONSTRUCTION LAW § 15:82 (citation omitted).

ii. Other Damages

In addition to the liquidated damages discussed above, Comstock asserts damages on several additional grounds. First, Comstock also seeks damages related to "financing" and unit cancellations arising from Atlas' filing of two liens which Balfour failed to timely discharge. Comstock seeks \$2,994,720.00 in damages for the "financing" fees and \$303,813.00 in damages arising out of the unit cancellations. Comstock also seeks recovery for other damages it incurred in completing the Project after Balfour's deficient performance. Comstock labels these damages as: "costs to supplement punchlists"; "additional and extended personnel costs"; "estimated future costs to complete punchlist"; and "estimated future costs to complete warranty list" which allegedly total \$4,472,689.22.

An initial point of inquiry for the Court regarding all of these damages is whether they constitute direct or consequential damages. The Contract specifically provides that the parties "waive Claims against each other for consequential damages arising out of or relating to this Contract." Gen. Cond. §4.3.11.

1. Consequential vs. Direct Damages

The parties agree that, as a matter of law, “[d]irect damages are those that flow ‘naturally’ from a breach of contract; *i.e.*, those that, in the ordinary course of human experience can be expected to result from the breach, and are compensable.” *R.K. Chevrolet, Inc. v. Hayden*, 253 Va. 50, 56, 480 S.E.2d 477 (1997). On the other hand, “[c]onsequential damages are those which arise from the intervention of ‘special circumstances’ not ordinarily predictable.” *Virginia Polytechnic Institute and State University v. Interactive Return Service, Inc.*, 595 S.E.2d 1, 7 (Va. 2004)(citing *Roanoke Hosp. Ass’n v. Doyle & Russell, Inc.*, 214 S.E.2d 155, 160 (Va. 1975)).

The Contract goes further and defines “consequential damages,” to include specifically:

This mutual waiver includes... damages incurred by [Comstock] for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons;

Gen. Cond. §4.3.11. As in all other contexts of this trial, the Court endeavors to give full effect to the terms of the Contract as they are written. Thus, the Contract’s definition of “consequential damages” will control to the extent it specifically identifies waived damages.

a. Comstock’s Claims for “Financing” and Unit Cancellation Costs Stemming from Balfour’s Failure to Discharge Its Subcontractors’ Liens

The Contract specifically compels Balfour to release or otherwise discharge subcontractor’s liens within five days for amounts paid by Comstock or for amounts that the subcontractor previously provided. Gen. Cond. §§3.18.3, 5.3.3. On December 14, 2007, Atlas filed two mechanic’s liens on the project totaling approximately

\$1.3 million.⁵ CPY Ex. 5. Balfour breached the contract by failing to secure the release of those liens. Tr. 66:16-18. Balfour argues that, regardless of any breach, Comstock's assertion of damages totaling \$2,994,720.00⁶ in the form of various fees incurred in securing alternate financing are not direct damages arising from such a breach.

Comstock argues that the damages it seeks in the form of extra financing arise *directly* out of Balfour's failure to bond off or otherwise obtain the release of liens filed by Atlas on the Project and thus do not fall within the purview of the consequential damages waiver in the Contract. Balfour responds by pointing to §4.3.11 of the Contract which states that the parties' waiver of consequential damages includes those losses "incurred by [Comstock] for... losses of... income, profit, [and] *financing*." (emphasis added).

In reading §3.18.3 of the Contract in conjunction with §5.3.3, the Court infers that Comstock sought to protect itself from the negative consequences which flow from a subcontractor's filing of a lien on the project, one of which may logically be the impairment of Comstock's ability to secure financing using the Project property as collateral. However, the waiver explicitly contemplates and waives claims for losses incurred by Comstock for "losses of... financing." Gen. Cond. § 4.3.11. The Court finds this to be a clear and unambiguous waiver of precisely the type of damages Comstock seeks.

⁵ These liens are not to be confused with the two mechanic's liens Balfour filed on July 29, 2008 after signing the LFCA, which is discussed later in this Opinion.

⁶ This amount is comprised of: a "Modification Fee" paid to Corus Bank of \$133,276.64; the payment of a transaction fee of \$200,000 to Stonehenge Funding, LLC; the payment of fees of \$530,520.00 and \$2,122,520.00 to KeyBank; and \$8,844.92 in legal fees as part of the payoff of the Corus loan.

The Court is compelled to say the same about the ancillary losses Comstock asserts which arise from the lost sales of condominium units while the Atlas liens encumbered the Project. Comstock argues that it lost eight sales contracts during the time period that the Atlas liens were on the Project in the total amount of \$2,885,419. Comstock does not appear to seek damages directly for those lost sales, perhaps because they too are explicitly waived, but rather argues that because of the unit cancellations, Comstock was not able to make payoffs to the bank which caused Comstock to incur additional interest of in the amount of \$225,273.00 on a loan. Tr. 64:17-22; 65:8-20; Tr. 62:16 – 64:16; 65:4-7; CPY Ex. 253. Comstock also claims it paid homeowner's fees for these units that went unsold totaling \$49,980.00 and real estate taxes associated with ownership of the units totaling \$28,560.00. Tr. 64:17 – 66:2.

Comstock fails to establish entitlement to these damages for two reasons. First, Comstock failed to introduce sufficient evidence to tie these lost sales to the liens on the Project. The Court did hear testimony, however, from Comstock's own witnesses that the condominium market in Northern Virginia was on the decline at the time the liens were filed. Tr. 667:1-5. Thus, there is every possibility that the lost sales contracts, and these corresponding fees, were the result of something other than Balfour's filing of the liens. Second, the Court must conclude that the Contract's waiver of consequential damages provision also includes these kinds of losses. Again, the waiver covered "damages incurred by [Comstock] for rental expenses, for losses of use, income, profit, [and] financing..." Gen. Cond. §4.3.11. While these losses arguably fall under rental expenses or loss of income and profit, the Court would also note that it does not read the waiver as exclusive. This means that while the Court reads §4.3.11 to *include* certain types of losses, as it explicitly states, there is no corresponding clause stating that the listed types of loss are somehow exclusive. The Court concludes that the incurred interest, homeowner fees, and taxes do not "flow naturally" from the breach of the Contract, and therefore these are consequential damages which Comstock waived in signing the Contract.

b. Comstock's Damages for Completion of the Project

Next, Comstock seeks to recover a number of expenses it allegedly incurred in correcting and concluding Balfour's deficient and incomplete work. In order to recover for breach of contract under Virginia, three elements must be established: (1) the existence of a legally enforceable obligation or promise between the defendant and plaintiff; (2) the defendant's breach of this obligation or promise; and (3) injury or damage to the plaintiff caused by that breach. *Brown v. Harms*, 251 Va. 301, 306 (Va. 1996).

Before proceeding, the Court concludes that, unlike the damages sought in the preceding section, the damages arising from Balfour's unsatisfactory work are not of the sort contemplated and waived by § 4.3.11 of the Contract. The Court also concludes that LFCA clearly reserves Comstock's right to seek additional damages under the Contract and only settled those charges which were specifically enumerated by the parties in executing the LFCA.

i. Costs to Supplement Punchlist Paid to Third Parties and Additional and Extended Personnel Costs

Comstock argues that the Contract obligated Balfour to produce detailed lists of deficiencies, and that because Balfour did not do so, Comstock is entitled under the Contract to "supplement Balfour's Work." Specifically, if Balfour failed to perform work as required, §2.4.1 of the Contract provides:

If the Contractor defaults or neglects to carry out...Work in accordance with the Contract Documents...and fails within a five-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect ... the Owner may ...correct such deficiencies.

CPY Ex. 82, Gen. Cond. § 2.4.1. However, if a dispute of this nature arose, the Contract provides:

Except as provided otherwise in the contract, claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice ... If a party fails to submit a claim within the time limits required by the Contract Documents, such claim is hereby expressly waived.

CPY Ex. 82; Gen. Cond. § 4.3.2.

On August 10, 2007, Comstock issued an additional Notice pursuant to Article 2.4.1 of the Contract. In the notice letter, Comstock states that Balfour must “commence and continue corrective repairs and warranty work to the flooring at the Project.” (Tr. 667:9-23 (Benson); CPY Ex. 183).

Balfour proved unable to sufficiently complete punchlist work, so Comstock hired additional help. As noted in the Court’s Findings of Fact, Comstock hired Owens Corning and Wamer Construction Consultants as external personnel to assist in creating and inspecting the punchlists, in addition to paying DCS to prepare a punchlist for “common areas.” CPY Ex. 232. Comstock also paid Quintilla Construction to provide punchlist labor such as painting, hanging drywall, adjustments, and minor installations in addition to Production Cleaning Services to clean the units for unit purchaser walk-throughs because Balfour was not doing so. Tr. 473:1-7; Tr. 593:11-13; Tr. 593:20 – 594:5; CPY Ex. 232. The total cost incurred by Comstock for this work was \$1,835,120.73. CPY Ex. 232.

Additionally, Comstock added further personnel and resources to the Project as a result of Balfour's incomplete work. CPY Ex. 233. Comstock also hired additional contractors for security and punchlist work. *Id.* Comstock's costs for these additional expenses were \$492,479.13 in additional on-site supervision and \$636,384.36 for third party security and punchlist work. CPY Ex. 233.

