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

FORM 10-Q

☒ **Quarterly Report Pursuant To Section 13 or 15(d) of the Securities Exchange Act of 1934**

For the quarterly period ended September 30, 2009

☐ **Transition Report Pursuant To Section 13 or 15(d) of the Securities Exchange Act of 1934**

For the transition period from _____ to _____

Commission File Number 1-32375

Comstock Homebuilding Companies, Inc.
(Exact name of registrant as specified in its charter)

Delaware	**20-1164345**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**

11465 Sunset Hills Road
5th Floor
Reston, Virginia 20190
(703) 883-1700
(Address including zip code, and telephone number, including area code, of principal executive offices)

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 (Section 232.405) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). YES ☐ NO ☐

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

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 Exchange Act). YES ☐ NO ☒

As of November 13, 2009, 15,608,438 shares of the Class A common stock, par value $.01 per share, and 2,733,500 shares of Class B common stock, par value $0.01, of the Registrant were outstanding.

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COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES

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

	September 30, 2009	December 31, 2008
ASSETS		
Cash and cash equivalents	$ 872	$ 5,977
Restricted cash	3,432	3,859
Receivables	15	—
Real estate held for development and sale	87,783	129,542
Inventory not owned - variable interest entities	—	19,250
Property, plant and equipment, net	279	829
Other assets	2,145	1,402
TOTAL ASSETS	$ 94,526	$ 160,859
LIABILITIES AND SHAREHOLDERS' EQUITY		
Accounts payable and accrued liabilities	$ 8,533	$ 8,232
Obligations related to inventory not owned	—	19,050
Notes payable - secured by real estate	66,181	90,086
Notes payable - unsecured	17,236	12,743
TOTAL LIABILITIES	91,950	130,111
Commitments and contingencies (Note 9)		
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	157,216	157,058
Treasury stock, at cost (391,400 Class A common stock)	(2,439)	(2,439)
Accumulated deficit	(152,384)	(124,277)
TOTAL COMSTOCK HOMEBUILDING COMPANIES, INC SHAREHOLDERS' EQUITY	2,576	30,525
Noncontrolling interest	—	223
TOTAL EQUITY	2,576	30,749
TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	$ 94,526	$ 160,859

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

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

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Revenues				
Revenue - homebuilding	$11,224	$12,270	$ 18,086	$ 39,645
Revenue - other	1,400	803	3,025	1,807
Total revenue	12,624	13,073	21,111	41,452
Expenses				
Cost of sales - homebuilding	10,484	10,968	16,565	35,168
Cost of sales - other	1,216	356	2,166	1,069
Impairments and write-offs	—	2	22,938	14,580
Selling, general and administrative	1,128	4,211	5,480	11,684
Interest, real estate taxes and indirect costs related to inactive projects	454	2,199	3,808	3,615
Operating loss	(658)	(4,663)	(29,846)	(24,664)
Gain on troubled debt restructuring	(2,803)	(1,194)	(2,803)	(9,519)
Other (income) loss, net	(134)	(1,268)	1,063	(2,866)
Total pre tax loss	2,279	(2,201)	(28,106)	(12,279)
Income taxes expense	—	5	2	5
Net income (loss)	2,279	(2,206)	(28,108)	$(12,284)
Net income (loss) attributable to noncontrolling interest	—	(4)	—	(7)
Net income (loss) attributable to Comstock Homebuilding Companies, Inc	2,279	(2,202)	(28,108)	(12,277)
Basic income (loss) per share	$ 0.13	$ (0.13)	$ (1.60)	$ (0.70)
Basic weighted average shares outstanding	17,618	17,475	17,575	17,431
Diluted income (loss) per share	$ 0.12	$ (0.13)	$ (1.60)	$ (0.70)
Diluted weighted average shares outstanding	19,467	17,475	17,575	17,431

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

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

	Nine Months Ended September 30,	
	2009	2008
Cash flows from operating activities:		
Net loss	$(28,108)	$(12,277)
Adjustment to reconcile net loss to net cash provided by operating activities		
Amortization and depreciation	549	530
Impairments and write-offs	22,938	14,580
Loss on disposal of assets	—	9
Non-controlling interest	—	(7)
Gain on troubled debt restructuring	(2,803)	(9,519)
Gain on trade payable settlements	(333)	—
Board of directors compensation	—	148
Amortization of stock compensation	158	112
Changes in operating assets and liabilities:		
Restricted cash	427	1,149
Receivables	(15)	160
Real estate held for development and sale	15,372	11,307
Other assets	(743)	19,435
Accrued interest	—	—
Accounts payable and accrued liabilities	2,097	(12,414)
Net cash provided by operating activities	9,549	13,213
Cash flows from investing activities:		
Purchase of property, plant and equipment	—	—
Net cash used in investing activities	—	—
Cash flows from financing activities:		
Proceeds from notes payable	311	24,337
Payments on notes payable	(14,732)	(38,077)
Non-controlling interest	(223)	—
Proceeds from shares issued under employee stock purchase plan	—	9
Net cash used in financing activities	(14,644)	(13,731)
Net decrease in cash and cash equivalents	(5,105)	(518)
Cash and cash equivalents, beginning of period	5,977	6,822
Cash and cash equivalents, end of period	$ 872	$ 6,304
Supplemental disclosure for non-cash activity:		
Interest incurred but not paid in cash	$ 1,513	$ 290
Warrants issued in connection with troubled debt restructuring	$ —	$ 720
Reduction in real estate held for development and sale in connection with troubled debt restructuring	$ 3,449	$ 31,244
Reduction in notes payable in connection with troubled debt restructuring	$ 6,502	$ 31,365
Reduction in accrued liabilities in connection with troubled debt restructuring	$ —	$ 1,004
Reduction in inventory and related debt - variable interest entity	$ 19,050	

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 AND BASIS OF PRESENTATION

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, as a result of completing its initial public offering ("IPO") of its Class A common stock, the Company acquired 100% of the outstanding capital stock of Comstock Holding Company, Inc. and subsidiaries ("Comstock Holdings") by merger, which followed a consolidation that took place immediately prior to the closing of the IPO (the "Consolidation"). The Consolidation was effected through the mergers of Sunset Investment Corp., Inc. and subsidiaries and Comstock Homes, Inc. and subsidiaries and Comstock Service Corp., Inc. and subsidiaries ("Comstock Service") with and into Comstock Holdings. Pursuant to the terms of the merger agreement, shares of Comstock Holdings were canceled and replaced by 4,333 and 2,734 shares Class A and B common stock of the Company, respectively. Both 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.

The mergers of Sunset Investment Corp., Inc. and subsidiaries and Comstock Homes, Inc. and subsidiaries with and into Comstock Holdings (collectively the "Comstock Companies" or "Predecessor") and the Company's acquisition of Comstock Holdings was accounted for using the Comstock Companies' historical carrying values of accounting as these mergers were not deemed to be substantive exchanges. The merger of Comstock Service was accounted for using the purchase method of accounting as this was deemed to be a substantive exchange due to the disparity in ownership.

The Company's Class A common stock is traded on the NASDAQ Global market ("NASDAQ") under the symbol "CHCI" and has no public trading history prior to December 17, 2004. In January 2008 the Company was notified by NASDAQ that it was not in compliance with requirements related to its listing on the NASDAQ Global Market. The Company was granted 180 days to regain compliance. On July 9, 2008 the Company was notified that it had not regained compliance and was going to be delisted from the NASDAQ Global Market. The Company requested a hearing on September 4, 2008 to appeal this decision and seek an additional extension. On October 24, 2008 the Company received a notice from NASDAQ indicating that the NASDAQ Listing Qualifications Panel had granted the Company's request for continued listing. The notice from NASDAQ indicated that continued listing was subject to: 1) the Company evidencing a closing bid price of $1.00 or more for a minimum of ten consecutive trading days on or before April 9, 2009, and 2) the Company evidencing a minimum market value of publicly held shares of $5,000 on or before May 10, 2009. NASDAQ suspended compliance obligations with respect to these rules in January 2009 and again in March 2009. On August 26, 2009 the Company received a notice from NASDAQ indicating that in addition to noncompliance with the closing bid price and minimum market value of publicly held shares requirements, effective June 30, 2009 the Company was also in default of the $10,000 shareholder equity requirement. The Company was granted a hearing before a NASDAQ Listing Qualifications Panel on September 23, 2009 to present its plan for regaining compliance with the three listing qualifications. Prior to the September 23, 2009 hearing, the Company did receive from NASDAQ a confirmation of return to compliance with the $5,000 minimum market value of publicly held shares requirement. Then on October 1, 2009, the Company received from NASDAQ a confirmation of return to compliance with the $1.00 closing bid price requirement. The Company remains in default of the minimum shareholder equity requirement and presented its plan to regain compliance to the NASDAQ Listing Qualifications Panel on September 23, 2009. The plan requests that the Company be transferred from the NASDAQ Global market to the NASDAQ Capital market where the minimum shareholder equity requirements are $10,000 and $2,500, respectively. The Company has not received a decision from the Panel regarding the transfer request.

