

BEAZER HOMES USA INC

Form 10-K

December 02, 2008

**Table of Contents**

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

**FORM 10-K**

(Mark One)

Annual report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

**For the fiscal year ended September 30, 2008**

Transition report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

**Commission file number: 001-12822**

**BEAZER HOMES USA, INC.**

(Exact name of Registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of incorporation or organization)

**58-2086934**

(I.R.S. Employer Identification No.)

**1000 Abernathy Road, Suite 1200, Atlanta, Georgia 30328**

(Address of principal executive offices) (Zip code)

**(770) 829-3700**

(Registrant's telephone number including area code)

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

Title of Securities  
Common Stock, \$.001 par value per share

Exchanges on which Registered  
New York Stock Exchange

**Securities registered pursuant to Section 12(g) of the Act: None**

Indicate by check mark if the registrant is a well-known seasoned issuer (as defined in Rule 405 of the 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

Edgar Filing: BEAZER HOMES USA INC - Form 10-K

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.  x

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

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

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 the registrant's Common Stock held by non-affiliates of the registrant (39,234,305 shares) as of March 31, 2008, based on the closing sale price per share as reported by the New York Stock Exchange on such date, was \$370,764,182.

The number of shares outstanding of the registrant's Common Stock as of November 28, 2008 was 39,269,431.

**DOCUMENTS INCORPORATED BY REFERENCE**

**Part of 10-K  
where incorporated**

Portions of the registrant's Proxy Statement for the 2009 Annual Meeting of Stockholders

III

---

**BEAZER HOMES USA, INC.**

**FORM 10-K**

**INDEX**

	<b>Page Number</b>
<b>Introduction</b>	
<u>Forward-Looking Statements</u>	3
<b><u>PART I.</u></b>	
<u>Item 1</u>	4
<u>Business</u>	
<u>Item 1A.</u>	15
<u>Risk Factors</u>	
<u>Item 1B.</u>	22
<u>Unresolved Staff Comments</u>	
<u>Item 2</u>	23
<u>Properties</u>	
<u>Item 3.</u>	23
<u>Legal Proceedings</u>	
<u>Item 4.</u>	27
<u>Submission of Matters to a Vote of Security Holders</u>	
<b><u>PART II.</u></b>	
<u>Item 5</u>	27
<u>Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities</u>	
<u>Item 6.</u>	30
<u>Selected Financial Data</u>	
<u>Item 7.</u>	32
<u>Management's Discussion and Analysis of Financial Condition and Results of Operations</u>	
<u>Item 7A.</u>	61
<u>Quantitative and Qualitative Disclosures About Market Risk</u>	
<u>Item 8</u>	62
<u>Financial Statements and Supplementary Data</u>	
<u>Item 9</u>	110
<u>Changes in and Disagreements with Accountants on Accounting and Financial Disclosure</u>	
<u>Item 9A</u>	110
<u>Controls and Procedures</u>	
<u>Item 9B</u>	114
<u>Other Information</u>	
<b><u>PART III.</u></b>	
<u>Item 10</u>	114
<u>Directors, Executive Officers and Corporate Governance</u>	
<u>Item 11</u>	114
<u>Executive Compensation</u>	
<u>Item 12</u>	114
<u>Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters</u>	
<u>Item 13</u>	115
<u>Certain Relationships and Related Transactions, and Director Independence</u>	
<u>Item 14</u>	115
<u>Principal Accountant Fees and Services</u>	
<b><u>PART IV.</u></b>	
<u>Item 15.</u>	115
<u>Exhibits and Financial Statement Schedules</u>	
<b><u>SIGNATURES</u></b>	120
<u>EX-3.1</u>	
<u>EX-21</u>	

EX-23

EX-31.1

EX-31.2

EX-32.1

EX-32.2

**Table of Contents**

References to we, us, our, Beazer, Beazer Homes, and the Company in this annual report on Form 10-K refer to Beazer Homes USA, Inc.

**FORWARD-LOOKING STATEMENTS**

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

These forward-looking statements are subject to risks, uncertainties and other factors, many of which are outside of our control, that could cause actual results to differ materially from the results discussed in the forward-looking statements, including, among other things, the matters discussed in this annual report in the section captioned

Management's Discussion and Analysis of Financial Condition and Results of Operations. Additional information about factors that could lead to material changes in performance is contained in Part I, Item 1A– Risk Factors. Such factors may include:

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

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

**Table of Contents**

**PART I**

**Item 1. Business**

We are a geographically diversified homebuilder with active operations in 17 states. Our homes are designed to appeal to homeowners at various price points across various demographic segments and are generally offered for sale in advance of their construction. Our objective is to provide our customers with homes that incorporate exceptional value and quality while seeking to maximize our return on invested capital over time.

Our principal executive offices are located at 1000 Abernathy Road, Suite 1200, Atlanta, Georgia 30328, telephone (770) 829-3700. We also provide information about our active communities through our Internet website located at <http://www.beazer.com>. Information on our website is not a part of and shall not be deemed incorporated by reference in this report.

**Industry Overview and Current Market Conditions**

The sale of new homes has been and will likely remain a large industry in the United States for four primary reasons: historical growth in both population and households, demographic patterns that indicate an increased likelihood of home ownership as age and income increase, job creation within geographic markets that necessitate new home construction and consumer demand for home features that can be more easily provided in a new home than an existing home.

In any year, the demand for new homes is closely tied to job growth, the availability and cost of mortgage financing, the supply of new and existing homes for sale and, importantly, consumer confidence. Consumer confidence is perhaps the most important of these demand variables and is the hardest one to predict accurately because it is a function of, among other things, consumers' views of their employment and income prospects, recent and likely future home price trends, localized new and existing home inventory, the level of current and near-term interest and mortgage rates, the availability of consumer credit, valuations in stock and bond markets, and other geopolitical factors. Moreover, because the purchase of a home represents many buyers' largest single financial commitment, it is often also associated with significant emotional considerations.

The supply of new homes within specific geographic markets consists of both new homes built pursuant to pre-sale arrangements and speculative homes (frequently referred to as "spec homes") built by home builders prior to their sale. The ratio of pre-sold to spec homes differs both by geographic market and over time within individual markets based on a wide variety of factors, including the availability of land and lots, access to construction financing, the availability and cost of construction labor and materials, the inventory of existing homes for sale and job growth characteristics. Consumer preferences also play a role. In rapidly growing markets characterized by relatively few available new homes, presale homes are very common. In markets characterized by a significant supply of newly built and existing homes, spec homes tend to represent a larger portion of new home sales as builders attempt to reduce their inventories of completed homes.

In general, high levels of employment, low mortgage interest rates and low new home and resale inventories contribute to a strong and growing homebuilding market environment. Conversely, rising unemployment, higher interest rates and larger new and existing home inventories generally lead to weak industry conditions.