Balfour also argues that these damages constitute double recovery when taken in conjunction with the liquidated damages discussed above. "In determining whether multiple damage awards constitute impermissible double recovery, the trial court must consider the nature of the claims involved, the duties imposed and the injury sustained." *Wilkins v. Peninsula Motor Cars, Inc.*, 266 Va. 558, 561 (Va. 2003)(citing *Advanced Marine Enterprises v. PRC Inc.*, 256 Va. 106,124, 501 S.E.2d 148, 159 (Va. 1998)). After looking to the claims involved and the injury sustained by Comstock, the Court rejects any argument by Balfour that these damages are duplicative of those awarded above as liquidated damages. These damages go beyond those contemplated by the liquidated damages clause and are not "delay damages" as Balfour contends, but rather are the direct result of Balfour's poor workmanship and abandonment of the Project before it was completed.

The Court finds all of the preceding damages to have been reasonably incurred as a direct and natural consequence of Balfour's breach of the Contract. Comstock has established Balfour's breaches of Contract by a preponderance and is thus entitled to recover its actual costs (which the Court finds to be reasonable) to supplement and perform Balfour's Work. *See, e.g., Brown*, 251 Va. at 306.

ii. Estimated Future Costs to Finish Punchlist and Warranty List Work

Finally, Comstock also seeks to recover damages it incurred in the months following execution of the LFCA, and newly-discovered items that needed to be corrected and/or completed by Balfour. Comstock did not add these tasks to current punchlists and instead created a separate “Warranty List” to follow those tasks.

Comstock argues that \$248,145 worth of punch list work remained outstanding in addition to \$1,260,502 worth of “warranty” items outstanding. Tr. 605:1 – 606:2; CPY Ex. 234. Comstock argues that because it has proven all three elements of Balfour’s breaches of Contract, it is entitled to recover its actual costs to supplement and perform Balfour’s Work and its estimated future costs to complete Balfour’s Work. *See Filak v. George*, 267 Va. 612, 619 (Va. 2004).

On this point, the parties disagree as to which portion of the Contract should control. Balfour points to §15.3 as a limit on Comstock’s “Warranty.” That section states that Comstock’s recovery on “warranty” claims are limited to the “reasonable cost of repairs *already made*” which would invalidate claims for expenses yet to be incurred. However, §15.3 explicitly applies to “warranty” claims asserted by an individual unit purchaser or the Condominium Association and states that Balfour is responsible for repairs to the extent that it is determined to be responsible for deficient work. This seems to render that provision inapplicable. Comstock further argues that the Project is not in the “Contractual Warranty period” covered by §15.3 because the Project is still not Substantially Complete. Thus, Comstock argues, §12.2.1.1, which provides that Balfour bears the cost to correct non-conforming or rejected work, should control. On this point, the Court concludes that §12.2.1 is the controlling section of the Contract.

The Court's difficulty in awarding these damages, however, does not arise from a debate over which contractual provision should apply, but rather from the fact that these costs are simply *estimates* of damages. As Balfour notes, Comstock provided nothing more than a list containing "estimates" of work *yet to be completed*. CPY Ex. 234. As a general matter, "[p]rospective damages—damages that compensate for future losses reasonably certain to arise from a past breach of a contract—can be recovered if there is a total breach of a promise that has formed the consideration for an entire and indivisible contract." 22 am. JUR. 2d DAMAGES § 488 (2009). Virginia appears to recognize that "[r]ecovery of future damages may be had if the damages are reasonably certain to occur or follow." *Kiser v. Amalgamated Clothing Workers of America*, 169 Va. 574, 574, (Va.1938).

The only evidence submitted by Comstock on this point are its *own* estimates of work that has yet to be performed, based on costs which have yet to be incurred. In particular, the Court has serious reservations regarding the certainty of Comstock's damages arising from the outstanding cabinet punchlist⁷ items, leaks in individual units, patio pavers, and potential duplicates of replacement glass. Comstock seems to anticipate this difficulty, and asks the Court for a specific finding that its future claims for actual costs expended to repair the "Warranty" items are not barred by the doctrine of *res judicata*.

⁷ Mr. Kidwell testified that the cost to replace all deficient cabinet door fronts was \$3,300 per kitchen, regardless of the work that actually needed to be done. Tr. 606:20 – 607:15. While Comstock notes that Kidwell would credit the warranty list for the difference in cost between replacing the entire kitchen and the amount on the original punchlist, the Court has lingering doubts as to whether damages were actually properly assessed on a case by case basis.

The Court agrees that these claims are not yet ripe, and thus have not been actually litigated by this Court.⁸

In conclusion, the Court awards \$2,964,002.22⁹ in direct damages to Comstock as a result of Balfour's breach of contract and the costs Comstock incurred to properly finish the Project as contemplated by the Contract.

ii. Count II: Breach of the Lien Free Completion Agreement

a. Damages and Attorneys' Fees are the Only Issues Remaining

In an attempt to resolve some of the disputes that had arisen between the parties, and with the intention of removing liens Atlas had filed on the Project, Comstock and Balfour entered into an agreement on January 30, 2008, which the Court refers to simply as the LFCA. As part of the LFCA, Balfour agreed that it would "not at any time file or record a lien against the Project," but left other disputed issues open for further negotiation. Balfour, however, subsequently filed two mechanic's liens against the Project after it believed Comstock breached the agreement. Balfour filed these liens against anyone owning an interest in the Project, such as individual condominium unit owners, lenders, and trustees, thinking that this act was compelled by the Virginia lien statute. *See* Va. Code. §§ 43-1 through §43-23.2. Balfour filed a third party complaint to join all owners, lenders, and trustees named in the mechanic's lien filings in the present action, and as a result, hundreds of parties were joined in this lawsuit.

⁸ Because §12.2.1.1 of the Contract applies, however, the parties may find themselves able to agree on the amount due and avoid the need for any further litigation.

⁹ This is the sum of Comstock's "Actual Costs to Supplement Punchlist Costs" (itemized separately as \$1,835,120.73 and \$636,384.46) and Comstock's "Additional and Extended Personnel Costs" (itemized as \$492,497.03).

After a hearing on the validity of the liens, the Court then issued an Order and Memorandum Opinion finding that (1) the Lien-Free Completion Agreement was supported by consideration; (2) the lien waiver provisions in the Agreement were unconditional; (3) Comstock did not breach the Agreement before Balfour Beatty filed the liens; and (4) the liens were invalid. As a result, the claims related to the liens were dismissed with prejudice, which resulted in the termination of the hundreds of Third Party Defendants as parties. Then, as mentioned, on Summary Judgment the Court concluded that “Balfour Beatty had a legally enforceable obligation to refrain from filing a mechanic’s lien. And... that Balfour Beatty violated this obligation by filing liens on the Project...” Aug. 14, 2007 Memo. Op. at 17. In its Memorandum Opinion, the Court granted partial summary judgment to Comstock on the first two elements of its breach of contract claim arising out of Balfour’s breach of the Lien Free Completion Agreement (“LFCA”). *Id.* Thus, the only issues left for trial were Comstock’s damages arising from Balfour’s breach and whether Comstock could satisfactorily establish the reasonableness of attorneys’ fees incurred.¹⁰ As the only “damages” Comstock seeks from Balfour’s breach of the LFCA seem to be attorneys’ fees, the remainder of this section will be devoted to that analysis.¹¹ Comstock seeks attorneys’ fees in the amount of \$261,160.47, the sum of five separate firms’ fees involved in the Balfour lien litigation.

¹⁰ In this Court’s Memorandum Opinion on the parties’ Cross-Motions for Summary Judgment, the Court noted that Comstock “alleged that it incurred significant direct damages to indemnify and defend third parties in this litigation as a result of Balfour Beatty’s lien filings. Whether these damages are direct damages or consequential damages barred by contract is a disputed issue of material fact.” SJ Op. at 18 n.7. The Court’s discussion of attorneys’ fees and the *Hiss* exception occurred in a section of the Court’s opinion preceding the Court’s discussion of Balfour’s breach of the LFCA. Thus, the only one of the “three breach” elements remaining at trial was damages, but the reasonableness of attorneys’ fees in defending and maintaining the suit with third parties under *Hiss* also obviously remained an issue and are thus both discussed here.

¹¹ As established in the previous footnote, Comstock referenced “direct damages” in indemnifying and/or defending third parties after Balfour’s breach of the LFCA. However, in Comstock’s breakdown of its damages, it only seems to seek recovery of the attorneys’ fees arising from LFCA matters as direct damages.

On the issue of attorneys' fees, as this Court held previously, Virginia adheres to the "American Rule," meaning that attorney's fees are not recoverable by a prevailing litigant unless a statutory or contractual provision provides for such an award. *See Lee v. Mulford*, 269 Va. 562, 565 (Va. 2005); *Dowling v. Rowan*, 270 Va. 510, 521-522 (Va. 2005). The exception to this rule, however, applies "where a breach of contract has forced the plaintiff to maintain or defend a suit with a third person[.]" *Hiss v. Friedberg*, 201 Va. 572, 577 (Va. 1960); *see also Owen v. Shelton*, 221 Va. 1051, 1055 (Va. 1981). In such an instance, a plaintiff forced to defend third persons "may recover the counsel fees incurred by him in the former suit provided they are reasonable in the amount and reasonably incurred." *Id.* However, retaining counsel must be a "direct and necessary consequence" of the defendant's breach of contract. *Id.* at 876-77.