The Company develops, builds and markets single-family homes, townhouses and condominiums in the Washington D.C. and Raleigh, North Carolina metropolitan markets. The Company also provides certain management and administrative support services on a contractual basis to third parties including certain related parties.

The homebuilding industry is cyclical and significantly affected by changes in national and local economic, business and other conditions. During 2006, new home sales in our markets began to slow and that trend has continued to worsen through 2008. In response to these conditions, the Company significantly reduced selling, general and administrative expenses in an effort to align its cost structure with the current level of sales activity, slowed land acquisition and halted land development and construction activities (except where required for near term sales). The Company has also offered for sale and has entered into foreclosure agreements various developed lots and land parcels that it believes are not needed based on carrying costs and anticipated absorption rates. Certain foreclosure agreements will result in the foreclosures on the related assets not being completed until 2010.

Liquidity Developments

In an effort to stabilize the company management has spent much of its time in 2009 focused on negotiating with creditors to eliminate debts and otherwise settle obligations of the company which has limited the Company's ability to pursue new business or growth opportunities. Early in 2009, management formulated a Strategic Realignment Plan, a strategy for eliminating debt and settling obligations of the Company and as part of this strategy the Company identified the real estate projects that it desired to retain and rebuild around with the goal of reaching amicable agreements with all of the Company's major creditors before December 31, 2009. As previously reported and as detailed herein the Company has made significant progress in that regard. As of September 30, 2009 the company had successfully negotiated settlements with most of its secured lenders regarding a majority of the loans guaranteed by the Company and had reduced the outstanding balance of debt from $102.8 million at December 31, 2008 to $83.4 million at September 30, 2009. In most cases the Company was released from the obligations under the loan in return for its agreement not to contest the foreclosure of the real estate assets securing the loan and in certain cases the Company provided the lender a non-interest bearing deficiency note in an amount equal to a fraction of the original debt with a term of three years. In one instance the Company also made a cash payment to the lender. Due to the time required to complete the requisite foreclosures on certain real estate assets, the foreclosure actions were not all complete at September 30, 2009 and will occur in future periods.

During 2008 and continuing into 2009 the banking and credit markets experienced severe disruption as a result of a collapse in the sub-prime and securitized debt markets. As a result, 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 construction and land development efforts. In addition, this disruption has affected certain of our prospective customers' ability to secure mortgage financing for the purchase of our homes. This limitation on available credit continues to have a negative effect on our sales and revenue in 2009 which undermines our ability to generate sufficient cash to fund our operations, meet our obligations and survive as a going concern. This continuing erosion of our liquidity could result in our need to seek bankruptcy protections either for certain subsidiary entities or for the Company as a whole.

Under normal market conditions it is customary for lenders in our industry to renew and extend debt obligations until a project or collection of projects is completed provided the obligations are kept current. This is no longer the case in our industry. Liquidity constraints among banks have limited their ability to

renew loan facilities. As recently reported, and as further discussed in Note 14, several of the Company's loan facilities have matured with no extensions available. At September 30, 2009 the Company and its subsidiaries had $9.6 million of debt which had either already matured or have payment obligations during the remainder of 2009. Net of the debt related to the Wachovia and M&T Bank foreclosure agreements executed in the third quarter of 2009, the Company is the guarantor of $54.5 million of debt including that of subsidiaries. As a result, any significant failure to negotiate renewals and extensions to its debt obligations would severely compromise the Company's liquidity and would jeopardize the Company's ability to satisfy its capital requirements. This inability to meet our capital requirements could result in our need to seek bankruptcy protections either for certain subsidiary entities or for Company as a whole.

In response to changing conditions in the banking industry the Company retained external consultants in the second quarter of 2008 to act as a financial advisor to the Company in exploring debt restructuring and alternatives for raising additional capital for the Company. In connection with the exploration of available debt restructuring alternatives, the Company then elected to cease making certain scheduled interest and/or principal curtailment payments while it attempted to negotiate modifications or other satisfactory resolutions with its lenders. During 2008 the Company reported several loan covenant violations and notices of default from several of its lenders. As discussed further in Note 14, these violations and notices led to foreclosures of certain assets and have resulted in certain guarantee enforcement actions being initiated against the Company where no foreclosures have taken place. Many of the Company's loan facilities contain Material Adverse Effect clauses which, if invoked, could create an event of default under those loans. In the event certain of the Company's loans were deemed to be in default as a result of a Material Adverse Effect, the Company's ability to meet its cash flow and debt obligations would be compromised. During the fourth quarter of 2008 the Company discontinued its relationship with its external advisory consultants. The Company continued to negotiate with its lenders into 2009 and has continued to report debt restructurings as they occur.

The Company may experience additional foreclosure actions in the future as a result of the continuing distress in the real estate and credit markets. The Company cannot at this time provide any assurances that it will be successful in its continuing efforts to work with its lenders on loan modifications. This inability to renegotiate debt could result in our need to seek bankruptcy protections either for certain subsidiary entities or for the Company as a whole.

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 related community amenities. Our current operations and inventory of home sites will require substantial capital to develop and construct. Our overall borrowing capacity is constrained by various loan covenants. There is no assurance either that we will return to compliance in the future or that our lenders will continue to refrain from exercising their rights related to our covenant violations. In the event our banks discontinue funding, accelerate the maturities of their facilities, refuse to waive future covenant defaults or refuse to renew the facilities at maturity we could experience an unrecoverable liquidity crisis in the future. We can make no assurances that cash advances available under our credit facilities, refinancing of existing underleveraged projects or access to public debt and equity markets will provide us with sufficient capital to meet our existing and expected operating capital needs in 2009. If we fail to meet our cash flow requirements we may be required to seek bankruptcy protection or to liquidate.

At September 30, 2009 we had $0.9 million in unrestricted cash and $3.4 million in restricted cash. Included in our restricted cash balance, to which we have no access, is a $3.0 million deposit with an insurance provider as security for future claims. Our access to working capital is very limited and our debt service obligations and operating costs for 2009 exceed our current cash reserves. If we are unable to identify new sources of liquidity and/or successfully modify our existing facilities, we will likely deplete our cash reserves and be forced to file for bankruptcy protection. There can be no assurances that in that event we would be able to reorganize through bankruptcy, and we might be forced into a trustee managed liquidation of our assets.

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Amounts in thousands, except per share data)

2. 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 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 foreclosure agreements with Wachovia Bank and M&T Bank that will result in cancellation of indebtedness (see Note 14) in exchange for the Company's agreement to cooperate in the banks' foreclosure process on assets that secure the debt. Neither Wachovia Bank or M&T Bank had foreclosed on any of the real estate assets as of September 30, 2009. The following summary of the carrying value of real estate held for development and sale reflects the Wachovia and M&T Bank assets scheduled for foreclosure:

	Number of projects	September 30, 2009
Real estate held for development and sale	26	$ 87,783
Real estate projects awaiting foreclosure related to the:		
Wachovia foreclosure agreement	(14)	(15,970)
M&T foreclosure agreement	(1)	(6,294)
Real estate held for development and sale, net of assets awaiting foreclosure	11	$ 65,519

Deteriorating market conditions, turmoil in the credit markets and increased price competition have continued to negatively impact the Company during 2008 and into the third quarter of 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. This quarter, the Company evaluated all 26 of its projects for impairment and the evaluation resulted in no impairment charges (no impairment charges were recorded for the three months ended September 30, 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 $35,374.