While we believe that long-term fundamentals for new home construction remain intact, beginning in mid-fiscal 2006, accelerating through fiscal 2008 and continuing into fiscal 2009, the homebuilding industry has experienced a significant downturn. Most housing markets across the United States can be characterized as suffering from an



oversupply of new and resale home inventory, reduced levels of consumer demand for new homes, high cancellation rates, aggressive price competition among homebuilders including a growing number of foreclosed homes offered at substantially reduced prices, and a continued significant level of incentives for home sales. The effect of the downturn in the homebuilding industry became more severe in 2008 due to market disruptions resulting from the deterioration in the credit quality of loans originated to non-prime and subprime borrowers. This mortgage crisis ultimately led to reduced availability for mortgage products and reduced investor demand for mortgage loans and mortgage-backed securities. These developments have severely impacted consumer confidence and demand for our homes. While the ultimate outcome of these events cannot be predicted, they have made it more difficult for homebuyers to obtain acceptable financing.

**Table of Contents**

In addition, the United States economy has suffered from a significant reduction in consumer confidence amid a severe decline in the availability of credit to all industries. Specifically, in the fourth quarter of our fiscal 2008, the deterioration in the overall economy accelerated, characterized by several bankruptcies, financial institution failures and consolidations, increased stock market volatility, and an unprecedented level of intervention in the capital markets by the United States federal government. This government intervention has included government control of Federal National Mortgage Association, or Fannie Mae, and Federal Home Loan Mortgage Company, or Freddie Mac, as well as the enactment of the \$700 billion Emergency Economic Stabilization Act of 2008 ( EESA ). EESA was enacted into law on October 3, 2008. EESA authorizes up to \$700 billion in new spending authority for the United States Secretary of the Treasury (the Secretary ) to purchase, manage and ultimately dispose of troubled assets. The provisions of this law include an expansion of the Hope for Homeowners Program. This program allows the Secretary to use loan guarantees and credit enhancements so that loans can be modified to prevent foreclosures. Also, the Secretary can consent to term extensions, rate-reductions and principal write-downs. Federal agencies that own mortgage loans are directed to seek modifications prior to foreclosures. While we expect the impact of this legislation will generally be favorable to the economy, the impact on our operations is not yet determinable.

The Housing and Economic Recovery Act of 2008 ( HERA ) was enacted into law on July 30, 2008. Among other things, HERA provides for a temporary first-time home buyer tax credit for purchases made through July 1, 2009; reforms of Fannie Mae and Freddie Mac, including adjustments to the conforming loan limits; modernization and expansion of the Federal Housing Administration ( FHA ), including an increase to 3.5% in the minimum down payment required for FHA loans; and the elimination of seller-funded down payment assistance programs for FHA loans approved after September 30, 2008. Overall, HERA is intended to help stabilize and add consumer confidence to the housing industry. However, certain of the changes, such as the elimination of the down payment assistance programs and the increase in minimum down payments, may adversely impact the ability of potential homebuyers to afford to purchase a new home or obtain financing. The down payment assistance programs were utilized for a number of our home closings in fiscal 2008. We are currently evaluating the impact HERA will have on our business and future results of operations.

As a result of these factors, we, like many other homebuilders, have experienced a material reduction in revenues and margins and we incurred significant net losses in fiscal 2007 and 2008. These net losses were driven primarily by asset impairment and lot option abandonment charges incurred in both fiscal 2007 and 2008. Please see *Management's Discussion and Analysis of Results of Operations and Financial Condition* for additional information.

We have responded to this challenging environment with a disciplined operating approach, responding to what was during fiscal 2007 and 2008 and what we expect will continue to be a challenging environment for the homebuilding industry. We continue to make reductions in direct costs and overhead expenses and remain committed to aligning our land supply and inventory levels to current expectations for lower home closings, exercising caution with respect to further investment in inventory. We have focused on the generation of cash from our existing inventory supply as the timing of a market recovery in housing is currently uncertain.

We have also undertaken a comprehensive review of each of our markets in order to refine our overall investment strategy and to optimize capital and resource allocations in an effort to enhance our financial position and to increase shareholder value. This review entailed an evaluation of both external market factors and our position in each market which has resulted in the decision to discontinue homebuilding operations in Charlotte, NC, Cincinnati/Dayton, OH, Columbia, SC, Columbus, OH and Lexington, KY which was announced on February 1, 2008 and in Colorado and Fresno, CA which were announced during the third quarter of fiscal 2008. We are actively completing an orderly exit from each of these markets and remain committed to our remaining customer care responsibilities. We have committed to complete all homes under construction in these markets and we are in the process of marketing the remaining land positions for sale. While the underlying basis for exiting each market was different, in each instance

we concluded we could better serve shareholder interests by re-allocating the capital employed in these markets. As of September 30, 2008, these markets represented approximately 2% of the Company's total assets.

On February 1, 2008, we exited the mortgage origination business and entered into an exclusive preferred lender relationship with a national mortgage provider. This exclusive relationship will continue to offer our homebuyers

## **Table of Contents**

the option of a simplified financing process while enabling us to focus on our core competency of homebuilding. Our decision to exit the mortgage origination business was related to the problems identified by the Audit Committee's investigation of our mortgage origination practices, the growing complexity and cost of compliance with national, state and local lending rules, and the retrenchment among mortgage capital sources which has had the effect of reducing the profitability of many mortgage brokerage activities. Our mortgage origination business is now reported as a discontinued operation in our consolidated statements of operations for all periods presented.

### **Long-Term Business Strategy**

We have developed a long-term business strategy which focuses on the following elements in order to provide a wide range of homebuyers with quality homes while generating returns on our invested capital over the course of a housing cycle:

**Geographic Diversification in Growth Markets.** We compete in a large number of geographically diverse markets in an attempt to reduce our exposure to any particular regional economy. Within these markets, we build homes in a variety of projects. We continually review our selection of markets based on both aggregate demographic information and our operating results. We use the results of these reviews to re-allocate our investments to those markets where we believe we can maximize our return on capital over the next several years.

**Diversity of Product Offerings.** Our product strategy entails addressing the needs of an increasingly diverse profile of home buyers. Within each of our markets we determine the profile of buyers we hope to address and design neighborhoods and homes with the specific needs of those buyers in mind. Depending on the market, we attempt to address one or more of the following types of home buyers: entry-level, move-up, luxury or retirement-oriented. The targeted buyer profiles are further refined by information about their marital and family status, employment, age, affluence and special interests. Recognizing that our customers want to choose certain components of their new home, we offer limited customization through the use of design studios in most of our markets. These design studios allow the customer to select certain non-structural customizations for their homes such as cabinetry, flooring, fixtures, appliances and wall coverings.

**Consistent Use of National Brand.** Our homebuilding and marketing activities are conducted under the name of Beazer Homes in each of our markets. We adopted the strategy of a single brand name across our markets in 2003 in order to better leverage our national and local marketing activities. Using a single brand has allowed us to execute successful national marketing campaigns and has accelerated our adoption of emerging online marketing practices.