Comstock did not introduce expert testimony on the issue of the reasonableness of attorneys' fees. Balfour argues that ordinarily, expert testimony will be required to assist the fact finder on the reasonableness of attorneys' fees. *Mullins v. Richlands Nat. Bank*, 403 S.E.2d 334, 335 (Va. 1991). The Virginia Supreme Court has caged this "requirement," however, noting that a party seeking attorneys' fees "is not required to prove the reasonableness of the fees with expert testimony *in all instances.*" *Seyfarth, Shaw, Fairweather & Geraldson v. Lake Fairfax Seven Ltd. P 'ship*, 480 S.E.2d 471, 473 (Va. 1997)(emphasis added). For its part, Comstock cites to an unreported Virginia Court of Appeals Case, *Byrd v. Byrd*, 1998 WL 136434 at *3 (Va. App. 1998), which held that "[e]xpert evidence is not necessary to establish the reasonableness of attorney's fees." In that case, evidence in the form of detailed bills and the party's testimony that the fees were consistent with rates for that attorney and firm sufficed in establishing the reasonableness of the fees. *Id.*

The Court reads the law in Virginia as not requiring expert testimony to establish the reasonableness of fees, so long as there is adequate corroborating evidence and testimony to ascertain the basis for the fees sought. Comstock sufficiently did so here. Balfour also contests whether these “damages” are properly considered direct or consequential. In fact, the Court specifically left this question open in its August 14, 2008 Summary Judgment Memorandum Opinion. Aug. 14, 2008 Mem. Op. at 18 n. 7 (“Whether these damages are direct damages or consequential damages barred by contract is a disputed issue of material fact.”). Given, however, that the Court now finds these expenses to be a direct and natural consequence of Balfour’s breach, the Contract’s waiver is inapplicable.

Although the Court held that Balfour forced Comstock to “maintain a suit with a third person” and thus fell within the *Hiss* exception, Comstock was not automatically entitled to attorneys’ fees. Rather, Comstock maintains the burden to prove that the fees were “reasonable in the amount and reasonably incurred.” *Id.* In this Circuit, in order to ascertain that attorneys’ fees were reasonably incurred “a court must first determine a lodestar figure by multiplying the number of reasonable hours expended times a reasonable rate.” *Robinson v. Equifax Information Services, LLC*, 560 F.3d 235, 244 (4th Cir. 2009) (citing *Grissom v. The Mills Corp.*, 549 F.3d 313, 320 (4th Cir.2008)).

This Circuit has adopted a twelve-factor test to calculate the “reasonable number of hours” and the “reasonable rate.” *Id.* These factors are:

- (1) the time and labor expended;
- (2) the novelty and difficulty of the questions raised;
- (3) the skill required to properly perform the legal services rendered;
- (4) the attorney’s opportunity costs in pressing the instant litigation;
- (5) the customary fee for like work;
- (6) the attorney’s expectations at the outset of the litigation;
- (7) the time limitations imposed by the client or circumstances;
- (8) the amount in controversy and the results obtained;

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- (9) the experience, reputation and ability of the attorney;
 - (10) the undesirability of the case within the legal community in which the suit arose;
 - (11) the nature and length of the professional relationship between attorney and client; and
 - (12) attorneys' fees awards in similar cases

Barber v. Kimbrell's Inc., 577 F.2d 216, 226 n. 28 (4th Cir.1978)(adopting twelve factors set forth in *Johnson v. Get. Highway Express, Inc.*, 488 F.2d 714 (5th Cir.1974), *abrogated on other grounds by Blanchard v. Bergeron*, 489 U.S. 87, 109 S.Ct. 939, 103 L.Ed.2d 67 (1989)). Further, "[a]fter determining the lodestar figure, 'the court then should subtract fees for hours spent on unsuccessful claims unrelated to successful ones.'" *Robinson*, 560 F.3d at 245 (citations omitted). Further, as this Circuit emphasizes:

determination of the hourly rate will generally be the critical inquiry in setting the "reasonable fee," and the burden rests with the fee applicant to establish the reasonableness of a requested rate. In addition to the attorney's own affidavits, the fee applicant must produce satisfactory 'specific evidence of the 'prevailing market rates in the relevant community' for the type of work for which he seeks an award.' Although the determination of a 'market rate' in the legal profession is inherently problematic, as wide variations in skill and reputation render the usual laws of supply and demand largely inapplicable, the Court has nonetheless emphasized that market rate should guide the fee inquiry.

Plyler v. Evatt, 902 F.2d 273, 277 -278 (4th Cir. 1990).

At this point, the record before the Court on the issue of attorneys' fees consists of documentary evidence in the form of attorneys' bills and the testimony of Comstock's Chief Financial Officer and President, respectively. Comstock's Exhibit 240 indicates that in its representation of Comstock specifically on the lien issues, and excluding time spent on its failed Slander of Title and Abuse of Process Claims, Quagliano & Seeger billed \$114,859.51 in legal fees, though a total number of hours and rate summary is not

included. Comstock's Exhibit 241 are records pertaining to McGuire Woods' brief participation in the suit representing KeyBank, which amounted to fees for .8 hours of work in the amount of \$396. Comstock's Exhibit 242 shows billing by Debra Fitzgerald-O'Connell ("O'Connell"), who represented the homeowners at the Project in connection with the lien proceedings, for 111.75¹² hours of work for a total of 23,746.87.¹³ Exhibit 242 indicates that Miles & Stockbridge, P.C. was retained by the title insurance company that represented both Corus and KeyBank in connection with the lien proceedings, which led to fees in the amount of 74,577.¹⁴ Unfortunately, the bill submitted into evidence does not indicate a breakdown of hours worked and rates which comprise that final sum. Finally, Exhibit 244 contains invoices from McKenna Long & Aldridge ("McKenna"), who represented KeyBank, in the amount of \$43,811.20.

Comstock introduced testimony of Bruce Labovitz, Comstock's former Chief Financial Officer, who testified to Comstock's obligations to defend its lenders and work to have the liens Balfour placed on the Project removed. He also testified to the legal expenses Comstock incurred in defending against the liens. Labovitz further testified on the basis of his previous experience reviewing invoices for legal fees that the attorneys' fees incurred in defending against the liens were in line with fees that Comstock pays to other attorneys in other like matters. Mr. Benson testified to Comstock's belief that the liens existence constituted a default under their loan documents with their lender, giving rise to Comstock's obligation to indemnify and defend the lenders, title holders, and the unit owners' association. Tr. 685:6-10. Comstock also introduced all relevant billing invoices from the five separate firms involved in litigating the matter. *See* CPY Ex. 240-244.

¹² O'Connell's bill indicates that she deducted a "courtesy discount" of \$4,190.63.

¹³ Comstock seeks recovery in the amount of \$23,880.47, but that figure also includes approximately \$133.60 in costs. This section of the Court's Opinion is dedicated to the reasonableness of attorneys' fees.

¹⁴ Comstock seeks a total of \$78,213.29, which includes \$3,635.79 in costs.

While the above evidence supplies the Court with much of the information needed to do its analysis under the aforementioned test, it lacks critical information regarding whether the rates charged and time expended are reasonable in Northern Virginia. The Court is without affidavits and other evidentiary materials on which the Court can further analyze the fee request under the law of this Circuit. As such, the Court requests further briefing and adjoining affidavit submissions by the Comstock, limited to this discrete issue only. Balfour may respond to this further submission within 14 days.

IV. **Conclusion**

Based on the foregoing findings of fact and conclusions of law, the Court holds Balfour liable for breach of contract with damages in the following amounts: \$8,769,000. in liquidated damages and \$2,964,002.22 in direct damages, for a total award of \$11,733,002.22.

As discussed, the Court is presently unable to decide the issue of the reasonableness of attorneys' fees arising out of Balfour's breach of the Lien Free Completion Agreement and requests supplemental briefing by the parties on this issue. Comstock shall file its initial brief on the matter within 21 days and Balfour shall file its brief in response within 14 days. An appropriate Order shall issue.

Alexandria, Virginia
February 23, 2010

/s/ Liam O'Grady
Liam O'Grady
United States District Judge

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT, entered into this day of , 2009 (the "Effective Date") between **COMSTOCK STATION VIEW LC**, a Virginia limited liability company, hereinafter known as "Seller," and **M/I HOMES OF DC, LLC**, a Delaware limited liability company, hereinafter known as "Purchaser."

WHEREAS, the Seller is the owner of certain real property located in Loudoun County, Virginia, as more specifically shown in the plat attached hereto as **Exhibit A**, known as **Station View**, located on the southwest corner of **Route 772 (Old Ryan Road) and Route 645 (Croson Lane)** and identified as **Loudoun County Tax Map 78, Parcel 21A and MCPI #120-28-5974**, Loudoun County, Virginia, consisting of approximately 7.47 acres, to be developed into **FORTY SEVEN (47) townhome lots (the "Lots")**, together with all improvements constructed thereon and all rights and appurtenances appertaining thereto, (the "**Property**"); and

WHEREAS, Seller desires to sell and Purchaser wishes to purchase the Property upon the terms and conditions hereafter set forth.