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 September 30, 2009, the Company had one project with a carrying value of $35,374 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 Cornerstone Bank ("Cornerstone") relating to the Company's Gates at Luberon project ("Gates"). In June 2009, Cornerstone 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 Cornerstone debt remained at June 30, 2009 as the Company reduced its assets for the lots that were legally transferred to Cornerstone 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 Cornerstone relating to litigation between the Company and Cornerstone. In connection with the settlement, Cornerstone 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 Cornerstone 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 Cornerstone settlement agreement.

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Amounts in thousands, except per share data)

The following table summarizes impairment charges and write-offs for the three and nine months ended:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Impairments	$ —	$ —	$22,938	$14,568
Write-offs	—	2	—	12
	$ —	$ 2	$22,938	$14,580

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

	September 30, 2009	December 31, 2008
Land and land development costs	$ 34,437	$ 51,421
Cost of construction (including capitalized interest and real estate taxes)	53,346	78,121
	$ 87,783	$ 129,542

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. 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:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Balance at beginning period	$ 828	$ 1,329	$1,031	$ 1,537
Additions	63	87	100	259
Releases and/or charges incurred	(114)	(205)	(354)	(583)
Balance at end of period	$ 777	$ 1,211	$ 777	$ 1,211

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Amounts in thousands, except per share data)

5. 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 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. The following table is a summary of interest incurred and capitalized and interest expensed as units are settled:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Total interest incurred and capitalized	$ —	$ 423	$ 12	$ 4,360
Interest expensed as a component of cost of sales	$ 1,551	$ 974	$ 2,442	$ 3,305

During the three months ended September 30, 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 on the consolidated statement of operations related to the inactivation of certain real estate projects held for development and sale:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Total interest incurred and expensed for inactive projects (1)	$ 161	$ 1,705	$2,452	$2,784
Total real estate taxes incurred and expensed for inactive projects	199	109	801	446
Total production overhead incurred and expensed for inactive projects	94	385	555	385
	$ 454	$ 2,199	$3,808	$3,615

(1) Under the terms of the loan agreement with Guggenheim Corporate Funding ("Guggenheim") relating to the Company's Penderbrook condominium project, interest is accrued at 12% unless and until certain unit settlement thresholds are achieved. Once a threshold is achieved, the interest rate is decreased and a reduction in the interest liability is recorded. In September 2009, the Company reached 16 settlements at the Penderbrook project for the nine months ended September 30, 2009. Under the terms of the loan agreement, 16 settlements entitles the Company to an interest rate reduction from 12% to 4% on the principal balance outstanding from January 1, 2009 to September 30, 2009. The amount of that interest liability reduction was approximately $779,000 and was recorded at September 30, 2009. To the extent the Company settles additional units at Penderbrook in the fourth quarter of 2009, the interest rate could potentially be reduced from 4% to 2%, which would result in further reductions in the interest liability recorded at December 31, 2009.

6. INCOME OR LOSS PER SHARE

The following weighted average shares and share equivalents are used to calculate basic and diluted earnings (loss) per share for the three and nine months ended September 30, 2009 and 2008:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Basic income (loss) per share				
Net income (loss)	$ 2,279	$ (2,202)	$(28,108)	$(12,277)
Basic weighted-average shares outstanding	17,618	17,475	17,575	17,431
Per share amounts	$ .13	$ (.13)	$ (1.60)	$ (0.70)
Dilutive income (loss) per share				
Net income (loss)	$ 2,279	$ (2,202)	$(28,108)	$(12,277)
Basic weighted-average shares outstanding	17,618	17,475	17,575	17,431
Stock options and restricted stock grants	1,849	—	—	—
Dilutive weighted-average shares outstanding	19,467	17,475	17,575	17,431
Per share amounts	$ .12	$ (.13)	$ (1.60)	$ (0.70)

There were no restricted stock grants outstanding at September 30, 2009. As a result of net losses for the nine months ended September 30, 2009, options and warrants were excluded from the computation of dilutive earnings per share because their inclusion would have been anti-dilutive. As a result of net losses for the for the three and nine months ended September 30, 2008, options and warrants issued were excluded from the computation of dilutive earnings per share because their inclusion would have been anti-dilutive. Options and warrants had an exercise price greater than the average market price of the common shares at September 30, 2008.

Comprehensive income

For the three and nine months ended September 30, 2009 and 2008, comprehensive income equaled net income; therefore, a separate statement of comprehensive income is not included in the accompanying consolidated financial statements.

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

7. INCOME TAX

Income taxes are accounted for under the asset and liability method in accordance with ASC 740-10, Income Taxes. 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.

The Company is projecting a tax loss for the twelve months ended December 31, 2009. Therefore, an effective tax rate of zero was assumed in calculating the current income tax expense at September 30, 2009. This results in a zero current income tax expense for the three and nine months ended September 30, 2009.

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. At December 31, 2007, the Company recorded valuation allowances for certain tax attributes and other deferred tax assets. At this time, sufficient 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. With a full valuation allowance, any change in the deferred tax asset or liability is fully offset by a corresponding change in the valuation allowance. This results in a zero deferred tax benefit or expense for the three and nine months ended September 30, 2009.

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 September 30, 2009, the Company had gross unrecognized tax benefits of $77, which was fully reserved. The reserve was limited to interest on the net timing difference. The unrecognized tax benefits of $77 at September 30, 2009, would not reduce the Company annual effective tax rate if recognized. The Company has accrued interest and recorded a liability of $77 related to these unrecognized tax benefits during 2009. The Company does not expect the unrecognized tax benefits to change significantly over the next 12 months.

The Company files U.S. and state income tax returns in jurisdictions with varying statutes of limitations. The 2006 through 2008 tax years generally remain subject to examination by federal and most state tax authorities.

8. STOCK REPURCHASE PROGRAM

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 in 2007, 2008 or during the nine months ended September 30, 2009. The Company has no immediate plans to repurchase any additional shares under the existing authorization.

9. COMMITMENTS AND CONTINGENCIES

Litigation

In April 2008 a wholly owned subsidiary of the Company, Mathis Partners, LLC ("Mathis Partners") received notice from Haven Trust Bank (Lender) that it filed a collection action against the Company pursuant to a guaranty agreement entered into by the Company for the outstanding balance of the indebtedness owed for the Gates of Luberon project in Atlanta, Georgia. In January 2009, prior to any substantive action taking place in the lawsuit, the Lender failed and was taken over by the Federal Deposit Insurance Corporation (FDIC). The FDIC sought a stay in the guaranty action through April 2009. Cornerstone Bank, one of the banks to whom Haven Trust participated the loan has assumed control of the collection process and has reinstated the foreclosure and guarantee actions. Foreclosure of a portion of the Property took place on June 2, 2009, at which time a bid was made on the Property by Cornerstone Bank for approximately $1,275. Cornerstone Bank had sought the Court's confirmation of the foreclosure sale, to which the Company and Mathis Partners objected. The confirmation of the foreclosure sale and the Company's objection was scheduled heard in September 2009. Prior to the hearing, the parties negotiated a settlement agreement to resolve both the Lender and Cornerstone Bank actions whereby the Company made a $50 cash payment and issued a non-interest bearing subordinated deficiency note in the amount of $400 with a three year term in exchange for complete forgiveness of the outstanding indebtedness and guaranty by the Company. As a result, both lawsuits have been dismissed with prejudice. This settlement resulted in a gain on troubled debt restructuring of $1.2 million (See Note 12).

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 has been recorded as of June 30, 2009.

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. We anticipate the court's decision in the 4th quarter 2009 or first quarter 2010. While there can be no assurance, we are optimistic that the court will not rule in favor of Balfour Beatty. The lender for the Company's subsidiary had not issued a default notice with respect to the liens but an adverse judgment with respect to the litigation could be considered an event of default under the KeyBank loan associated with the Project.

In September 30, 2009 the Company reached a final settlement in a dispute with Mooring Capital, the holder of a non-controlling interest in one of the Company's subsidiaries. Terms of the settlement called for the Company to purchase Mooring Capital's interest for 175 warrants and $20 cash. In recording the purchase of Mooring Capital's interest, the non-controlling interest liability was eliminated.