**Operational Scale Efficiencies.** Beyond marketing advantages, we attempt to create both national and local scale efficiencies as a result of the scope of our operations. On a national basis we are able to achieve volume purchasing advantages in certain product categories, share best practices in construction, planning and design among our markets and leverage our fixed costs in ways that improve profitability. On a local level, while we are not generally the largest builder within our markets, we do attempt to be a major participant within our selected submarkets and targeted buyer profiles. There are further design, construction and cost advantages associated with having strong market positions within particular markets.

**Balanced Land Policies.** We seek to maximize our return on capital by carefully managing our investment in land. To reduce the risks associated with investments in land, we often use options to control land. We generally do not speculate in land which does not have the benefit of entitlements providing basic development rights to the owner.

### **Reportable Business Segments**

We design, sell and build single-family and multi-family homes in the following geographic regions which are presented as reportable segments. During fiscal 2008, in connection with our realignment of management, operational and financial reporting lines and our decision to exit a number of markets, we have

**Table of Contents**

correspondingly realigned our reportable segments. Those operations located in markets we have exited or are in the process of exiting are included in the Other Homebuilding segment:

<b>Segment/State</b>	<b>Market(s) / Year Entered</b>
<b><i>West:</i></b>	
Arizona	Phoenix (1993)
California	Los Angeles County (1993), Orange County (1993), Riverside and San Bernardino Counties (1993), San Diego County (1992), Ventura County (1993), Sacramento (1993), Kern County (2005)
Nevada	Las Vegas (1993)
New Mexico	Albuquerque (2005)
Texas	Dallas/Ft. Worth (1995), Houston (1995)
<b><i>East:</i></b>	
Maryland	Baltimore (1998), Metro-Washington, D.C. (1998)
Delaware	Delaware (2003)
New Jersey/New York/	Central and Southern New Jersey (1998), Orange County, NY (2005),
Pennsylvania	Bucks County, PA (1998)
Virginia	Fairfax County (1998), Loudoun County (1998), Prince William County (1998)
North Carolina	Raleigh/Durham (1992)
Indiana	Indianapolis (2002)
Tennessee	Nashville (1987)
<b><i>Southeast:</i></b>	
Florida	Jacksonville (1993), Fort Myers/Naples (1996), Tampa/St. Petersburg (1996), Orlando (1997), Sarasota (2005), Tallahassee (2006)
Georgia	Atlanta (1985), Savannah (2005)
South Carolina	Charleston (1987), Myrtle Beach (2002)
<b><i>Other Homebuilding (Exit Markets):</i></b>	
California	Fresno (2005)
Colorado	Denver (2001), Colorado Springs (2003)
Kentucky	Lexington (2002)
North Carolina	Charlotte (1987), Greensboro (1999)
Ohio	Columbus (2002), Cincinnati/Dayton (2002)
Tennessee	Memphis (2002)
South Carolina	Columbia (1993)

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

***Financial Services:***

We provide title services to our customers in many of our markets and report these services under our Financial Services reportable segment.

**Seasonal and Quarterly Variability**

Our homebuilding operating cycle generally reflects escalating new order activity in the second and third fiscal quarters and increased closings in the third and fourth fiscal quarters. However, during fiscal 2008, we continued to experience challenging market conditions in most of our markets which contributed to decreased revenues and closings as compared to prior periods including prior quarters, thereby reducing typical seasonal variations.

### **Markets and Product Description**

We evaluate a number of factors in determining which geographic markets to enter as well as which consumer segments to target with our homebuilding activities. We attempt to anticipate changes in economic and real estate conditions by evaluating such statistical information as the historical and projected growth of the population; the

**Table of Contents**

number of new jobs created or projected to be created; the number of housing starts in previous periods; building lot availability and price; housing inventory; level of competition; and home sale absorption rates.

We generally seek to differentiate ourselves from our competition in a particular market with respect to customer service, product type, and design and construction quality. We maintain the flexibility to alter our product mix within a given market, depending on market conditions. In determining our product mix, we consider demographic trends, demand for a particular type of product, market research of consumer preferences, margins, timing and the economic strength of the market. Although some of our homes are priced at the upper end of the market, and we offer a selection of amenities, we generally do not build custom homes. We attempt to maximize efficiency by using standardized design plans whenever possible. In all of our home offerings, we attempt to maximize customer satisfaction by incorporating quality materials, distinctive design features, convenient locations and competitive prices.

During fiscal year 2008, the average sales price of our homes closed was approximately \$248,700. The following table summarizes certain operating information of our reportable homebuilding segments as of and for the years ended September 30, 2008, 2007 and 2006 (dollars in thousands). Please see *Management's Discussion and Analysis of Results of Operations and Financial Condition* for additional information.

	2008		2007		2006	
	Number of Homes	Average	Number of Homes	Average	Number of Homes	Average
	Closed	Closing Price	Closed	Closing Price	Closed	Closing Price
West	2,777	\$ 240.5	4,369	\$ 288.5	6,484	\$ 311.4
East	2,405	279.9	2,821	313.2	4,617	306.8
Southeast	1,515	232.0	2,970	258.9	4,483	266.3
Other	995	221.8	1,860	226.6	2,777	221.9
Total Company	7,692	\$ 248.7	12,020	\$ 277.4	18,361	\$ 285.7

	September 30, 2008		September 30, 2007		September 30, 2006	
	Units in Backlog	Dollar Value in Backlog	Units in Backlog	Dollar Value in Backlog	Units in Backlog	Dollar Value in Backlog
West	527	\$ 117,721	805	\$ 217,122	1,730	\$ 558,994
East	485	132,766	1,317	410,659	1,322	464,629
Southeast	306	67,959	490	123,309	1,343	373,484
Other	40	8,153	373	87,716	707	158,349
Total Company	1,358	\$ 326,599	2,985	\$ 838,806	5,102	\$ 1,555,456



## Corporate Operations

We perform all or most of the following functions at our corporate office:

- evaluate and select geographic markets;
- allocate capital resources to particular markets for land acquisitions;
- maintain and develop relationships with lenders and capital markets to create access to financial resources;
- plan and design homes and community projects;
- operate and manage information systems and technology support operations; and
- monitor the operations of our subsidiaries and divisions.

We allocate capital resources necessary for new projects in a manner consistent with our overall business strategy. We will vary the capital allocation based on market conditions, results of operations and other factors. Capital commitments are determined through consultation among selected executive and operational personnel, who play an important role in ensuring that new projects are consistent with our strategy. Centralized financial controls are also maintained through the standardization of accounting and financial policies and procedures.

## **Table of Contents**

### **Field Operations**

The development and construction of each project is managed by our operating divisions, each of which is generally led by a market leader who, in turn, reports to a regional president and indirectly to our Chief Operating Officer. At the development stage, a manager (who may be assigned to several projects and reports to the market leader of the division) supervises development of buildable lots. During fiscal 2008, we reorganized our field operations into three regions and concentrated certain accounting, accounts payable, billing and purchasing functions in regional accounting centers. Together with our operating divisions, our field teams are equipped with the skills to complete the functions of identification of land acquisition opportunities, land entitlement, land development, construction, marketing, sales and warranty service.