NOW, THEREFORE, WITNESSETH: In consideration of the mutual promises and covenants herein contained, Seller hereby grants to Purchaser the right to purchase and the Purchaser agrees to purchase in fee simple the Property on the following terms and conditions:

ARTICLE I

PURCHASE, PAYMENT AND PRICE

1.01 Property. Purchaser agrees to purchase the Property and Seller agrees to sell and convey all of Seller's right, title and interest in and to the Property together with any and all improvements, appurtenances, rights, privileges and easements benefiting, belonging, or pertaining to the Property and any right, title and interest of Seller in and to the land lying in the bed of any street, road or highway (open or proposed) in front of, adjoining or servicing the Property including condemnation awards or payments in lieu thereof as a result of change of grade, alignment or access rights (all of which shall be deemed part of the Property for the purposes of this Agreement, but only to the extent currently existing), pursuant to the terms and conditions hereof.

1.02 Purchase Price. Subject to all of the terms and conditions of this Agreement, Seller agrees to sell and Purchaser agrees to purchase the Property at a price of **TWO MILLION EIGHT HUNDRED FORTY THOUSAND AND NO/100THS DOLLARS (\$2,840,000.00)** (the "Purchase Price"), which shall be payable in cash at settlement.

1.03 Price Adjustment. In the event that the final approved record plat, which has been approved by all appropriate government authorities (the "Final Record Plat") together with federal and/or any other state or local approvals, including wetlands and/or Virginia DEQ permits, does not permit the development and construction of the number of Lots used to calculate the Purchase Price (i.e., FORTY SEVEN (47) townhome Lots), at any time, then the Purchase Price shall be appropriately adjusted downward, based upon a price of SIXTY THOUSAND FOUR HUNDRED TWENTY FIVE AND 53/100THS DOLLARS (\$60,425.53) per Lot so that the total Purchase Price paid by Purchaser for the Property at settlement shall be calculated based upon the total number of Lots permitted to be developed and constructed on the Property.

ARTICLE II

DEPOSIT

2.01 Amount.

a. Within **five (5) business** days of the Effective Date, Purchaser shall deliver to Curran & Whittington, PLLC, located at 15100 Washington Street, Suite 201, Haymarket, VA 20169, (the "Escrow Agent"), a cash in the sum of **ONE HUNDRED THIRTY THOUSAND AND NO/100THS DOLLARS (\$130,000.00)**, (the "Deposit").

2.02 Release. The Deposit, unless previously returned to the Purchaser or released to the Seller pursuant to the terms of this Agreement, shall be credited to the Purchase Price at settlement and closing.

Provided Purchaser does not terminate the Agreement at the expiration of the Feasibility Study Period, and Seller has obtained Lender Approval as herein defined, Escrow Agent shall, within three business days after receipt of a vendor invoice from Seller, with a copy delivered to Purchaser, disburse portions of the Deposit required to pay all normal and customary third party costs, approved by Purchaser, which approval shall not be unreasonably withheld or delayed, incurred subsequent to the Effective Date hereof and associated with satisfying the pre-conditions set forth in Paragraph 5.01(e) below, provided however, in no event shall disbursements hereunder exceed Fifty Thousand and No/100ths Dollars (\$50,000.00).

ARTICLE III

TITLE AND SURVEY

3.01 Title. The Seller covenants that at settlement and closing, it will be the fee simple owner of the Property subject to all instruments forming the chain of title to the Property that it will have full legal, beneficial, and equitable ownership of the Property and that it will have the right and power to convey the Property. The Property is to be sold and conveyed free of liens, and title is to be good of record, merchantable and insurable. Title shall be fully insurable under a full coverage advantage owner's title policy issued by a recognized title insurance company of Purchaser's choice, at standard rates and without requirement or exception subject, however, to all standard pre-printed exceptions and to any easements, covenants, rights of way or declaration of covenants of record that exist (the "Permitted Exceptions"). Prior to the expiration of the Feasibility Study Period, Purchaser may order (a) a title commitment (the "Title Commitment") or other evidence of title to the Lots acceptable to Purchaser in the amount of the Purchase Price, from a reputable title insurance company (the "Title Company"), and (b) a physical survey acceptable to the Title Company and Purchaser. Purchaser reserves the right to approve or disapprove any and all exceptions to title and/or matters of survey (the "Title Exceptions"), including without limitation, and whether or not of record, liens, encumbrances, easements, restrictions, reservations, rights, ingress from and egress to public thoroughfares, encroachments and claims, and commencement of

condemnation proceedings. On or before the expiration of the Feasibility Study Period Purchaser shall give Seller notice (the "Purchaser's Notice") of any Title Exceptions which are not satisfactory to Purchaser. As to any Title Exceptions, Seller will advise Purchaser within ten (10) days of receipt of Purchaser's Notice as to which of said Title Exceptions it is willing to cure ("Seller's Notice"). In the event Seller is unwilling or unable to cure any Title Exceptions, Purchaser may: (a) cancel this Agreement in which event it shall be null and void and Escrow Agent, shall return to Purchaser the Deposit, and the parties hereto shall have no further rights and obligations under this Agreement, or (b) waive any item or items. Purchaser shall perfect its election by providing notice to Seller; provided, however, that such election shall be without prejudice to Purchaser's right to cancel this Agreement and receive the Deposit should the Seller unreasonably delay in removing or be unable to cure any Title Exceptions it has agreed to cure. Failure to provide notice pursuant to (a) or (b) above within three business days from receipt of Seller's Notice shall be deemed an election to waive a Title Exception.

Seller agrees not to encumber the title to or permit the encumbrance of title to the Property after the Date of Execution of this Agreement unless required to satisfy a precondition of settlement.

Seller agrees to sign such customary affidavits, indemnities or other documents as reasonably necessary for the Title Company to delete the standard preprinted exceptions from Purchaser's title policy.

Notwithstanding anything to the contrary above, any deeds of trust, judgments, unpaid state or federal taxes, inheritance taxes, unpaid real estate taxes, or any other liens against the Property that can be cured by the payment of money shall be first paid and released of record by the settlement agent or attorney at settlement (if not sooner paid and released of record by Seller), utilizing the proceeds paid by Purchaser at settlement.

The state of title at date of settlement and closing shall be the same as is disclosed by the Title Examination, except as may be required to satisfy a precondition of settlement and further except for those matters and approved by Purchaser, or Seller shall be in default and Purchaser may exercise its remedies pursuant to this paragraph or Paragraph 8.02 hereof.

In the event this Agreement is terminated by Purchaser for reasons set forth within this paragraph, Escrow Agent, shall promptly return the Deposit to the Purchaser, after which neither party shall have any further liability to the other hereunder, except for the indemnification of obligations set forth in Paragraph 4.01.

ARTICLE IV

FEASIBILITY AND ENGINEERING

4.01 Feasibility Study Period. Seller agrees to provide to Purchaser, within three (3) days of the date of this Agreement, copies of all plans, plats, tests, approvals, current homeowners association documents, proffers, title work, marketing report, environmental studies and soil studies, together with any and all approvals received regarding the Lots within its possession (collectively, the "Due Diligence Items"). Purchaser and its agents, representatives, employees and consultants shall have the right to conduct, at Purchaser's sole expense, a review of the Due Diligence Items, such physical, environmental, engineering, and feasibility studies (the "Feasibility Studies") as Purchaser deems appropriate in an effort to determine whether to proceed with the Closing. During the feasibility study period, Purchaser and its agent, representatives, employees and consultants shall have the right, during normal business hours and from time to time after the Effective Date of this Agreement, to enter upon the Property for the purpose of performing soil borings tests, engineering, and topographic surveys and to make feasibility, zoning, marketing and economic tests and studies upon or of the Property in order to determine whether the Property is suitable for Purchaser's needs. The feasibility study period shall expire at 5 P.M. eastern standard time THIRTY (30) DAYS from the Effective Date hereof (the "Feasibility Study Period").

In the event the results of the aforesaid engineering, zoning, feasibility, marketing and other tests and studies performed by or on behalf of Purchaser are not, in Purchaser's sole exclusive, and nonreviewable discretion, satisfactory to Purchaser, Purchaser may at any time prior to expiration of the Feasibility Study Period, upon

written notice to Seller, terminate this Agreement, after which event Escrow Agent, shall return the Deposit to the Purchaser and neither party shall have any further liability to the other hereunder except as required by this Paragraph.

Purchaser agrees to restore the Property to the extent changed by the Purchaser or its agents, at its sole expense, to the extent reasonably possible, to its condition as of the Effective Date of this Agreement if this Agreement does not go to settlement due to Purchaser's termination or default hereunder.

In the event Purchaser, its agents, representatives, employees or consultants, enter upon the Property for the purpose contained herein, Purchaser agrees to promptly pay for all expenses thereof and further agrees to indemnify Seller from and against any and all loss, damage or claim resulting from the negligence of this Purchaser, its agents, representatives, employees or consultants.