The Company and/or its subsidiaries have also been named as a party defendant in legal actions arising from our other business operations that, on an aggregate basis, would be deemed material if decided against the Company and/or its subsidiaries for the full amounts claimed. Although the Company would not be liable in all instances for judgments against its subsidiaries, we cannot accurately predict the amount of any liability that could be imposed upon the Company with respect to legal actions currently pending against the Company or its subsidiaries.

Further, in the future the Company or its subsidiaries could be named as a defendant in additional legal actions arising from our past business activities. Although we cannot accurately predict the amount of any liability that could be imposed upon the Company with respect to legal actions that may be brought against the Company in the future, it is anticipated that any adverse ruling by a court resulting in actual liability would likely have a material adverse effect on our financial position, operating results or cash flows.

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES

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(Amounts in thousands, except per share data)

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 September 30, 2009 the Company has issued $976 in letters of credit and $5,927 in performance and payment bonds to these third parties. No amounts have been drawn against these letters of credit and performance bonds.

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., (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 three months ended September 30, 2009 and 2008, total payments made under this lease agreement were $91 and $138, respectively. During the nine months ended September 30, 2009 and 2008 total payments were $348 and $423, 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.

On February 26, 2009 Comstock Homes of Washington, L.C., a wholly owned subsidiary of Comstock Homebuilding Companies, Inc. concurrently entered into a Fourth Amendment to Sub-Lease Agreement and a Services Agreement with CAM. Under the terms of the lease Amendment, CAM released Comstock Homes of Washington from its lease obligation with respect to 1.4 square feet of space at its headquarters in Reston, Virginia. In consideration of the release Comstock Homes of Washington agreed to pay a $50 termination fee to CAM which is payable at a rate of $5 per month for ten months. After the amendment, Comstock Homes of Washington had 15.8 square feet remaining under its sub-lease with CAM with annual rent of $502. Under the terms of the Services Agreement, Comstock Homes of Washington agreed to provide project management and leasing services to CAM for a term of ten months at a rate of $5 per month.

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 three months ended September 30, 2009 and 2008, the Company paid $29 and $57, respectively. During the nine months ended September 30, 2009 and 2008, the Company paid $73 and $220, respectively, to I-Connect. 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.

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Amounts in thousands, except per share data)

11. 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. In addition, as a result of the Company's acquisitions in Georgia and North Carolina, which became fully integrated in the fourth quarter of 2006, the Company modified how it analyzes its business during the fourth quarter of 2006. The Company had, in years prior to 2009, determined that its homebuilding operations primarily involved three reportable geographic segments: Washington DC Metropolitan Area, Raleigh, North Carolina, and Atlanta, Georgia. Based on reduced activity in the Atlanta market, the Company elected to consolidate the Raleigh and Atlanta segments into the Southeast region segment, effective January 1, 2009. As such, the three and nine months ended September 30, 2008 have been restated for presentation purposes only. 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):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Revenues:				
Washington DC Metropolitan Area	$11,796	$ 7,051	$ 19,357	$ 19,801
Southeast region	828	6,022	1,754	21,651
Total revenue	$12,624	$13,073	$ 21,111	$ 41,452
Segment operating (loss) gain				
Washington DC Metropolitan Area	$ 397	$ (1,371)	$(17,067)	$ (8,403)
Southeast region	31	(671)	(8,488)	(10,031)
Total segment operating (loss) gain	428	(2,042)	(25,555)	(18,434)
Corporate expenses unallocated	(1,086)	(2,621)	(4,291)	(6,230)
Total operating loss	(658)	(4,663)	(29,846)	(24,664)
Gain on debt restructuring	(2,803)	—	(2,803)	—
Other income (loss)	(134)	2,462	1,063	12,385
Income (loss) before income taxes	$ 2,279	$ (2,201)	$(28,106)	$(12,279)

The table below summarizes impairments and write-offs by segment. These expenses are included in the segment operating income (loss) as reflected in the table above.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Washington DC Metropolitan Area	$ —	$ 2	$15,351	$ 6,141
Southeast region	—	—	7,587	8,439
	$ —	$ 2	$22,938	$14,580

The table below summarizes total assets for the Company's segments as of:

	September 30, 2009	December 31, 2008
Washington DC Metropolitan Area	$ 67,478	$ 116,483
Southeast region	22,845	34,925
Corporate	4,204	9,451
Total assets	$ 94,526	$ 160,859

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

12. 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's from liability under the $1,664 deferred purchase money note and interest accrued.

This transaction was accounted for as a full settlement of debt pursuant to ASC 470-60. 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	1,797
Forfeited deposit	200
Gain on troubled debt restructuring	$1,597

On both a basic and diluted income per share basis the $1,597 gain was $0.09 per share for the nine months ended September 30, 2009.

On September 21, 2009 the Company entered into a settlement agreement and mutual release with Cornerstone Bank ("Cornerstone") with respect to approximately $5.1 million debt secured by its Gates of Luberon project in Atlanta, Georgia. Under the terms of the agreement, Cornerstone 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 Cornerstone 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. 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	$ 1,206

On both a basic and diluted income per share basis the $1,206 gain was $0.07 per share for the nine months ended September 30, 2009.

13. SUBSEQUENT EVENTS

The Company has evaluated subsequent events through November 13, 2009, which is the date these financial statements were issued. Except for the events set forth below, no material subsequent events occurred between September 30, 2009 and November 13, 2009.

On October 30, 2009 the Company executed a loan modification with KeyBank National Association ("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 cash flow equal to fifteen percent of the net sales price of sold units on a retroactive basis for units previously settled between July 1, 2009 and October 30, 2009 which is approximately $700. The unrestricted use by the Company of a portion of the accelerated release proceeds, approximately $450, is subject to certain conditions subsequent, and continued receipt of the sales proceeds of future units is subject to the occurrence of additional conditions subsequent, including the restructuring of certain of the Company's unsecured indebtedness and 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 all of the net sales price of sold units. The Modification also modified 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 be fully subordinate to the Loan.

On November 10, 2009 the Company entered into an agreement with Fifth Third Bank ("Fifth Third") to eliminate approximately $1.3 million of secured debt related to Comstock of Raleigh's Brookfield project located in Raleigh, N.C. The subject debt is non-recourse to Comstock Homebuilding. Under the terms of the agreement, Fifth Third agreed to release Comstock of Raleigh and its affiliates from its obligations and guarantees relating to the project loan and Comstock of Raleigh agreed to cooperate with Fifth Third with respect to a foreclosure on a portion of the Brookfield project. As an incentive to Fifth Third to expedite the foreclosure Comstock Homebuilding agreed to enter into a non-interest bearing unsecured promissory note in the amount of $25,000 with a three year term (the "Note") provided Fifth Third successfully completes the foreclosure on or before February 28, 2010, unless extended as provided for in the agreement (the "Deadline"). Should Fifth Third fail to complete the foreclosure on or before the Deadline, Comstock Homebuilding shall not be required to provide the Note but the release issued by Fifth Third will nevertheless remain effective.

On November 12, 2009 the Company received a notice from NASDAQ Stock Market Listing Qualifications indicating that the Company's closing bid-price was under $1.00 for the thirty trading days ended November 11, 2009. As a result, NASDAQ issued a notice of default related to this requirement and provided the Company until May 11, 2010 to regain compliance. To regain compliance the closing bid-price must remain over $1.00 for a minimum of ten consecutive trading days prior to May 11, 2010.

On November 12, 2009, Parker Chandler Homes, LLC, formerly known as Comstock Homes of Atlanta, LLC, Buckhead Overlook, LLC, and Post Preserve, LLC (collectively, "Debtors"), each a subsidiary of Comstock Homebuilding Companies, Inc. (the "Company"), filed bankruptcy petitions (the "Petitions") in the United States Bankruptcy Court, Northern District of Georgia. The Chapter 7 Petitions were filed in furtherance of the Company's ongoing restructuring efforts; which include winding down its Atlanta division.

14. 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 September 30, 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)	$22,014
Past due(2)	6,343
2009	3,300
2010	14,528
2011	19,401
2012 and thereafter	17,831
Total	$83,417

(1) Debt related to Wachovia ($15,893) and M&T Bank ($6,121) foreclosure agreements 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 is pending but had not occurred at September 30, 2009. There will be no further cash outlay on this debt by the Company.