### **Land Acquisition and Development**

Generally, the land we acquire is purchased only after necessary entitlements have been obtained so that we have the right to begin development or construction as market conditions dictate. During the current downturn in the homebuilding industry, we do not expect to make significant land acquisitions but we will continue to consider attractive opportunities as they arise. In certain situations, we will purchase property without all necessary entitlements where we perceive an opportunity to build on such property in a manner consistent with our strategy. The term entitlements refers to subdivision approvals, development agreements, tentative maps or recorded plats, depending on the jurisdiction within which the land is located. Entitlements generally give a developer the right to obtain building permits upon compliance with conditions that are usually within the developer's control. Although entitlements are ordinarily obtained prior to the purchase of land, we are still required to obtain a variety of other governmental approvals and permits during the development process.

We select our land for development based upon a variety of factors, including:

- internal and external demographic and marketing studies;
- suitability for development during the time period of one to five years from the beginning of the development process to the last closing;
- centralized corporate-level management review of all significant land decisions;
- financial review as to the feasibility of the proposed project, including profit margins and returns on capital employed;
- the ability to secure governmental approvals and entitlements;
- environmental and legal due diligence;
- competition in the area;
- proximity to local traffic corridors and amenities; and
- management's judgment as to the real estate market and economic trends and our experience in a particular market.

We generally purchase land or obtain an option to purchase land, which, in either case, requires certain site improvements prior to construction. Where required, we then undertake or, in the case of land under option, the grantor of the option then undertakes, the development activities (through contractual arrangements with local developers), which include site planning and engineering, as well as constructing road, sewer, water, utilities, drainage and recreational facilities and other amenities. When available in certain markets, we also buy finished lots that are ready for construction.

We strive to develop a design and marketing concept for each of our projects, which include determination of size, style and price range of the homes, layout of streets, layout of individual lots and overall community design. The product line offered in a particular project depends upon many factors, including the housing generally available in the area, the needs of a particular market and our cost of lots in the project. We are, however, often able to use

standardized home design plans.

**Option Contracts.** We acquire certain lots by means of option contracts. Option contracts generally require the payment of a cash deposit or issuance of a letter of credit for the right to acquire lots during a specified period of time at a certain price.

**Table of Contents**

Under option contracts, both with and without specific performance, purchase of the properties is contingent upon satisfaction of certain requirements by us and the sellers. Our obligations with respect to options with specific performance are included on our consolidated balance sheet in other liabilities at September 30, 2008. At September 30, 2008, we were committed to future amounts under option contracts with specific performance obligations that aggregated \$56.0 million, net of cash deposits. Under option contracts without specific performance obligations, our liability is generally limited to forfeiture of the non-refundable deposits, letters of credit and other non-refundable amounts incurred, which aggregated approximately \$50.8 million at September 30, 2008. This amount includes non-refundable letters of credit of approximately \$7.4 million. At September 30, 2008, future amounts under option contracts without specific performance obligations aggregated approximately \$508.2 million, net of cash deposits.

The following table sets forth, by reportable segment, land controlled by us as of September 30, 2008:

	Lots Owned							Total Lots Under Contract	Total Lots Controlled
	Lots for Current and Future		Finished Lots	Land Held for Sale	Homes		Total Lots Owned		
	Undeveloped Lots (1)	Development			Under Construction (2)	Total Lots Owned			
<b>West</b>									
Arizona	-	680	546	826	150	2,202	792	2,994	
California	-	3,931	1,032	238	436	5,637	174	5,811	
Nevada	-	895	502	-	124	1,521	1,448	2,969	
Texas	85	1,106	1,850	-	360	3,401	528	3,929	
New Mexico	-	-	90	-	18	108	162	270	
<b>Total West</b>	<b>85</b>	<b>6,612</b>	<b>4,020</b>	<b>1,064</b>	<b>1,088</b>	<b>12,869</b>	<b>3,104</b>	<b>15,973</b>	
<b>East</b>									
Virginia	-	-	339	-	134	473	473	946	
Maryland	-	573	828	-	176	1,577	509	2,086	
Delaware	-	906	157	-	36	1,099	217	1,316	
Indiana	294	1,655	1,104	265	237	3,555	162	3,717	
North Carolina	-	339	97	190	66	692	107	799	
Tennessee	-	1,151	10	-	93	1,254	651	1,905	
New Jersey	-	165	292	-	99	556	870	1,426	
<b>Total East</b>	<b>294</b>	<b>4,789</b>	<b>2,827</b>	<b>455</b>	<b>841</b>	<b>9,206</b>	<b>2,989</b>	<b>12,195</b>	
<b>Southeast</b>									
Georgia	-	88	183	162	86	519	-	519	

Edgar Filing: BEAZER HOMES USA INC - Form 10-K

Florida	-	1,518	856	206	241	2,821	2,907	5,728
South Carolina	-	1,160	548	59	152	1,919	1,504	3,423
Total Southeast	-	2,766	1,587	427	479	5,259	4,411	9,670
<u>Other</u>								
Exit Markets	-	-	35	1,703	51	1,789	-	1,789
<b>Total</b>	379	14,167	8,469	3,649	2,459	29,123	10,504	39,627

(1) Undeveloped Lots consists of raw land that is expected to be developed into the respective number of lots reflected in this table.

(2) The category Homes Under Construction represents lots upon which construction of a home has commenced.

**Table of Contents**

The following table sets forth, by reportable segment, land held for development, land held for future development and land held for sale as of September 30, 2008:

	Land Held for Development	Land Held for Future Development	Land Held for Sale
West	\$ 171,293	\$ 341,784	\$ 26,515
East	239,101	44,387	3,642
Southeast	104,134	21,149	14,841
Other	1,722	-	40,738
Unallocated	102,002	-	-
Total	\$ 618,252	\$ 407,320	\$ 85,736

**Joint Ventures.** We participate in land development joint ventures in which Beazer Homes has less than a controlling interest. We enter into joint ventures in order to acquire attractive land positions, to manage our risk profile and to leverage our capital base. Our joint ventures are typically entered into with developers, other homebuilders and financial partners to develop finished lots for sale to the joint venture's members and other third parties. During fiscal 2008 and 2007 respectively, we wrote down our investment in certain of our joint ventures by \$68.8 million and \$28.6 million as a result of impairments of inventory held within those ventures. In fiscal 2007, we also recorded \$3.4 million of contractual obligation abandonments related to those ventures.

Our joint ventures typically obtain secured acquisition, development and construction financing. At September 30, 2008, our unconsolidated joint ventures had borrowings outstanding totaling \$524.4 million of which \$327.9 million related to one joint venture in which we are a 2.58% partner. In some instances, Beazer Homes and our joint venture partners have provided varying levels of guarantees of debt of our unconsolidated joint ventures. At September 30, 2008, these guarantees included, for certain joint ventures, construction completion guarantees, loan to value maintenance agreements, repayment guarantees and environmental indemnities (see Note 13 to the Consolidated Financial Statements).