4.02 Title Report and Engineering. In addition to any other plans Seller is obligated to deliver to Purchaser under this Agreement, Seller shall deliver to Purchaser without cost to Purchaser, within three (3) days after the Effective Date copies of all of the following (collectively, the "Documents") to the extent that the Documents are in the possession or control of Purchaser: (a) preliminary title report for the Property, together with a copy of all documents listed as exceptions in such report of title; (b) topographic surveys of the Property; (c) the engineering drawings for the water lines and for the street improvements for the Property; (d) level one environmental assessment for the Property; (e) traffic studies of the Property; (f) any other engineering plans, engineering studies, soil studies, soil tests, appraisals, surveys, or any other test results, plats, plans or studies Seller may have which relate to the Property, and (g) the approved preliminary plan, final plan and proposed record plat. Seller shall also certify to Purchaser that all such surveys, test results, plats, plans or studies have been or will by settlement and closing be paid for in full.

ARTICLE V

PRE-CONDITIONS OF SETTLEMENT

5.01 Pre-Conditions. Should settlement not be completed on or before August 1, 2010 ("Outside Closing Date"), as a result of any pre-condition of settlement not being satisfied, Purchaser, at its sole discretion, may (i) terminate this Agreement in its entirety; or (ii) waive such pre-condition and proceed to settlement. Should this Agreement be terminated pursuant to this paragraph, Escrow Agent, shall return the remaining portion of the Deposit to the Purchaser and thereafter the parties shall have no further obligation pursuant to this Agreement, except for the indemnification obligations set forth in Paragraph 4.01. The pre-conditions of settlement are as follows:

- a. No governmental action or inaction (such as but not limited to the imposition of a sewer, water or building permit moratorium shall have been taken, or shall have been publicly announced to be taken, by any applicable governmental authority, which; would increase the cost of, or materially increase the processing time for obtaining all necessary permits or utilities required for the construction, sale and occupancy of residential dwellings on the Property; would materially increase the cost of or materially delay construction of residential dwellings on the Property; or which prevent the residential dwelling units to be constructed on the Property from being connected to a public sewer and water system (subject to the payment of tap fees and obtaining the customary permits).
- b. Title to the Property is as required by Paragraph 3.01 hereof;
- c. The Final Record Plat, materially consistent with Exhibit A attached hereto, approving no less than FORTY FIVE (45) townhome Lots, has been recorded or is ready for recordation, subject only to the posting of applicable bonds, among the land records of Loudoun County, Virginia.
- d. All material representations, warranties and covenants of Seller contained within this Agreement are true and correct;
- e. All offsite easements, if any, necessary for the development of the Property to include complete access to the property as well as any sight, water, sewer, and stormwater management easements shall be in place.

f. Development permits, or their equivalent, have been issued or are ready to be issued, subject only to the posting of applicable bonds, for the Development of the Lots. All federal, state and/or local wetlands and Virginia DEQ, if applicable, approvals and permits shall be in place or are ready to be issued, subject only to the posting of applicable bonds, allowing the development and construction of the FORTY-FIVE (45) townhomes on the Property consistent with the Final Record Plat.

ARTICLE VI

CLOSING AND POSSESSION

6.01 Conveyance. Settlement and closing hereunder shall be held within TEN (10) business days after all pre-conditions of settlement are satisfied, or no later than the Outside Closing Date if Purchaser elects to proceed with settlement if a pre-condition has not been satisfied. Settlement and closing shall be conducted at the offices of Potomac Settlement Services, Inc., located at 15100 Washington Street, Suite 201, Haymarket, Virginia 20169 or by such other agent or attorney designated by Purchaser in writing to Seller. Purchaser shall provide written notice to Seller of the exact time, date and place of settlement at least five (5) business days prior thereto. Copies of all closing documents to be executed and delivered by either Seller or Purchaser at closing, together with a proposed closing statement, shall be delivered to Seller and Seller's attorney and to Purchaser and Purchaser's attorney for review at least two (2) business days prior to the scheduled closing date.

6.02 Deed of Conveyance. At settlement Seller shall execute and deliver into settlement a Special Warranty Deed in proper form for recording among the land records of Loudoun County, Virginia. The cost of the preparation of the deed of conveyance, Seller's attorney's fees, a reasonable settlement fee, costs pertaining to payoff and release of existing trusts and liens, agricultural transfer tax for years through the year of closing, front foot benefit or similar charges roll back or similar taxes (if applicable) and grantor's tax shall be paid by the Seller. Purchaser shall pay all expenses of examination of title, Purchaser's attorney's fees and title insurance premiums, if any and all other transfer and recording taxes.

6.03 Taxes and Assessments. Seller shall pay or credit against the Purchase Price (a) all delinquent real estate taxes, front foot benefit charges or similar charges (the "Real Estate Taxes"), together with penalties and interest thereon, (b) all assessments which are a lien against the Property as of the date of closing, both current and reassessed, which are due and payable on or before closing, (c) all use recoupment taxes (agriculture or otherwise) for years through the year of closing, if any, and (d) all real estate taxes for years prior to the closing. The proration of undetermined taxes shall be based on a 365-day year and on the last available tax rate and valuations, giving effect to applicable exemptions, recently voted millage, change in tax rate or valuation, etc., whether or not officially certified. It is the intention of the parties in making this tax proration for Purchaser to pay to Seller at closing the amount which Seller remitted, or will be required to remit, to the appropriate collector of taxes for the period of time after the closing date hereof. Should the Property be taxed as part of a larger parcel, the proration shall be based on the acreage of the Property versus the acreage of the larger parcel. Upon making the proration provided for herein, Seller and Purchaser agree that the amount so computed shall be subject to later adjustments should the amount credited at closing be incorrect based upon actual tax bills received by Purchaser after closing. Seller hereby represents and warrants to Purchaser that (i) all assessments now a lien are shown on the public records of the collector of real property taxes, (ii) no improvements have been installed by public authority or Seller, the costs of which are to be assessed against the Property in the future, and (iii) Seller has not been notified orally or in writing of possible future improvements by public authority, any part of the cost of which would or might be assessed against the Property.

6.04 Future Encumbrances. Seller agrees that from the date of execution hereof by Seller, Seller may not further encumber the Property other than the necessary easements provided in Article V of this Agreement without the written consent of the Purchaser, which consent will not be unreasonably withheld.

6.05 FIRPTA. Seller hereby represents and warrants to Purchaser that Seller is not a “foreign person” within the meaning of Section 1445 of the Internal Revenue Code of 1986, and Seller further agrees, at closing, if requested, to furnish Purchaser an affidavit to this effect complying with the provisions of Section 1445 of the Internal Revenue Code.

6.06 Performance. The delivery to settlement attorney or agent of the cash payment, the executed deed of conveyance, and all other documents and instruments required to be delivered by either party to the other by the terms of this Agreement shall be deemed to be good and sufficient tender of performance of the terms hereof. Seller shall give possession of the Property at the time of payment of Purchase Price and delivery of the appropriate deed of conveyance.

ARTICLE VII

DECLARATION OF COVENANTS

7.01 Declaration of Covenants. The Property is not currently subject to a declaration of covenants, conditions and restrictions or similar document.

ARTICLE VIII

DEFAULT

8.01 Purchaser. In the event Purchaser shall default with respect to its obligations to proceed to full and final settlement on the Property, and if Seller is ready, willing and able to perform, then Seller shall give written notice to Purchaser, with a copy to the Escrow Agent, that said default shall be cured within ten (10) days of Purchaser’s receipt of such notice. If Purchaser fails to cure the default within such ten (10) day cure period, then as the Seller’s fixed, agreed and liquidated damages, and as Seller’s sole remedy, the Deposit shall be paid to the Seller and thereafter the parties shall be relieved of all further liability and obligation under this Agreement, excluding, however, the indemnification obligations under Paragraph 4.01, which shall survive such termination. The parties hereto agree that if Purchaser defaults on its obligations and fails to cure such default within the ten (10) day cure period, the actual damages thereby incurred by Seller would be difficult to measure and the receipt of the Deposit by Seller would in such circumstances represent reasonable compensation to Seller on account thereof.

8.02 Seller. In the event Seller fails to perform or breaches any of its representations, warranties, covenants or obligations to be performed by Seller, the Purchaser shall give to the Seller written notice, with a copy to the Escrow Agent, that such default shall be cured within ten (10) days for its failure to convey the Property or thirty (30) days of Seller's receipt of such notice for a any other default. If Seller fails to cure the default within the applicable ten (10) or thirty (30) day cure period, to Purchaser's reasonable satisfaction, then, at Purchaser's sole option, it shall either (i) terminate this Agreement, whereupon the Seller shall return the entire Deposit to the Purchaser as full liquidated damages and as its sole remedy, in lieu of any other claims or causes of action which may be available to Purchaser at law or in equity by reason of such default by Seller, after which event neither party shall have further liability hereunder, or (ii) pursue the remedy of specific performance except where Lender Approval has not been obtained, or (iii) waive such breach and proceed with settlement of the Property.

ARTICLE IX

AGENTS AND COMMISSION

9.01 Liability. Seller and Purchaser each warrant to the other that neither has dealt with any agent, broker or finder with respect to the transaction contemplated by this Agreement. In the event that any claim for commission or finder's fee is brought by any person or entity as a consequence of the transaction contemplated hereby, then the party whose acts gave rise to such claim shall hold harmless the other party against any loss, cost or expense of any nature, including but not limited to, court costs and reasonable attorney's fees arising as a consequence of the claim for the commission or fee.