(2) Past due is comprised of Royal Bank of Canada ($5,602) and BB&T ($741).

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 September 30, 2009, the one-month LIBOR and prime rates of interest were 0.25% 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 September 30, 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 has numerous credit facilities and lenders. After evaluating its options with respect to restructuring its debts, the Company elected to suspend making regularly scheduled cash interest payments on all of its debt. During 2009 the Company has been in discussions with substantially all of its lenders to negotiate amendments to its loan facilities and modifications to its guarantees that were more aligned with the evolving housing market downturn and the Company's limited liquidity. The Company has been successful in renegotiating a significant portion of its debts. The Company has notified its remaining lenders that absent amicable agreements being reached within the very near term regarding the restructure of its bank debts in a manner that will provide the Company with working capital sufficient to stabilize and continue operations, that the Company expects to have exhausted its cash reserves and will be forced into reorganization under the protection of the bankruptcy court. The Company is actively working with all of its lenders in this restructuring initiative.

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As described in more detail below, at September 30, 2009 our outstanding debt by lender was as follows (dollars in 000s):

Bank	Balance as of 09/30/09	Recourse
KeyBank	$ 22,800	Secured
Wachovia (1)	15,893	Secured
Wachovia	335	Unsecured
Guggenheim Capital Partners	12,084	Secured
JP Morgan Ventures	12,743	Unsecured
M&T Bank – Belmont Bay (1)	6,121	Secured
M&T Bank – Cascades	1,016	Secured
M&T Bank	495	Secured
Royal Bank of Canada	5,602	Secured
Cornerstone (Haven Trust)	400	Unsecured
Bank of America	3,758	Unsecured
Fifth Third	1,328	Secured
Branch Banking & Trust	741	Secured
Seller – Emerald Farm	100	Secured
Total	$ 83,417	

(1) Debt related to Wachovia ($15,893) and M&T Bank ($6,121) foreclosure agreements 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 September 30, 2009. There will be no further cash outlay on this debt by the Company.

At September 30, 2009 the Company had $22.8 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. At September 30, 2009 the available balance in the interest reserve was approximately $2.0 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 of sold units on a retroactive basis for units previously settled between July 1, 2009 and October 30, 2009 which is approximately $700. The unrestricted use by the Company of a portion of the accelerated release proceeds, approximately $450, is subject to certain conditions subsequent, and continued accelerated releases for the sale of future units is subject to the occurrence of additional conditions subsequent, including the restructuring of certain of the Company's unsecured indebtedness and 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 all of the net sales price of sold units. The Modification also modified 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 be fully subordinate to the Loan.

On May 26, 2006 the Company entered into $40.0 million secured revolving borrowing base credit facility with Wachovia Bank for the financing of entitled land, land under development, construction and project related letters of credit. Funding availability was to be limited by compliance with a periodic borrowing base calculation and certain financial covenants. The Company ceased making interest payments on this loan in June 2008, which was construed by the lender to have been an event of default under the loan agreement. On July 25, 2008 Wachovia issued the Company a notice of default with respect to this facility. In December 2008 we entered into loan modification agreements with Wachovia by which the single credit facility was split into three separate notes; an $8.0 million revolving construction loan, a $7.0 million term note and a $3.0 million outstanding project note. This transaction was accounted for as a troubled debt restructuring under which we recorded a $3.3 million gain after accounting for future interest costs. The revolver and term notes matured in January 2009 and the project note matures in December 2011. On April 17, 2009, the Company received a notice of default from Wachovia based on allegations of 1) Comstock's failure to timely pay amounts due under the Agreement and the Note and 2) the existence of certain mechanics liens and liens for unpaid taxes against the collateral securing the Loans. Additionally, the revolving loan required us to meet certain settlement covenants by June 30, 2009 which we did not achieve.

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 is reduced by the principal payments related to certain homes sold by the Company prior to September 30, 2009. As of September 30, 2009 the deficiency note balance was $335 and the debt from which the Company will be released upon foreclosure of the assets was $15.9 million. On November 5, 2009, by subsequent agreement, the amount of the deficiency note was further reduced to $205. 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 September 30, 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 September 30, 2009 the Company had approximately $12.1 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 September 30, 2009 and based on the pace of Q4 2009 sales, settlements and backlog believes it will meet the minimum sales requirement as of December 31, 2009.

As of September 30, 2009, $12.7 million was outstanding to JP Morgan Ventures ("JP Morgan"), 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 JP Morgan. 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 JP Morgan 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 JP Morgan a seven-year warrant to purchase 1.5 million shares of Class A common stock at $0.70 per share. In exchange JP Morgan 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 and September 30, 2009.

At September 30, 2009 the Company had $7.6 million outstanding to M&T Bank. Under the terms of the original loan agreements, the Company was required to maintain certain financial covenants which are summarized below. In March 2007 the Company entered into loan modification agreements lowering the minimum interest coverage ratio and the minimum tangible net worth covenants. On October 25, 2007 the Company entered into loan modification agreements that extended maturities and provided for forbearance with respect to all financial covenants. On June 30, 2008, the loans with M&T matured. The Company ceased making interest payments on these loans in July 2008, which was construed by the lender to have been an event of default under the loan agreement. In connection with a dispute between Comstock and the developers of Belmont Bay in Woodbridge, Virginia the developers of Belmont Bay had filed a lis pendens against the River Club II project. The Belmont Bay River Club II project collateralizes $6.6 million of the $7.6 million of debt outstanding with M&T. On or about July 8, 2009, the Company and the developers of Belmont Bay executed a settlement agreement dismissing the cases with prejudice. As part of the settlement agreement, the Company's obligations to the developers of Belmont Bay of $1.8 million were released, subject to satisfaction of certain conditions set forth in the settlement agreement.

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 current principal balance of $6.1 million plus $0.4 million of accrued interest and fees, will be released in its entirety and the Cascades Loan, with a current balance of $1.0 million, will be 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. Foreclosure of these assets is expected in the fourth quarter of 2009 or the first quarter of 2010. 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.

At September 30, 2009 the Company had approximately $5.6 million outstanding to Royal Bank of Canada ("RBC") relating to three projects in the Atlanta market. The Company ceased making interest payments in July 2008. The Company's Parket Chandler Homes (formerly known as Comstock Homes of Atlanta, LLC) subsidiary has received a notice of default from RBC. The Company is not a guarantor of this debt.

At September 30, 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 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. Cornerstone, one of the banks to which Haven Trust participated the loan assumed control of the loan and reinstated the guarantee and foreclosure actions. Cornerstone'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 Cornerstone relating to the aforementioned litigation. In connection with the settlement, Cornerstone 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 Cornerstone 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 12 for details related to troubled debt restructuring and the Cornerstone settlement and mutual release.

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Amounts in thousands, except per share data)

At September 30, 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.

As of September 30, 2009 the Company had $1.3 million outstanding with Fifth Third Bank, successor to First Charter Bank. The loan matures on January 10, 2010. There are no financial covenants associated with this loan. The Company is not a guarantor of this debt. On November 10, 2009 the Company entered into an agreement with Fifth Third Bank ("Fifth Third") to eliminate approximately $1.3 million of secured debt related to Comstock of Raleigh's Brookfield project located in Raleigh, N.C. The subject debt is non-recourse to Comstock Homebuilding. Under the terms of the agreement, Fifth Third agreed to release Comstock of Raleigh and its affiliates from its obligations and guarantees relating to the project loan and Comstock of Raleigh agreed to cooperate with Fifth Third with respect to a foreclosure on a portion of the Brookfield project. As an incentive to Fifth Third to expedite the foreclosure Comstock Homebuilding agreed to enter into a non-interest bearing unsecured promissory note in the amount of $25,000 with a three year term (the "Note") provided Fifth Third successfully completes the foreclosure on or before February 28, 2010, unless extended as provided for in the agreement (the "Deadline"). Should Fifth Third fail to complete the foreclosure on or before the Deadline, Comstock Homebuilding shall not be required to provide the Note but the release issued by Fifth Third will nevertheless remain effective. At September 30, 2009 the Company had approximately $0.7 million outstanding to Branch Bank & Trust Company ("BB&T") relating to three construction loans in the Company's Atlanta market. On August 29, 2008 The Company entered into a foreclosure agreement with BB&T with respect to approximately $31.4 million of debt secured by properties in Virginia and Atlanta, Georgia. Under the terms of the foreclosure agreement, the Company agreed to cooperate with BB&T with respect to its foreclosure on certain Company real estate assets and BB&T agreed to provide the Company with a full release from its related debt obligations. BB&T completed its foreclosure on the properties in September 2008. The Company retained three pre-sold lots in Atlanta which were not included in the foreclosure agreement. The Company is still awaiting its final release of liability associated with the foreclosures.