**Construction**

We typically act as the general contractor for the construction of our projects. Our project development operations are controlled by our operating divisions, whose employees supervise the construction of each project, coordinate the activities of subcontractors and suppliers, subject their work to quality and cost controls and assure compliance with zoning and building codes. We specify that quality, durable materials be used in the construction of our homes. Our subcontractors follow design plans prepared by architects and engineers who are retained or directly employed by us and whose designs are geared to the local market. A majority of our home plans are prepared in our corporate office, allowing us to ensure the quality of the plans we build as well as to enable us to reduce direct costs through our value engineering efforts.

Subcontractors typically are retained on a project-by-project basis to complete construction at a fixed price. Agreements with our subcontractors and materials suppliers are generally entered into after competitive bidding. In connection with this competitive bid process, we obtain information from prospective subcontractors and vendors with respect to their financial condition and ability to perform their agreements with us. We do not maintain significant

inventories of construction materials, except for materials being utilized for homes under construction. We have numerous suppliers of raw materials and services used in our business, and such materials and services have been, and continue to be, available. Material prices may fluctuate, however, due to various factors, including demand or supply shortages, which may be beyond the control of our vendors. Whenever possible, we enter into regional and national supply contracts with certain of our vendors. We believe that our relationships with our suppliers and subcontractors are good.

Construction time for our homes depends on the availability of labor, materials and supplies, product type and location. Homes are designed to promote efficient use of space and materials, and to minimize construction costs and time. In all of our markets, construction of a home is typically completed within three to six months following

## **Table of Contents**

commencement of construction. At September 30, 2008, excluding models, we had 2,041 homes at various stages of completion of which 1,057 were under contract and included in backlog at such date and 984 homes (408 were completed and 576 under construction) were not under a sales contract, either because the construction of the home was begun without a sales contract or because the original sales contract had been cancelled.

## **Warranty Program**

For certain homes sold through March 31, 2004 (and in certain markets through July 31, 2004), we self-insured our structural warranty obligations through our wholly owned risk retention group. Beginning with homes sold April 1, 2004 (August 1, 2004 in certain markets), our warranties are issued, administered, and insured, subject to applicable self-insured retentions, by independent third parties. We currently provide a limited warranty (ranging from one to two years) covering workmanship and materials per our defined performance quality standards. In addition, we provide a limited warranty (generally ranging from a minimum of five years up to the period covered by the applicable statute of repose) covering only certain defined construction defects. We also provide a defined structural element warranty with single-family homes and townhomes in certain states.

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

In addition, we maintain third-party insurance, subject to applicable self-insured retentions, for most construction defects that we encounter in the normal course of business. We believe that our accruals and third-party insurance are adequate to cover the ultimate resolution of our potential liabilities associated with known and anticipated warranty and construction defect related claims and litigation. Please see *Management's Discussion and Analysis of Results of Operations and Financial Condition* and Note 13, *Contingencies* to the Consolidated Financial Statements for additional information.

There can be no assurance, however, that the terms and limitations of the limited warranty will be effective against claims made by the homebuyers, that we will be able to renew our insurance coverage or renew it at reasonable rates, that we will not be liable for damages, the cost of repairs, and/or the expense of litigation surrounding possible construction defects, soil subsidence or building related claims or that claims will not arise out of events or circumstances not covered by insurance and/or not subject to effective indemnification agreements with our subcontractors.

## **Marketing and Sales**

We make extensive use of advertising and other promotional activities, including our Internet website (<http://www.beazer.com>), mass-media advertisements, brochures, direct mail, billboards and the placement of strategically located signboards in the immediate areas of our developments.

We normally build, decorate, furnish and landscape model homes for each project and maintain on-site sales offices. At September 30, 2008, we maintained 503 model homes, of which 222 were owned, 196 were financed and 85 were leased from third parties pursuant to sale and leaseback agreements. We believe that model homes play a particularly important role in our marketing efforts.

We generally sell our homes through commissioned employees (who typically work from the sales offices located at the model homes used in the subdivision) as well as through independent brokers. Our personnel are available to assist prospective homebuyers by providing them with floor plans, price information and tours of model homes, and in connection with the selection of options. The selection of interior features is a principal component of our marketing



and sales efforts. Sales personnel are trained by us and attend periodic meetings to be updated on sales techniques, competitive products in the area, the availability of financing, construction schedules and marketing and advertising plans, which management believes results in a sales force with extensive knowledge of our operating policies and housing products. Our policy also provides that sales personnel be licensed real estate agents where required by law. Depending on market conditions, we also at times begin construction on a number of homes for which no signed sales contract exists. The use of an inventory of such homes satisfies the requirements of relocated personnel and of independent brokers, who often represent customers who require a completed home within

## **Table of Contents**

60 days. We sometimes use various sales incentives in order to attract homebuyers. The use of incentives depends largely on local economic and competitive market conditions.

### **Customer Financing**

Through January 31, 2008, Beazer Mortgage Corporation ( Beazer Mortgage ) financed certain of our mortgage lending activities with borrowings under its warehouse line of credit or from general corporate funds prior to selling the loans and their servicing rights shortly after origination to third-party investors. Beazer Mortgage provided qualified homebuyers numerous financing options, including a wide variety of conventional, FHA and Veterans Administration ( VA ) financing programs. Effective February 1, 2008, we exited the mortgage origination business and entered into an exclusive preferred lender arrangement with a national, third-party mortgage provider. The operating results of Beazer Mortgage are reported as discontinued operations in the Consolidated Statements of Operations for all periods presented. See Item 3 Legal Proceedings for discussion of the investigations and litigation related to our mortgage origination business.

We continue to offer title insurance services to our homebuyers in many of our markets.

### **Competition**

The development and sale of residential properties is highly competitive and fragmented, particularly in the current weak housing environment. We compete for residential sales on the basis of a number of interrelated factors, including location, reputation, amenities, design, quality and price, with numerous large and small homebuilders, including some homebuilders with nationwide operations and greater financial resources and/or lower costs than us. We also compete for residential sales with individual resales of existing homes (including a growing number of foreclosed homes offered at substantially reduced prices), available rental housing and, to a lesser extent, resales of condominiums. In recent months, short sales (a transaction in which the seller's mortgage lender agrees to accept a payoff of less than the balance due on the loan) and foreclosures have become a sizable portion of the existing home market.

We utilize our experience within our geographic markets and breadth of product line to vary our regional product offerings to reflect changing market conditions. We strive to respond to market conditions and to capitalize on the opportunities for advantageous land acquisitions in desirable locations. To further strengthen our competitive position, we rely on quality design, construction and service to provide customers with a higher measure of home.