ARTICLE X

CONDEMNATION

10.01 Notice and Award. Seller agrees to give Purchaser prompt notice of any actual or threatening taking of all or any portion of the Property by condemnation or eminent domain prior to the date of closing hereunder. In the event that prior to closing hereunder there shall occur a taking by condemnation or eminent domain or a proposed conveyance to a condemning authority in lieu of condemnation of all or any material portion of the Property, then Purchaser, at its option, may either (i) terminate this Agreement by written notice to Seller whereupon the Escrow Agent shall return the Deposit to Purchaser and the parties shall not be further obligated to each other pursuant to this Agreement, except for the indemnification obligations set forth in Paragraph 4.01, or (ii) proceed to closing hereunder, with a reduction in the Purchaser Price, equal to SIXTY THOUSAND FOUR HUNDRED AND TWENTY-FIVE AND 53/100THS DOLLARS (\$60,425.53) per Lot for each Lot lost incident to the condemnation or to be lost pursuant to a threatened condemnation.

ARTICLE XI

SELLER'S REPRESENTATIONS

11.01 General. Seller hereby represents, warrants and covenants to Purchaser that Comstock Station View L.C., a Virginia limited liability company, is a duly organized and validly existing corporation under the laws of the Commonwealth of Virginia qualified to do business in the Commonwealth of Virginia and in good standing; that Seller has the power as a limited liability company to execute and perform this Agreement; that all necessary consents and approvals from the Seller have been obtained; and that the person executing this Agreement on behalf of Seller is duly empowered to bind Seller to perform its obligations hereunder. Copies of any necessary approvals are to be furnished by Seller upon written request by Purchaser.

11.02 Specific. In addition to any other warranty made in connection with this Agreement, the Seller warrants and agrees (a) that the Seller is the fee simple owner of all of the Property which shall be sold to and acquired by Purchaser under this Agreement and at settlement will be the fee simple owner of the Property, and has no knowledge of off-record or undisclosed interest in the Property, and, with exception to

the deed of trust secured against the Property, to Seller's knowledge and belief, the Property has no other liens and encumbrances other than as shall be disclosed by a proper title search conducted incident to 3.01 hereof by Purchaser ; (b) that Seller has not received written notice that the Property is subject to any unrecorded restrictive covenant or equitable servitude of any kind which would in any way limit the free choice of the Purchaser with respect to the nature or location of homes to be constructed on the Property, except as provided herein; (c) that to the best of Seller's knowledge and belief: The Property does not contain any hazardous substance, the Seller has not conducted or authorized the generation, transportation, storage, treatment or disposal at the Property of any hazardous substance other than is customary resulting from construction on surrounding properties; that the Seller has not received any written notice of, and has no knowledge that, any government authority or any employee or agent thereof, or any private citizen, making a claim that there is a presence, release, threat of release, placement on or in the Property, or the generation, transportation, storage, treatment or disposal at the Property, of any hazardous substance; to the best of Seller's knowledge and belief nor has any "clean-up" of the Property occurred pursuant to the Environmental Laws (as hereinafter defined) which could give rise to liability on the part of Purchaser to reimburse any governmental authority for the costs of such clean-up or a lien or encumbrance on the Property. For purposes of this paragraph, "hazardous substance" means any materials in violation of any applicable environmental laws or regulations including, but not limited to, Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C., 9601 et seq., any "superlien" laws, any "superfund" laws, or similar federal, state or local laws, or any successor statutes thereto (the Environmental Laws"); (d) that to the best of Seller's actual knowledge, the Property does not contain levels of natural asbestos unacceptable to any local, state or federal authority; (e) that to the best of Seller's actual knowledge, the Property has not been used as a grave site or fill or borrow area; (f) no suit, actions, arbitration or legal, administrative or other proceeding is pending or has been threatened against the Property, or against Seller with respect to

the Property, which, if adversely determined, could prevent or impair the ability of Seller to perform this Agreement or restrict Purchaser's use or development of the Property, or any part thereof, except as set forth in Paragraph 15.01; (g) no bankruptcy, insolvency, rearrangement, or similar action or proceeding, whether voluntary or involuntary, is pending or threatened against Seller and Seller has no immediate intention of filing or commencing any such action or proceeding; (h) that Seller has granted no person any contract right or other legal right to the use of any portion of the Property or to the furnishing or use of any facility or amenity on or relating solely to the Property; (i) Seller has not received any written notice that any part of the Property is subject to a right of first refusal which has not been waived or other right which Seller, or any predecessor in title, may have granted to other persons or parties as to the Property, or any part thereof, whether written or verbal; (j) that no written notice has been received by Seller that any governmental or quasi-governmental agency or authority intends to commence construction of any special or off-site improvements or impose any special or other assessment against the Property, or any part thereof; (k) that the Property is not located within a flood hazard area or wetland except as referenced and disclosed on the Wetlands Permit attached hereto as **Exhibit B**; (l) that Seller has not received any written notice alleging that it or the Property to be, or that with due notice or lapse of time or both it or the Property will be, in breach of default of any lawful statute, ordinance or regulation of the United States, State, County or City applicable to the Lots ("Legal Requirement") which could materially adversely affect the ability of Seller to perform this Agreement or restrict Purchaser's use or construction of residential homes on the Lots; and (m) that the execution of this Agreement will not conflict with or result in a breach of any of the terms or provisions of, constitute a default under, or cause or allow an acceleration of any note, mortgage, deed of trust, loan agreement or other document, instrument or agreement to which Seller is a party or by which the Property is encumbered or affected, except as otherwise disclosed in Paragraph 15.01.

11.03 Mechanic's Liens. All contractors, subcontractors, laborers, and materialmen who are or did perform work upon or furnish labor or materials at Seller's request to improve or benefit the Property prior to settlement have been or will be paid in full by Seller on or before the date of each settlement. Seller will execute at closing the necessary affidavits and other documents reasonably required by Purchaser's title insurance company to eliminate from its title policy any exceptions to filed or unfiled mechanic's liens arising from any act of Seller or its subcontractors. Should at any time after settlement and closing a notice of intent to file a mechanic's lien or a mechanic's lien be filed against the Property arising from any act of Seller or its contractors, subcontractors, laborers or materialmen, Seller shall, within thirty (30) days of written notifications from Purchaser to Seller of the filing of such notice or lien, cause said notice or lien to be withdrawn or released of record, either by payment in full of all sums represented by said lien or by statutory bonding. Seller shall indemnify and hold Purchaser harmless against all costs and expenses (including reasonable attorney's fees) incurred by Purchaser for Seller's failure to do so.

11.04 Zoning. Seller shall immediately provide Purchaser with written notice of any and all special zoning limitations or other restrictions with regard to the Property including, without limitation, restrictions (if any) relating to fencing, bike paths, walking paths, park areas, reserves, house sizes, garages, basements, no-build zones, lighting or other similar items. All such limitations or restrictions shall be subject to Purchaser's approval which shall not be unreasonably withheld.

11.05 Indemnification. Seller shall, and hereby does indemnify, protect and hold harmless the Purchaser of, and from, any and all liability and all loss, damage and expense including judgments, costs and attorney's fees by reason of a material breach of Seller's representations or warranties.

11.06 Affidavit. All of the foregoing covenants, warranties and representations will be effective, repeated and true at the time of settlement and closing and Seller will provide an affidavit to that effect.

11.07 Survival. The warranties set forth above shall be materially true and accurate as of the date of Closing and will survive the conveyance of the Property to Purchaser for a period of nine months and will be for the benefit of the Purchaser and its successors and/or assignees.

ARTICLE XII

PURCHASER'S REPRESENTATIONS

12.01 General. Purchaser hereby represents, warrants and covenants to Seller that Purchaser is a duly organized and validly existing limited liability company under the laws of Delaware, qualified to do business in the Commonwealth of Virginia and in good standing; that Purchaser has the power to execute and perform this Agreement; that all necessary consents and approvals from the Purchaser have been obtained; and that person executing this Agreement on behalf of Purchaser is duly empowered to bind Purchaser to perform its obligations hereunder. Copies of any necessary approvals are to be furnished by Purchaser upon written request by Seller.

12.02 Indemnification. Purchaser shall, and hereby does indemnify, protect and hold harmless the Seller of, and from, any and all liability and all loss, damage and expense including judgments, costs and attorney's fees by reason of a material breach of Purchaser's representation or warranties.

12.03 Survival. The warranties set forth above will survive the conveyance of the Property to Purchaser and will be for the benefit of the Seller and its successors and/or assignees.

ARTICLE XIII

ESCROW AGENT

13.01 Name. For the purposes of this Agreement the term "Escrow Agent" shall mean Curran & Whittington, PLLC., 15100 Washington Street, Suite 201, Haymarket, Virginia 20169. Unless otherwise provided herein, any funds deposited with the Escrow Agent will be placed in a separate interest bearing escrow account. All interest earned thereon shall be considered part of the Deposit.

13.02 Liability. The Escrow Agent shall have no liability, personal or otherwise, absent gross negligence, fraud or willful misconduct on account of its duties hereunder or in acting upon any signature, notice, demand, request, waiver, consent, receipt or other paper or document believed by Escrow Agent to be genuine.