From time to time, the Company has employed subordinated and unsecured credit facilities to supplement the capital resources or a particular project or group of projects. As of September 30, 2009, there was approximately $3.7 million of outstanding variable rate unsecured loans.

Many of the Company's loan facilities contain Material Adverse Effect clauses that, if invoked, could create an event of default under the loan. In the event all the Company's loans were deemed to be in default as a result of a Material Adverse Effect, the Company's ability to meet the capital and debt obligations would be compromised and the Company would not be able to continue operations without bankruptcy protection.

The Company's senior management has succeeded in reaching amicable agreements with regards to needed modifications of all of the secured loans that the Company has guaranteed in an effort to stabilize the Company and reduce the possibility that the Company would need to seek the protections afforded by the bankruptcy code. Management continues to work on reaching amicable agreements with the Company's unsecured creditors in keeping with its Strategic Realignment Plan. The Company cannot at this time provide any assurances that it will be successful in these efforts. In the event the Company is not successful it may not be able to continue operations absent court imposed protections.

As illustrated by the preceding debt maturity schedule, we have a significant amount of debt that either has matured or will mature in the near future. In our industry, it was customary for secured debt to be renewed until a project is complete but we have no assurance that this will be the case with our debts. Our recently reported and cured loan covenant violations may impact our ability to renew and extend our debt. Failure to meet our obligations as they come due could force us to have to use court protections under bankruptcy to continue to operate.

The Company's debt with M&T Bank and JP Morgan contains certain financial covenants. The Minimum Tangible Net Worth covenants are as follows: M&T Bank, $135.0 million and JP Morgan, $35.0 million. Additionally, the M&T Bank loan contains the following additional covenants: a required Interest Coverage Ratio of 2.5 to 1, a required Debt to Net Worth Ratio of 2.5 to 1. However, as discussed above, the Company entered into a forebearance agreement with M&T Bank in September 2009. The JP Morgan loan also contains additional covenants: a required Leverage Ratio, not to exceed 3.0 to 1, and a required Fixed Charge Ratio of 0.5 to 1. The Company is not in compliance with the JP Morgan covenants and has received a default notice. Although the Company's debt with KeyBank contains a nonfinancial covenant related to a required number of settlements each month, the Company entered into a loan modification with KeyBank in October 2009 in which the existing defaults were waived.

15. 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 three months ended March 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 accounted for the change in estimate in accordance with ASC 250 Accounting Changes and Error Corrections. Subsequently, the 2009 retention bonuses were terminated.

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(Amounts in thousands, except per share data)

16. 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 June 30:

	September 30, 2009	December 31, 2008
Carrying amount	$ 9,000	$ 10,797
Fair value	$ 8,480	$ 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.

17. RECLASSIFICATION

Certain amounts in the prior years' financial statements have been reclassified to conform to the current year's presentation. These reclassifications have no impact on previously reported net income (loss) or shareholders' equity.

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES
MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

FORWARD-LOOKING STATEMENTS AND FACTORS THAT MAY AFFECT RESULTS

The following discussion of our financial condition and results of operations should be read in conjunction with the accompanying unaudited consolidated interim financial statements and the notes thereto appearing elsewhere in the this report and our audited consolidated financial statements and the notes thereto for the year ended December 31, 2008, appearing in our Annual Report on Form 10-K for the year then ended (the "2008 Form 10-K").

This report includes forward-looking statements that are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. 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, many of which are beyond our control. 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 substantial debt; inherent risks in investment in real estate; our ability to compete in the Washington, D.C. and Raleigh, North Carolina and Atlanta, Georgia real estate and home building markets; 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. Additional information concerning these and other important risk and uncertainties can be found under the heading "Risk Factors" in our Form 10-K filed for the fiscal year ended December 31, 2008. Our actual results could differ materially from these projected or suggested by the forward-looking statements.

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES
MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Overview

We are a residential real estate developer that has substantial experience building a diverse range of products including single-family homes, townhouses, mid-rise condominiums, high-rise multi-family buildings and mixed-use (residential and commercial) developments in suburban communities and high density urban infill areas. We have historically built projects with the intent that they be sold either as fee-simple properties, condominiums, or investment properties. We focus on geographic areas, products and price points where we believe there will be continuing demand for new housing and potential for attractive returns. We have operated in the Washington, D.C., Raleigh, North Carolina, and Atlanta, Georgia markets where we target first-time, early move-up, secondary move-up, and empty nester move-down buyers. However, during the first half of 2009, we halted operations in Atlanta, Georgia and substantially suspended operations in Raleigh, N.C. We focus on the "middle-market" meaning that we tend to offer products in the middle price points in each market, 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 markets. Since our founding in 1985, and as of December 31, 2008, we have built and delivered more than 5,170 homes generating revenue in excess of $1.3 billion.

Our markets have historically been characterized by strong population and economic growth trends that have led to strong demand for traditional housing. However, the housing industry is in an unprecedented and prolonged cyclical downturn, suffering the effects of reduced demand brought on by significant increases in existing home inventory, resistance to appreciating prices of new homes, turmoil in the mortgage markets, reduced liquidity levels in the world financial markets, increasing unemployment and concerns about the health of the national and global economics. We believe over the past two decades we have gained experience that will be helpful to us as we seek to manage our business through the current difficult market environment. We believe we have taken, and are continuing to take, steps that will assist us in managing our business through the current cycle until market conditions stabilize and eventually improve. There can be no assurances, however, that we will be able to generate and maintain sufficient cash resources to survive long enough for market conditions to improve.

As a result of deteriorating market conditions, we have adjusted certain aspects of our business strategy. In 2008, we focused our energy on repositioning projects, reducing debt, reducing costs, managing liquidity, renegotiating loans with current period and near-term maturities, refinancing projects and enhancing our balance sheet. We have cancelled or postponed plans to start several new projects and either renegotiated or cancelled contracts to purchase certain other projects. As a result, we purchased no new land in 2008 or so far in 2009. We have sold certain land and other assets and taken steps to significantly reduce our inventory of speculative homes as well. Until market conditions stabilize, we will continue to focus on working through the inventory we own. This will include continuing efforts to either turn over to our lenders or sell certain land parcels where we believe it is the best strategy relative to that particular asset.

In early 2009 no significant improvement in market conditions was evident. Accordingly in an effort to stabilize the Company management formulated a Strategic Realignment Plan, a strategy for reducing market exposure, reducing project count and inventory and eliminating debt and settling obligations of the Company. A key part of this strategy was the identification of the real estate projects that management believed provided the best possibility for rebuilding the Company to be profitable again in future periods. Management outlined a plan for securing the necessary modifications of existing loans on these key properties and initiated negotiations with the subject lenders on these projects as well as negotiations with all of the lenders associated with the projects that the Company would seek to eliminate from its portfolio. Management's goal was to reach amicable agreements with all of the Company's major creditors before year end 2009. As a result management has spent much of 2009 focused on negotiating with our creditors to eliminate debts and otherwise settle obligations of the Company. As previously reported and as detailed herein the Company has made significant progress with respect to eliminating debt and restructuring the loans for the projects it desired to retain. As of September 30, 2009 the Company had successfully negotiated settlements with the majority of its secured lenders where the Company was a guarantor and had reduced the outstanding balance of debt from $102.8 million at December 31, 2008 to $83.4 million at September 30, 2009. With respect to projects that the Company did not seek to retain, in most cases the Company was released from the obligations under the loan in return for its agreement not to contest the foreclosure of the real estate assets securing the subject loan and in certain cases the Company provided the lender a non-interest bearing deficiency note in an amount equal to a fraction of the original debt with a term of three years. In one instance the Company also made a cash payment to the lender. Due to the time required to complete the requisite foreclosures on certain real estate assets, the foreclosure actions were not all complete at September 30, 2009 and will occur in future periods. The Company expects that all such foreclosures will be completed in 2010.