### **Government Regulation and Environmental Matters**

Generally, our land is purchased with entitlements, giving us the right to obtain building permits upon compliance with specified conditions, which generally are within our control. Upon compliance with such conditions, we are able to obtain building permits. The length of time necessary to obtain such permits and approvals affects the carrying costs of unimproved property acquired for the purpose of development and construction. In addition, the continued effectiveness of permits already granted is subject to factors such as changes in policies, rules and regulations and their interpretation and application. Many governmental authorities have imposed impact fees as a means of defraying the cost of providing certain governmental services to developing areas. To date, the governmental approval processes discussed above have not had a material adverse effect on our development activities, and indeed all homebuilders in a given market face the same fees and restrictions. There can be no assurance, however, that these and other restrictions will not adversely affect us in the future.

We may also be subject to periodic delays or may be precluded entirely from developing communities due to building moratoriums, slow-growth or no-growth initiatives or building permit allocation ordinances which could be

implemented in the future in the states and markets in which we operate. Substantially all of our land is entitled and, therefore, the moratoriums generally would only adversely affect us if they arose from health, safety and welfare issues such as insufficient water or sewage facilities. Local and state governments also have broad discretion regarding the imposition of development fees for projects in their jurisdictions. These fees are normally established, however, when we receive recorded final maps and building permits. We are also subject to a variety of local, state and federal statutes, ordinances, rules and regulations concerning the protection of health and the

## **Table of Contents**

environment. These laws may result in delays, cause us to incur substantial compliance and other costs, and prohibit or severely restrict development in certain environmentally sensitive regions or areas.

In order to provide homes to homebuyers qualifying for FHA-insured or VA-guaranteed mortgages, we must construct homes in compliance with FHA and VA regulations. Our title subsidiaries are subject to various licensing requirements and real estate laws and regulations in the states in which they do business. These laws and regulations include provisions regarding operating procedures, investments, lending and privacy disclosures, forms of policies and premiums.

In some states, we are required to be registered as a licensed contractor and comply with applicable rules and regulations. Also, in various states, our new home counselors are required to be licensed real estate agents and to comply with the laws and regulations applicable to real estate agents.

Failure to comply with any of these laws or regulations could result in loss of licensing and a restriction of our business activities in the applicable jurisdiction.

## **Bonds and Other Obligations**

We are frequently required, in connection with the development of our projects, to provide letters of credit and performance, maintenance and other bonds in support of our related obligations with respect to such developments. The amount of such obligations outstanding at any time varies in accordance with our pending development activities. In the event any such bonds or letters of credit are drawn upon, we would be obligated to reimburse the issuer of such bonds or letters of credit. At September 30, 2008 we had approximately \$50.8 million and \$384.1 million of outstanding letters of credit and performance bonds, respectively, related to our obligations to local governments to construct roads and other improvements in various developments, which were in addition to outstanding letters of credit of approximately \$11.6 million related to our land option contracts.

## **Employees and Subcontractors**

At September 30, 2008, we employed 1,444 persons, of whom 445 were sales and marketing personnel and 331 were involved in construction. Although none of our employees are covered by collective bargaining agreements, certain of the subcontractors engaged by us are represented by labor unions or are subject to collective bargaining arrangements. We believe that our relations with our employees and subcontractors are good. In response to the continued weakness in the homebuilding market and economy in general, in fiscal 2008 we reduced our number of employees by 45% or 1,175 employees as compared to September 30, 2007.

## **Available Information**

Our Internet website address is [www.beazer.com](http://www.beazer.com). Our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to those reports filed or furnished pursuant to section 13(a) or 15(d) of the Exchange Act are available free of charge through our website as soon as reasonably practicable after we electronically file with or furnish them to the Securities and Exchange Commission ( SEC ) and are available in print to any stockholder who requests a printed copy. The public may also read and copy any materials that we file with the SEC at the SEC's Public Reference Room at 100 F Street N.E., Washington, D.C. 20549. You may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. Additionally, the SEC maintains a website that contains reports, proxy statements, information statements and other information regarding issuers, including us, that file electronically with the SEC at [www.sec.gov](http://www.sec.gov).

In addition, many of our corporate governance documents are available on our website at [www.beazer.com](http://www.beazer.com). Specifically, our Audit, Finance, Compensation and Nominating/Corporate Governance Committee Charters, our Corporate Governance Guidelines and Code of Business Conduct and Ethics are available. Each of these documents is available in print to any stockholder who requests it.

The content on our website is available for information purposes only and is not a part of and shall not be deemed incorporated by reference in this report.

**Table of Contents**

**Item 1A. Risk Factors**

*The homebuilding industry is experiencing a severe downturn that may continue for an indefinite period and continue to adversely affect our business, results of operations and stockholders' equity.*

Most housing markets across the United States continue to be characterized by an oversupply of both new and resale home inventory, including foreclosed homes, reduced levels of consumer demand for new homes, increased cancellation rates, aggressive price competition among homebuilders and increased incentives for home sales. As a result of these factors, we, like many other homebuilders, have experienced a material reduction in revenues and margins. These challenging market conditions are expected to continue for the foreseeable future and, in the near term, these conditions may further deteriorate. We expect that continued weakness in the homebuilding market will adversely affect our business, results of operations and stockholders' equity as compared to prior periods and could result in additional inventory and goodwill impairments in the future.

In addition, we have been experiencing a significant increase in the number of cancellations by customers. Our backlog reflects the number and value of homes for which we have entered into a sales contract with a customer but have not yet delivered the home. Although these sales contracts typically require a cash deposit and do not make the sale contingent on the sale of the customer's existing home, in some cases a customer may cancel the contract and receive a complete or partial refund of the deposit as a result of local laws or as a matter of our business practices. If the current industry downturn continues, economic conditions continue to deteriorate or if mortgage financing becomes less accessible, more homebuyers may have an incentive to cancel their contracts with us, even where they might be entitled to no refund or only a partial refund, rather than complete the purchase. Significant cancellations have had, and could have, a material adverse effect on our business as a result of lost sales revenue and the accumulation of unsold housing inventory. In particular, our cancellation rates for the fiscal quarter and fiscal year ended September 30, 2008 were 45.7% and 39.9%, respectively. It is important to note that both backlog and cancellation metrics are operational, rather than accounting data, and should be used only as a general gauge to evaluate performance. There is an inherent imprecision in these metrics based on an evaluation of qualitative factors during the transaction cycle.

Based on our impairment tests and consideration of the current and expected future market conditions, we recorded inventory impairment charges of \$429.4 million, lot option abandonment charges of \$81.2 million and non-cash goodwill impairment charges totaling \$52.5 million during fiscal 2008. During fiscal 2008, we also wrote down our investment in certain of our joint ventures reflecting \$68.8 million of impairments of inventory held within those ventures. While we believe that no additional goodwill, joint venture investment or inventory impairments existed as of September 30, 2008, future economic or financial developments, including general interest rate increases, poor performance in either the national economy or individual local economies, or our ability to meet our projections could lead to future impairments.