13.03 Direction. In the event the Escrow Agent is in doubt as to its duties and liabilities under the provisions hereof, the Escrow Agent may, in its sole discretion, continue to hold the monies or instruments which are the subject of this escrow until the parties hereto mutually agree in writing to disbursement thereof, or until a judgment of a court of competent jurisdiction shall determine the rights of the parties hereto, or Escrow Agent may deposit all monies and/or instruments then held pursuant to this Agreement with the clerk of the court having jurisdiction over the Property, and upon notifying all parties concerning such actions, all liability on the part of the Escrow Agent shall fully cease and terminate, except to the extent of accounting for any monies or instruments heretofore delivered out of escrow.

13.04 Indemnification. Seller and Purchaser shall jointly and severally defend, indemnify and hold harmless the Escrow Agent against and from any such liability and any and all costs, including attorney's fees, in connections with this Purchase Agreement.

ARTICLE XIV

SUBDIVISION

14.01 Subdivision. Subject to Paragraph 2.02 of this Agreement, Seller shall have the responsibility at its expense for administering, managing, directing and achieving the preparation, submission and governmental approval of all the plans to allow for the subdivision and development of the Property into approximately FORTY-SEVEN (47) townhome Lots ("Development Plans"). The Seller represents and warrants that the final draft record plat has been submitted to, but not yet approved by, Loudoun County, Virginia, and is attached hereto as **Exhibit A**. The Final Record Plat shall not be materially amended/modified from what is depicted in **Exhibit A**, or otherwise provided for herein. If the Final Record Plat is requested to be modified,

Seller shall provide the County's comments and requested changes to Purchaser, upon receipt of which Purchaser shall have three business days to provide written confirmation to Seller that Purchaser either accepts the County's comments or rejects the County's comments. If Purchaser accepts the County's comments, the Parties shall, subject to satisfaction of the terms and conditions contained herein, proceed to settlement as provided in Paragraph 6.01. If Purchaser rejects the County's comments, Seller shall return the remaining portion of the Deposit to Purchaser, and neither party shall any further rights or responsibilities under this Agreement. Upon receipt of approval of the Final Record Plat, and if requested by Purchaser, the Development Plans shall be submitted by the Seller to Loudoun County for permits in a commercially reasonable manner and as soon as possible thereafter, the Final Record Plat shall be submitted for recordation. The Purchaser agrees to pay all customary fees and to post the customary bonds incident thereto. Seller agrees no work will be commenced pursuant to said plans and permits without Purchaser's written consent, until after settlement and closing. In the event settlement and closing does not occur for any reason, Seller agrees to assist in having any bonds, letters of credit and/or escrows released, including but not limited to immediately replacing any such bonds, letter(s) of credit and/or escrows. Any right of Seller in all plans, approvals, permits and related engineering shall be assigned at no cost to Purchaser at settlement. Seller agrees to cooperate and execute any documents reasonably required to accomplish said assignment.

14.02 "AS-IS" SALE OF PROPERTY. Subject to the express terms and provisions of this Agreement, the Property shall be sold and conveyed in its "as is, where is" condition, with all faults, on the Closing Date, without any representations or warranties whatsoever, express or implied, with all representations and warranties hereby waived by Purchaser except as otherwise specifically set forth herein. PURCHASER ACKNOWLEDGES AND AGREES THAT EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT, THE PROPERTY IS TO BE TRANSFERRED BY SELLER TO PURCHASER "AS IS, WITH ALL FAULTS", AND IN ITS CURRENT

CONDITION. PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY CONTAINED HEREIN, NEITHER SELLER NOR ANY AGENT, EMPLOYEE OR OTHER REPRESENTATIVE OF SELLER (OR PURPORTED AGENT, EMPLOYEE OR OTHER REPRESENTATIVE OF SELLER) HAS MADE (i) ANY GUARANTEE, REPRESENTATION, OR WARRANTY, EXPRESS OR IMPLIED (AND SELLER SHALL NOT HAVE ANY LIABILITY WHATSOEVER) AS TO THE VALUE, USES, HABITABILITY, CONDITION, DESIGN, OPERATION, FINANCIAL CONDITION OR PROSPECTS, OR FITNESS FOR PURPOSE OR USE OF THE PROPERTY (OR ANY PART THEREOF) OR THE PROPERTY INFORMATION, OR (ii) ANY OTHER GUARANTEE, REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY PORTION OF THE PROPERTY (OR ANY PART THEREOF) OR THE PROPERTY INFORMATION. FURTHER, SUBJECT TO THE EXPRESS TERMS AND PROVISIONS OF THIS AGREEMENT, SELLER SHALL HAVE NO LIABILITY FOR ANY LATENT, HIDDEN OR PATENT DEFECT AS TO THE PROPERTY OR THE FAILURE OF THE PROPERTY, OR ANY PART THEREOF, TO COMPLY WITH ANY APPLICABLE LAWS AND REGULATIONS. IN PARTICULAR, SUBJECT TO THE EXPRESS TERMS AND PROVISIONS OF THIS AGREEMENT, PURCHASER ACKNOWLEDGES AND AGREES THAT THE "PROPERTY INFORMATION" PROVIDED UNDER THIS AGREEMENT (AND ANY OTHER INFORMATION PURCHASER MAY HAVE OBTAINED REGARDING IN ANY WAY ANY OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, ITS OPERATIONS OR ITS FINANCIAL HISTORY OR PROSPECTS FROM SELLER OR ITS AGENTS, EMPLOYEES OR OTHER REPRESENTATIVES) IS DELIVERED TO PURCHASER AS A COURTESY, WITHOUT REPRESENTATION OR WARRANTY AS TO ITS ACCURACY OR COMPLETENESS, AND NOT AS AN INDUCEMENT TO ACQUIRE THE PROPERTY; THAT NOTHING CONTAINED IN SUCH DELIVERIES SHALL CONSTITUTE OR BE DEEMED TO BE A GUARANTEE, REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, IN ANY REGARD AS TO ANY OF THE PROPERTY (EXCEPT AS EXPRESSLY PROVIDED HEREIN); AND THAT

PURCHASER IS RELYING ONLY UPON THE PROVISIONS OF THIS AGREEMENT AND ITS OWN INDEPENDENT ASSESSMENT OF THE PROPERTY AND ITS PROSPECTS IN DETERMINING WHETHER TO ACQUIRE THE PROPERTY.

ARTICLE XV

MISCELLANEOUS

15.01 Lender Approval. Seller's obligations under this Agreement are conditioned upon obtaining lender approval to release in full the existing deed of trust secured against the Property upon payment of the Purchase Price ("Lender Approval"). Seller agrees to diligently pursue Lender Approval. In the event Seller fails to obtain Lender Approval, and provide written evidence satisfactory to Purchaser of said approval within TEN (10) days after the expiration of the Feasibility Study Period, either party shall have the right to terminate this Agreement and the Deposit shall be immediately returned to Purchaser and the parties shall have no liability to each other.

15.02 Notice. All notices and other communications hereunder shall be in writing and be deemed duly given if personally delivered, electronically delivered (so long as followed by overnight delivery by a recognized national carrier), telecopied with proof of receipt (so long as followed by overnight delivery by a recognized national carrier) or mailed by certified mail, return receipt requested, postage prepaid;

if to Seller to: Comstock Station View L.C.
11465 Sunset Hills Road, Fifth Floor
Reston, Va 20910
ATTN: Ms. Elena Garrison
Telecopier #703.760.1520
E-mail: egarrison@comstockhomebuilding.com

with a copy to: Comstock Station View L.C.
11465 Sunset Hills Road, Fifth Floor
Reston, Va 20910
ATTN: Mr. Christopher Clemente
Telecopier #703.760.1520
E-mail: cclemente@comstockhomebuilding.com

and a copy to: Comstock Station View L.C.
11465 Sunset Hills Road, Fifth Floor
Reston, Va 20910
ATTN: Mr. Jubal Thompson, Esquire
Telecopier #703.760.1520
E-mail: jthompson@comstockhomebuilding.com

and

And if to Purchaser to: M/I Homes of DC, LLC
c/o M/I Homes, Inc.
3 Easton Oval, Suite 500
Columbus, OH 43219
Attn: Robert H. Schottenstein
telecopier #614-418-8080
Email:

with a copy to: M/I Homes of DC, LLC
c/o M/I Homes, Inc.
3 Easton Oval, Suite 500
Columbus, OH 43219
Attn: Thomas Mason, Esquire
telecopier #614-418-8622
Email:

and a copy to: M/I Homes of DC, LLC
21355 Ridgetop Circle, Suite 220
Sterling, Virginia 20166-6503
Attn: Dennis Kelleher
telecopier #(703) 404-3040

The parties hereto shall be responsible for notifying each other of any change of address.

15.03 Financial Accounting. Seller recognizes that Purchaser is subject to the requirements of Revised Interpretation No. 46 ("FIN 46R"), *Consolidation of Variable Interest Entities*, an authoritative accounting pronouncement issued by the Financial Accounting Standards Board. Seller will reasonably cooperate with Purchaser with Purchaser's obligation, if any, to comply with the financial reporting requirements of FIN 46R.

15.04 Survival. The provisions hereof shall survive the execution and delivery of the deed(s) executed hereunder for a period of six months and shall not be merged therein.