There are recent signs that demand for the Company's products is increasing in the Washington, D.C. metropolitan area, a market that has served as the Company's primary market since its founding in 1985. Accordingly, the Company will focus its energy in the near term on the projects it has retained in the Washington area. While we have always preferred to purchase finished building lots that are developed by others, we have significant experience in entitling and developing land for many of our home building projects. We believe this experience will enhance our ability to be opportunistic in our approach to acquisitions. Nonetheless, our interest in acquiring new development projects will be focused on finished building lots until market conditions and circumstances warrant otherwise.

During the past several years our business has included the development, redevelopment and construction of residential mid-rise and high-rise condominium complexes. The majority of our multi-family projects are in our core market of the greater Washington, D.C. area. We believe the demographics and housing trends in the Washington, DC area will continue to generate demand for high density housing and mixed-use developments over the long term. However, condominium sales in the greater Washington, D.C. area have declined significantly as a result of current economic conditions. In order to reduce the cost associated with carrying our condominium inventory in the Washington, DC region we are temporarily operating two of our multi-family projects as hybrid for-sale and for-rent properties. This approach provides us regular cash flow which we use to offset a portion of the carry costs associated with the applicable multi-family assets. In addition, we believe the value of the assets will increase over time as market conditions stabilize or improve. In Raleigh, North Carolina we continue to be focused on lower density housing, principally single family homes. We have halted our operations in Atlanta, Georgia and substantially suspended operations in Raleigh, N.C. in an effort to concentrate resources in the Washington, D.C. market and on reorganizing our debt.

Our Strategic Realignment Plan has the following key elements:

- protect liquidity while eliminating projects with limited near term potential and the associated debt;
- maximize the realized value of retained real estate to enhance cashflow and liquidity;
- realign all operating expenses with market realities
- utilize technology to streamline operations and reduce costs,
- focus operations in the near term on our primary market over the past 25 years, the Washington, D.C. metropolitan area;
- utilize technology to enhance customer communications and facilitate sales, while containing costs;

- pursue strategic partnerships to reduce reliance on raw land acquisitions for future growth

Our business was founded in 1985 by Christopher Clemente, our current Chief Executive Officer, as a residential land developer and home builder focused on the move-up home market in the Northern Virginia suburbs of the Washington, D.C area. Prior to our initial public offering in December 2004, we operated our business through four primary holding companies. 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. Our principal executive offices are located at 11465 Sunset Hills Road, Suite 510, Reston, Virginia 20190, and our telephone number is (703) 883-1700. Our Web site is www.comstockhomebuilding.com. References to “Comstock,” “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.

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES
MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following table summarizes certain information related to new orders, settlements, and backlog for the three and nine month period ended September 30, 2009 and 2008:

	Three months ended September 30, 2009			
	Washington Metro Area	North Carolina	Georgia	Total
Gross new orders	29	2	—	31
Cancellations	2	5	—	7
Net new orders	27	(3)	—	24
Gross new order revenue	$ 8,995	$ 252	$ —	$ 9,247
Cancellation revenue	$ 460	$ 1,220	$ —	$ 1,680
Net new order revenue	$ 8,535	$ (968)	$ —	$ 7,567
Average gross new order price	$ 310	$ 126	$ —	$ 298
Settlements	39	1	—	40
Settlement revenue - homebuilding	$ 11,116	$ 108	$ —	$ 11,224
Average settlement price	$ 285	$ 108	$ —	$ 281
Backlog units	6	3	—	9
Backlog revenue	$ 1,541	$ 977	$ —	$ 2,518
Average backlog price	$ 257	$ 326	$ —	$ 280

	Three months ended September 30, 2008			
	Washington Metro Area	North Carolina	Georgia	Total
Gross new orders	19	19	4	42
Cancellations	5	4	3	12
Net new orders	14	15	1	30
Gross new order revenue	$ 6,129	$ 2,767	$ 1,060	$ 9,956
Cancellation revenue	$ 1,561	$ 794	$ 1,163	$ 3,518
Net new order revenue	$ 4,568	$ 1,973	$ (103)	$ 6,438
Average gross new order price	$ 323	$ 146	$ 265	$ 237
Settlements	19	19	6	44
Settlement revenue - homebuilding	$ 6,248	$ 4,256	$ 1,766	$ 12,270
Average settlement price	$ 329	$ 224	$ 294	$ 279
Backlog units	5	16	4	25
Backlog revenue	$ 1,273	$ 4,449	$ 1,315	$ 7,037
Average backlog price	$ 255	$ 278	$ 329	$ 281

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES
MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

	Nine months ended September 30, 2009			
	Washington Metro Area	North Carolina	Georgia	Total
Gross new orders	63	15	—	78
Cancellations	7	11	1	19
Net new orders	56	4	(1)	59
Gross new order revenue	$ 19,999	$ 2,571	$ —	$22,570
Cancellation revenue	$ 2,128	$ 2,314	$ 386	$ 4,828
Net new order revenue	$ 17,871	$ 257	$ (386)	$17,742
Average gross new order price	$ 317	$ 171	$ —	$ 289
Settlements	53	7	—	60
Settlement revenue - homebuilding	$ 17,053	$ 1,033	$ —	$18,086
Average settlement price	$ 322	$ 148	$ —	$ 301
Backlog units	6	3	—	9
Backlog revenue	$ 1,541	$ 977	$ —	$ 2,518
Average backlog price	$ 257	$ 326	$ —	$ 280

	Nine months ended September 30, 2008			
	Washington Metro Area	North Carolina	Georgia	Total
Gross new orders	61	49	17	127
Cancellations	17	15	10	42
Net new orders	44	34	7	85
Gross new order revenue	$ 20,194	$10,483	$5,260	$35,937
Cancellation revenue	$ 4,701	$ 4,419	$3,093	$12,213
Net new order revenue	$ 15,493	$ 6,064	$2,167	$23,724
Average gross new order price	$ 331	$ 214	$ 309	$ 283
Settlements	52	56	22	130
Settlement revenue - homebuilding	$ 17,994	$14,554	$7,097	$39,645
Average settlement price	$ 346	$ 260	$ 323	$ 305
Backlog units	5	16	4	25
Backlog revenue	$ 1,273	$ 4,449	$1,315	$ 7,037
Average backlog price	$ 255	$ 278	$ 329	$ 281

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES
MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

We currently have communities under development in multiple counties throughout the markets we serve. At September 30, 2009, we owned approximately 1,232 building lots. However, approximately 547 of those lots are awaiting foreclosure by Wachovia and M&T Bank. The following lot table summarizes certain information for our current and planned communities as of September 30, 2009:

			As of September 30, 2009					
Project	State	Product Type (2)	Estimated Units at Completion	Units Settled	Backlog (3)	Lots Owned Unsold	Lots under Option Agreement Unsold	Average New Order Revenue to Date
Status: Active (1)								
Allen Creek (5)	GA	SF	26	23	—	3	—	$ 204,987
Arcanum (5)	GA	SF	34	24	—	10	—	$ 376,173
Falling Water (5)	GA	SF	22	18	—	4	—	$ 422,513
Glenn Ivey	GA	SF	20	18	—	2	—	$ 227,039
James Road	GA	SF	10	9	—	1	—	$ 339,847
Post Road	GA	SF	60	—	—	60	—	n/a
Wyngate	GA	SF	4	3	—	1	—	$ 416,990
Sub-Total / Weighted Average (4)			176	95	—	81	—	$ 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	2	24	—	$ 235,711
Brookfield Station (6)	NC	SF	62	15	—	47	—	$ 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	24	—	11	—	$ 191,787
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	284	3	261	—	$ 270,458
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	317	4	103	—	$ 253,844
River Club II (7)	VA	Condo	112	9	—	103	—	$ 257,464
The Eclipse on Center Park	VA	Condo	465	388	2	75	—	$ 404,183
Sub-Total / Weighted Average (4)			1,372	952	6	414	—	$ 325,466
Total Active			**2,180**	**1,409**	**9**	**762**	**—**	**$ 320,483**
Status: Development (1)								
Shiloh Road I	GA	SF	60	—	—	60	—	n/a
Tribble Lakes (5)	GA	SF	167	—	—	167	—	n/a
Sub-Total / Weighted Average (4)			227	—	—	227	—	n/a
Massey Preserve	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**	**—**	**—**	**461**	**—**	**n/a**
Total Active & Development			**2,641**	**1,409**	**9**	**1,223**	**—**	**$ 320,483**

(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) 16 of remaining lots subject to foreclosure agreement with Wachovia executed in third quarter 2009.
(7) Remaining lots subject to foreclosure agreement with M&T Bank executed in third quarter 2009.