*Our home sales and operating revenues could decline due to macro-economic and other factors outside of our control, such as changes in consumer confidence, declines in employment levels and increases in the quantity and decreases in the price of new homes and resale homes in the market.*

Changes in national and regional economic conditions, as well as local economic conditions where we conduct our operations and where prospective purchasers of our homes live, may result in more caution on the part of homebuyers and, consequently, fewer home purchases. These economic uncertainties involve, among other things, conditions of supply and demand in local markets and changes in consumer confidence and income, employment levels, and government regulations. These risks and uncertainties could periodically have an adverse effect on consumer demand for and the pricing of our homes, which could cause our operating revenues to decline. Additional reductions in our revenues could, in turn, further negatively affect the market price of our securities.

*We are the subject of ongoing governmental criminal and civil investigations and pending civil litigation which could result in criminal charges and could require us to pay substantial fines, damages or other penalties or could otherwise have a material adverse effect on us. The failure to fulfill our obligations under the consent order with the SEC could have a material adverse effect on our operations.*

We and our subsidiary, Beazer Mortgage Corporation, are under criminal and civil investigations by the United States Attorney's office in the Western District of North Carolina and other federal and state agencies.

**Table of Contents**

We and certain of our current and former employees, officers and directors have been named as defendants in securities class action lawsuits, lawsuits regarding Employee Retirement Income Security Act ( ERISA ) claims, and derivative shareholder actions. In addition, certain of our subsidiaries have been named in class action and multi-party lawsuits regarding claims made by homebuyers. We cannot predict or determine the timing or final outcome of the investigations or the lawsuits or the effect that any adverse findings in the investigations or adverse determinations in the lawsuits may have on us. While we are cooperating with the investigations, developments, including the expansion of the scope of the investigations, could negatively impact us, could divert the efforts and attention of our management team from the operation of our business, and/or result in further departures of executives or other employees. An unfavorable determination resulting from any investigation could result in the filing of criminal charges or the payment of substantial criminal or civil fines, the imposition of injunctions on our conduct or the imposition of other penalties or consequences, including but not limited to the Company having to adjust, curtail or terminate the conduct of certain of our business operations. Any of these outcomes could have a material adverse effect on our business, financial condition, results of operations and cash flows. An unfavorable determination in any of the lawsuits could result in the payment by us of substantial monetary damages which may not be covered by insurance. Further, the legal costs associated with the investigations and the lawsuits and the amount of time required to be spent by management and the Board of Directors on these matters, even if we are ultimately successful, could have a material adverse effect on our business, financial condition and results of operations. In addition to expenses incurred to defend the Company in these matters, under Delaware law and our bylaws, we may have an obligation to indemnify our current and former officers and directors in relation to these matters. We have obligations to advance legal fees and expenses to certain directors and officers, and we have advanced, and may continue to advance, legal fees and expenses to certain other current and former employees.

In connection with the settlement with the SEC, we consented, without admitting or denying any wrongdoing, to a cease and desist order requiring future compliance with certain provisions of the federal securities laws and regulations. If we are found to be in violation of the order in the future, we may be subject to penalties and other adverse consequences as a result of the prior actions.

Our insurance carriers may seek to rescind or deny coverage with respect to certain of the pending investigations or lawsuits, or we may not have sufficient coverage under such policies. If the insurance companies are successful in rescinding or denying coverage or if we do not have sufficient coverage under our policies, our business, financial condition and results of operations could be materially adversely affected.

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

Our future success depends upon our ability to attract, train, assimilate and retain skilled personnel. If we are unable to retain our key employees or attract, train, assimilate or retain other skilled personnel in the future, it could hinder our business strategy and impose additional costs of identifying and training new individuals. Competition for qualified personnel in all of our operating markets is intense.

*Recent and potential future downgrades of our credit ratings could adversely affect our access to capital and could otherwise have a material adverse effect on us.*

S&P lowered its rating of the Company's corporate credit and senior unsecured debt from B to B- on November 25, 2008 and maintained its negative outlook. On March 26, 2008, Moody's lowered its rating from B1 to B2 and maintained its negative outlook. On September 4, 2008, Fitch lowered the Company's issuer-default rating from B to B-. The rating agencies announced that these downgrades reflect deterioration in our homebuilding operations, credit metrics and other earnings-based metrics and their outlook for our future earnings, as well as possible distractions resulting from the ongoing investigations described elsewhere herein. These ratings and our current credit condition affect, among other things, our ability to access new capital, especially debt, and may result in more stringent



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

**Table of Contents**

*Our revolving credit facility, bonds and certain other debt impose significant restrictions and obligations on us. Restrictions on our ability to borrow could adversely affect our liquidity. In addition, our substantial indebtedness could adversely affect our financial condition, limit our growth and make it more difficult for us to satisfy our debt obligations.*

Our revolving credit facility imposes certain restrictions and obligations on us. The facility size is dependent upon certain consolidated tangible net worth qualifications. Availability under the facility is also subject to satisfaction of a secured borrowing base. We are permitted to grow the borrowing base by adding additional cash and/or real estate as collateral securing the revolving credit facility. In addition, we must comply with other covenants which, among other things, require us to maintain minimum tangible net worth and liquidity levels and limit the incurrence of liens, secured debt, investments, transactions with affiliates, asset sales, mergers and other matters. Any failure to comply with any of these covenants could result in an event of default under the revolving credit facility. Any such event of default, any other default or any failure of our representations and warranties in the credit agreement to be correct in all material respects on the date of a proposed borrowing would also prohibit our ability to make borrowings under the revolving credit facility and could negatively impact other covenants or lead to defaults under certain of our other debt. We have in the past needed waivers and amendments under this facility with respect to financial covenants and other matters. There can be no assurance that we will be able to obtain any future waivers or amendments that may become necessary without significant additional cost or at all. The indentures under which our senior notes were issued and certain of our other debt contain similar covenants.

As of September 30, 2008, we had total outstanding indebtedness of approximately \$1.75 billion, net of unamortized discount of approximately \$2.6 million. Our substantial indebtedness could have important consequences to us and the holders of our securities, including, among other things:

- causing us to be unable to satisfy our obligations under our debt agreements;
- making us more vulnerable to adverse general economic and industry conditions;
- making it difficult to fund future working capital, land purchases, acquisitions, share repurchases, general corporate purposes or other purposes; and
- causing us to be limited in our flexibility in planning for, or reacting to, changes in our business.

In addition, subject to restrictions in our existing debt instruments, we may incur additional indebtedness. If new debt is added to our current debt levels, the related risks that we now face could intensify. Our growth plans and our ability to make payments of principal or interest on, or to refinance, our indebtedness, will depend on our future operating performance and our ability to enter into additional debt and/or equity financings. If we are unable to generate sufficient cash flows in the future to service our debt, we may be required to refinance all or a portion of our existing debt, to sell assets or to obtain additional financing. We may not be able to do any of the foregoing on terms acceptable to us, if at all.