15.05 Assignment. The principals to the Agreement mutually agree that the benefits hereunder are not assignable by either party without the written consent of the other party. Notwithstanding the foregoing, Purchaser shall have the right to assign this Agreement to a limited liability company, partnership, corporation, or other entity in which Purchaser owns a membership, partnership or other equity interest. Additionally, Purchaser may assign its right to purchase certain Lots to other residential home builders and Seller shall not unreasonably withhold or delay consent of such an assignment.

15.06 Construction of Agreement.

- a. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.
- b. Titles to paragraphs and subparagraphs are for convenience only and are not intended to limit or expand the covenants and obligations expressed thereunder.
- c. Time shall be of the essence with regard to all terms and conditions of this Agreement.
- d. This Agreement contains the entire agreement among the parties hereto with respect to the Property. No change or modification of this Agreement, or any waiver of the provisions hereof, shall be valid unless same is in writing and signed by the parties hereto.
- e. Waiver of performance or satisfaction of timely performance or the satisfaction of any condition, covenant, requirement, obligation or warranty by one party shall not be deemed a waiver of the performance or satisfaction of any other condition, covenant, requirement, obligation or warranty unless specifically consented to in writing.
- f. In the event any moratorium on building residences is imposed by any governmental entity, the Purchaser shall be entitled to extend all time periods imposed in this Agreement by a period equal to the length of the moratorium, provided, that if such moratorium shall extend beyond six (6) months from the date of settlement and closing provided for herein, either party may terminate this Agreement, in which event the Deposit shall be forthwith returned to Purchaser and both parties shall be released of all further liability or obligation hereunder.

g. It is the intention of the parties hereto that all questions with respect to the construction of this Agreement and the rights or liabilities of the parties hereunder shall be determined in accordance with the laws of the **Commonwealth of Virginia**.

h. Any date specified in this Agreement which is a Saturday, Sunday or legal holiday, shall be extended to the first regular business day after such date which is not a Saturday, Sunday or legal holiday. Any reference herein to the singular shall include the plural and vice versa and reference to the male, female or neuter gender shall include reference to all other genders.

i. This Agreement represents the result of bargaining and negotiations between the parties and of a combined draftsmanship effort. Consequently, Seller and Purchaser expressly waive and disclaim, in connection with the interpretation of this Agreement, any rule of law requiring that ambiguous or conflicting terms be construed against the party whose attorney prepared this Agreement or any earlier draft of this Agreement.

j. Nothing contained herein is intended to create, nor shall it ever be construed to make, Seller and Purchaser partners or joint ventures.

k. Approvals granted hereunder by Purchaser are solely for its own benefit and shall not be relied upon by third parties or impose any liability upon Purchaser as to the accuracy or sufficiency of the item or matter being approved.

l. In the Event that full performance under this Agreement has not occurred within ten (10) years of the date hereof, this Agreement shall terminate and be of no further force and effect, with the Deposit being returned to Purchaser.

15.07 Duration and Acceptance of Offer. Should this Agreement be ratified by one party prior to submission to the other party, Purchaser's offer to purchase or Seller's offer to sell, as the case may be, shall remain open for () days after ratification by the first party to do so. Should the other party not ratify this Agreement within said () day period, the offer to purchase or sell, as the case may be, is withdrawn and this Agreement shall be null and void.

15.08 Severability. In the event that any part or all of any term, covenant, condition, agreement, provision or section of this Agreement shall be adjudged invalid or unenforceable by a court of competent and final jurisdiction, the same shall be severable from the remainder of this Agreement and this Agreement shall not terminate or be deemed void or voidable, but shall continue in full force and effect and there shall be substituted for such invalid provision a like, but legal and enforceable, provision which most nearly accomplishes the intention of the parties hereto, and if no such provision is available, the remainder of this Agreement shall be enforced. If such term, covenant, condition, agreement, provision or section of this Agreement is adjudged invalid due to its scope or breadth, such item shall be deemed valid to the extent of the scope or breadth permitted by law.

15.09 Effective Date. The date on which this Agreement is accepted by the last party to accept and sign the Agreement shall be inserted as the effective date of this Agreement under the first paragraph hereof.

15.10 WITNESS the following signatures and seals:

SELLER:

COMSTOCK STATION VIEW LC,
a Virginia limited liability company

By: Comstock Homebuilding Companies, Inc.
Its manager

Witness:

By: _____
Name: Christopher Clemente
Title: Chief executive Officer

Date: _____

PURCHASER:

M/I HOMES OF DC, LLC,
a Delaware limited liability company

Witness:

Date: _____

By: _____

Name:

Title:

List of Subsidiaries

	Name	State of Incorporation or Organization
1.	Buckhead Overlook, LLC	Georgia
2.	Comstock Acquisitions, L.C.	Virginia
3.	Comstock Aldie, L.C.	Virginia
4.	Comstock Barrington Park, L.C.	Virginia
5.	Comstock Bellemeade, L.C.	Virginia
6.	Comstock Belmont Bay 5, L.C.	Virginia
7.	Comstock Belmont Bay 89, L.C.	Virginia
8.	Comstock Blooms Mill II, L.C.	Virginia
9.	Comstock Brandy Station, L.C.	Virginia
10.	Comstock Carter Lake, L.C.	Virginia
11.	Comstock Cascades, L.C.	Virginia
12.	Comstock Communities, L.C.	Virginia
13.	Comstock Countryside, L.C.	Virginia
14.	Comstock Delta Ridge II, L.L.C.	Virginia
15.	Comstock East Capitol, L.L.C.	Virginia
16.	Comstock Emerald Farm, L.C.	Virginia
17.	Comstock Fairfax I, L.C.	Virginia
18.	Comstock Flynn's Crossing, L.C.	Virginia
19.	Comstock Hamlets of Blue Ridge, L.C.	Virginia
20.	Comstock Holland Road, L.L.C.	Virginia
21.	Comstock Homes of Atlanta, LLC	Georgia
22.	Comstock Homes of North Carolina, L.L.C.	North Carolina
23.	Comstock Homes of Raleigh, L.L.C.	North Carolina
24.	Comstock Homes of Washington, L.C.	Virginia
25.	Comstock James Road, L.L.C.	Georgia
26.	Comstock Kelton II, L.C.	Virginia
27.	Comstock Lake Pelham, L.C.	Virginia
28.	Comstock Landing, L.L.C.	Virginia
29.	Comstock Loudoun Condos 1, L.C.	Virginia
30.	Comstock Massey Preserve, L.L.C.	Virginia
31.	Comstock North Carolina, L.L.C.	North Carolina
32.	Comstock Penderbrook, L.C.	Virginia
33.	Comstock Potomac Yard, L.C.	Virginia
34.	Comstock Realty, LLC	Georgia
35.	Comstock Ryan Park, L.C.	Virginia
36.	Comstock Sherbrooke, L.C.	Virginia
37.	Comstock Station View, L.C.	Virginia
38.	Comstock Summerland, L.C.	Virginia
39.	Comstock Wakefield, L.L.C.	Virginia
40.	Comstock Wakefield II, L.L.C.	Virginia
41.	Culpeper Commercial, L.C.	Virginia
42.	Highland Avenue Properties, LLC	Georgia
43.	Highland Station Partners, LLC	Georgia
44.	Mathis Partners, LLC	Georgia
45.	North Shore Raleigh II, L.L.C.	Virginia
46.	Post Preserve, LLC	Georgia
47.	Raleigh Resolution, L.L.C.	Virginia
48.	Settlement Title Services, L.L.C.	Virginia
49.	TCG Debt Fund II, L.C.	Virginia
50.	TCG Fund I, L.C.	Virginia
51.	Tribble Road Development, LLC	Georgia

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statement on Form S-8 (No. 333-123709) of Comstock Homebuilding Companies, Inc. of our report dated March 31, 2010 relating to the financial statements, which appears in this Form 10-K.

/s/ PRICEWATERHOUSECOOPERS LLP

McLean, Virginia

March 31, 2010

**CERTIFICATION OF CHAIRMAN AND CHIEF EXECUTIVE OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Christopher Clemente, certify that:

1. I have reviewed this annual report on Form 10-K of Comstock Homebuilding Companies, Inc. for the fiscal year ended December 31, 2009;
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 period 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 fourth fiscal quarter of the fiscal year ended December 31, 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 function):
 - 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: March 31, 2010

/s/ CHRISTOPHER CLEMENTE

Christopher Clemente
Chairman and Chief Executive Officer
(Principal executive officer)

**CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Jeffrey R. Dauer, certify that:

1. I have reviewed this annual report on Form 10-K of Comstock Homebuilding Companies, Inc. for the fiscal year ended December 31, 2009;
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 period 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 fourth fiscal quarter of the fiscal year ended December 31, 2009 that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting;
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 function):
 - 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: March 31, 2010

/s/ JEFFREY R. DAUER

Jeffrey R. Dauer
Chief Financial Officer
(Principal financial officer)

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

In connection with the Annual Report on Form 10-K of Comstock Homebuilding Companies, Inc. (the "Company") for the year ended December 31, 2009, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of Christopher Clemente, Chairman and Chief Executive Officer of the Company and Jeffrey R. Dauer, Chief Financial Officer of the Company, certify, to our best knowledge and belief, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)); and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 31, 2010

/s/ CHRISTOPHER CLEMENTE

Christopher Clemente
Chairman and Chief Executive Officer

Date: March 31, 2010

/s/ JEFFREY R. DAUER

Jeffrey R. Dauer
Chief Financial Officer