*A substantial increase in mortgage interest rates or unavailability of mortgage financing may reduce consumer demand for our homes.*

Substantially all purchasers of our homes finance their acquisition with mortgage financing. Recently, the credit markets and the mortgage industry have been experiencing a period of unparalleled turmoil and disruption characterized by bankruptcies, financial institution failure, consolidation and an unprecedented level of intervention by the United States federal government. The U.S. residential mortgage market is further impacted by the deterioration in the credit quality of loans originated to non-prime and subprime borrowers and an increase in mortgage foreclosure rates. These difficulties are not expected to improve until residential real estate inventories return to a more normal level and the mortgage credit market stabilizes. While the ultimate outcome of these events cannot be predicted, they have had and may continue to have an impact on the availability and cost of mortgage

financing to our customers. The volatility in interest rates, the decrease in the willingness and ability of lenders to make home mortgage loans, the tightening of lending standards and the limitation of financing product options, have made it more difficult for homebuyers to obtain acceptable financing. Any substantial increase in mortgage interest rates or unavailability of mortgage financing would adversely affect the ability of prospective first-time and move-up homebuyers to obtain financing for our homes, as well as adversely affect the ability of prospective move-up homebuyers to sell their current homes. This disruption in the credit markets and the

**Table of Contents**

curtailed availability of mortgage financing has adversely affected, and is expected to continue to adversely affect, our business, financial condition, results of operations and cash flows as compared to prior periods.

*If we are unsuccessful in competing against our homebuilding competitors, our market share could decline or our growth could be impaired and, as a result, our financial results could suffer.*

Competition in the homebuilding industry is intense, and there are relatively low barriers to entry into our business. Increased competition could hurt our business, as it could prevent us from acquiring attractive parcels of land on which to build homes or make such acquisitions more expensive, hinder our market share expansion, and lead to pricing pressures on our homes that may adversely impact our margins and revenues. If we are unable to successfully compete, our financial results could suffer and the value of, or our ability to service, our debt could be adversely affected. Our competitors may independently develop land and construct housing units that are superior or substantially similar to our products. Furthermore, some of our competitors have substantially greater financial resources and lower costs of funds than we do. Many of these competitors also have longstanding relationships with subcontractors and suppliers in the markets in which we operate. We currently build in several of the top markets in the nation and, therefore, we expect to continue to face additional competition from new entrants into our markets.

*Our financial condition, results of operations and stockholders' equity may be adversely affected by any decrease in the value of our inventory, as well as by the associated carrying costs.*

We regularly acquire land for replacement and expansion of land inventory within our existing and new markets. The risks inherent in purchasing and developing land increase as consumer demand for housing decreases. The market value of land, building lots and housing inventories can fluctuate significantly as a result of changing market conditions and the measures we employ to manage inventory risk may not be adequate to insulate our operations from a severe drop in inventory values. When market conditions are such that land values are not appreciating, previously entered into option agreements may become less desirable, at which time we may elect to forego deposits and preacquisition costs and terminate the agreements. In fiscal 2008, we recorded \$81.2 million of lot option abandonment charges. During fiscal 2008, as a result of the further deterioration of the housing market and our strategic decision related to projects which no longer met our internal investment standards, we determined that the carrying amount of certain of our inventory assets exceeded their estimated fair value. As a result of our analysis, during fiscal 2008, we incurred \$429.4 million of non-cash pre-tax charges related to inventory impairments. If these adverse market conditions continue or worsen, we may have to incur additional inventory impairment charges which would adversely affect our financial condition, results of operations and stockholders' equity.

*We conduct certain of our operations through unconsolidated joint ventures with independent third parties in which we do not have a controlling interest and we can be adversely impacted by joint venture partners' failure to fulfill their obligations.*

We participate in land development joint ventures ( JVs ) in which we have less than a controlling interest. We have entered into JVs in order to acquire attractive land positions, to manage our risk profile and to leverage our capital base. Our JVs are typically entered into with developers, other homebuilders and financial partners to develop finished lots for sale to the joint venture's members and other third parties. As a result of the deterioration of the housing market in fiscal 2008 and 2007, we wrote down our investment in certain of our JVs reflecting \$68.8 million and \$28.6 million of impairments of inventory held within those JVs, respectively. In fiscal 2007 we also recorded \$3.4 million of JV contractual obligation abandonments. If these adverse market conditions continue or worsen, we may have to take further writedowns of our investments in our JVs.

Our joint venture investments are generally very illiquid both because we lack a controlling interest in the JVs and because most of our JVs are structured to require super-majority or unanimous approval of the members to sell a

substantial portion of the JV's assets or for a member to receive a return of its invested capital. Our lack of a controlling interest also results in the risk that the JV will take actions that we disagree with, or fail to take actions that we desire, including actions regarding the sale of the underlying property.

Our JVs typically obtain secured acquisition, development and construction financing. At September 30, 2008, our unconsolidated JVs had borrowings totaling \$524.4 million, of which \$327.9 million related to one joint venture in which we are a 2.58% partner. Generally, we and our joint venture partners have provided varying levels of guarantees of debt or other obligations of our unconsolidated JVs. At September 30, 2008, these guarantees

**Table of Contents**

included, for certain joint ventures, construction completion guarantees, loan-to-value maintenance agreements, repayment guarantees and environmental indemnities. At September 30, 2008, we had repayment guarantees of \$39.2 million and loan-to-value maintenance guarantees of \$5.8 million of debt of unconsolidated joint ventures (see Notes 3 and 13 to the Consolidated Financial Statements). As the housing market has deteriorated, many of these joint ventures are in default or are at risk of defaulting under their debt agreements and it has become more likely that our guarantees may be called upon. If one or more of these guarantees were drawn upon or otherwise invoked, our obligations could be significant, individually or in the aggregate, which could have a material adverse effect on our financial position or results of operations. We cannot predict whether such events will occur or whether such obligations will be invoked.

*We may not be able to utilize all of our deferred tax assets.*

As of September 30, 2008, the Company has determined that it is in a cumulative loss position based on the guidance in Statement of Financial Accounting Standards No. 109, *Accounting for Income Taxes*. Due to this cumulative loss position and the lack of sufficient objective evidence regarding the realization of our deferred tax assets in the foreseeable future, we have recorded a valuation allowance for substantially all of our deferred tax assets. Although we do expect the industry to recover from the current downturn to normal profit levels in the future, it may be necessary for us to record additional valuation allowances in the future related to operating losses. Additional valuation allowances could materially increase our income tax expense, and therefore adversely affect our results of operations and tangible net worth in the period in which such valuation allowance is recorded.

*We could experience a reduction in home sales and revenues or reduced cash flows due to our inability to acquire land for our housing developments if we are unable to obtain reasonably priced financing to support our homebuilding activities.*

The homebuilding industry is capital intensive, and homebuilding requires significant up-front expenditures to acquire land and begin development. Accordingly, we incur substantial indebtedness to finance our homebuilding activities. If internally generated funds and borrowings under our revolving credit facility are not sufficient, we would seek