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Results of Operations

Three and nine months ended September 30, 2009 compared to three and nine months ended September 30, 2008

Orders, cancellations and backlog

Gross new order revenue for the three months ended September 30, 2009 decreased $0.8 million, or 8.0%, to $9.2 million on 31 homes as compared to $10 million on 42 homes for the three months ended September 30, 2008. For the nine months ended September 30, 2009, gross new order revenue decreased $13.3 million, or 37.0% to $22.6 million on 78 homes, as compared to $35.9 million on 127 homes for the nine months ended September 30, 2008. Net new order revenue for the three months ended September 30, 2009 increased $1.2 million, or 18.8%, to $7.6 million on 24 homes as compared to $6.4 million on 30 homes for the three months ended September 30, 2008. Net new order revenue for the nine months ended September 30, 2009 decreased $6.0 million, or 25.3%, to $17.7 million on 59 homes as compared to $23.7 million on 85 homes for the nine months ended September 30, 2008. The decrease in gross new orders and net new orders are 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, lack of funding and elevated levels of unemployment.

Average gross new order revenue per unit for three months ended September 30, 2009 increased $61,000 to $298,000, as compared to $237,000 for the three months ended September 30, 2008. This increase is due to the sale of nineteen units in Raleigh, N.C. during the 3 months ended September 30, 2008 at an average gross new order per unit of $146,000 which pulled down the average for that period. The average gross new order revenue per unit for the nine months ended September 30, 2009 increased $6,000 to $289,000, as compared to $283,000 for the nine months ended September 30, 2008. This increase is due to the sale of forty-nine units in Raleigh, N.C. during the nine months ended September 30, 2008 at an average gross new order revenue per unit of $214,000 which pulled down the average for that period.

For the three months ended September 30, 2009 we experienced 7 order cancellations totaling $1.7 million of cancellation revenue as compared to 12 orders totaling $3.5 million for the three months ended September 30, 2008. For the nine months ended September 30, 2009 we experienced 19 order cancellations totaling $4.8 million of cancellation revenue as compared to 42 order cancellations totaling $12.2 million for the nine months ended September 30, 2008. Cancellations in the third quarter of 2009 were spread amongst our various communities with most occurring in our Raleigh Market.

Our cancellation rate for the nine months ended September 30, 2009 was 24.4%, or 19 cancellations on 78 gross new orders compared to cancellation rate of 33.1%, or 42 cancellations, on 127 gross new orders for the nine months ended September 30, 2008. The cancellation rate in the greater Washington, DC market was 11.1%, or 7 cancellations on 63 gross new orders. In the Raleigh market our cancellation rate was 73.3%, or 11 cancellations on 15 gross new orders, in the Atlanta market we had 1 cancellation with 0 gross new orders. Cancellation rates in general are being fueled by the tightening of the mortgage credit markets and by extended selling periods for resale homes. Our buyers' inabilities to obtain mortgage financing and/or to resell their homes are significant contributors to cancellations.

Our backlog revenue at September 30, 2009 decreased $4.5 million, or 64.3%, to $2.5 million on 9 homes as compared to our backlog at September 30, 2008 of $7.0 million on 25 homes. The reduction of backlog is indicative of the generally slow market conditions in the homebuilding industry.

Revenue – homebuilding

We delivered 40 homes during the three months ended September 30, 2009 as compared to 44 homes for the three months ended September 30, 2008. For the nine months ended September 30, 2009 we delivered 60 homes as compared to 130 homes delivered during the nine months ended September 30, 2008. The reduction in new home deliveries was largely attributable to the overall real estate industry contraction, reduced buyer confidence, lack of funding and elevated levels of unemployment.

Average revenue per home delivered was $281,000 for the three months ended September 30, 2009 as compared to $279,000 for the three months ended September 30, 2008. Average revenue per home delivered was $301,000 for the nine months ended September 30, 2009 as compared to $305,000 for the nine months ended September 30, 2008. We are beginning to see a moderation in the price reductions necessary to sell homes which has had a stabilizing effect on our average revenue per home for the three and nine months ended September 30, 2009.

Revenue from homebuilding decreased by $1.1 million, or 8.9%, to $11.2 million for the three months ended September 30, 2009 as compared to $12.3 million for the three months ended September 30, 2008. For the nine months ended September 30, 2009 revenue from homebuilding decreased by $21.5 million, or 54.3% to $18.1 million as compared to $39.6 million for the nine months ended September 30, 2008. This reduction in revenue from homebuilding is attributable to lower volume of unit settlements which is in part the result of a smaller backlog of units at the beginning of the quarter and year, respectively.

Revenue – other

Other revenue for the three months ended September 30, 2009 increased by $0.6 million, or 75.0%, to $1.4 million, as compared to $0.8 million for the three months ended September 30, 2008. Other revenue for the three months ended September 30, 2009 includes $633,000 of rental revenue from our Penderbrook and Eclipse communities as compared to $788,000 of rental revenue from our Penderbrook, Barrington and Eclipse communities for the three months ended September 30, 2008. Other revenue for the three months ended September 30, 2009 also includes $728,000 from the July 30, 2009 sale of 33 single-family lots at our Providence project in Raleigh, N.C.

Other revenue for the nine months ended September 30, 2009 increased by $1.2 million, or 66.7%, to $3.0 million, as compared to $1.8 million for the nine months ended September 30, 2008. Other revenue for the nine months ended September 30, 2009 includes $2.1 million of rental revenue from our Penderbrook and Eclipse communities as compared to $1.8 million of rental revenue from our Penderbrook, Barrington and Eclipse communities for the nine months ended September 30, 2008. During the third quarter of 2008, our Barrington project was foreclosed upon by the lender which resulted in the termination of rental activities and the recognition of related rental revenue. The loss of rental revenue from the Barrington project was offset by increases in the number of tenants under lease at our Penderbrook and Eclipse communities for the three and nine months ended September 30, 2009 as compared to the same periods ended September 30, 2008.

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES
MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Cost of sales – homebuilding

Cost of homebuilding sales for the three months ended September 30, 2009 decreased by $0.5 million, or 4.4%, to $10.5 million, or 93.8% of homebuilding revenue, as compared to $11.0 million, or 89.4% of revenue, for the three months ended September 30, 2008. Cost of homebuilding sales for the nine months ended September 30, 2009 decreased by $18.6 million, or 52.8%, to $16.6 million, or 91.7% of homebuilding revenue, as compared to $35.2 million, or 88.9% of revenue, for the nine months ended September 30, 2008. This decrease in cost of homebuilding sales follows the reduced revenue from homebuilding. The decrease in homebuilding margins is the result of 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 three and nine months ended September 30, 2009 it also included $728,000 from the July 30, 2009 sale of 33 single-family lots at our Providence project in Raleigh, N.C. Cost of sales – other for the three months ended September 30, 2009 increased $1.1 million to $1.2 million as compared to $71,000 for the three months ended September 30, 2008. Cost of sales – other for the nine months ended September 30, 2009 increased $2.0 million to $2.2 million as compared to $159,000 for the nine months ended September 30, 2008. The increase in rental operating expenses for the three and nine months ended September 30, 2009 as compared to the same periods ended September 30, 2008 is due to increased personnel and maintenance costs required to operate the rental properties.

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. 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 foreclosure agreements with Wachovia and M&T Bank that will result in cancellation of indebtedness (see Note 14) in exchange for the Company's agreement to cooperate in the banks' foreclosure process on assets that secure the debt. Neither Wachovia nor M&T Bank had foreclosed on any of the real estate assets as of September 30, 2009. The following summary of real estate held for development and sale reflects the Wachovia and M&T Bank assets scheduled for foreclosure:

	Number of projects	September 30, 2009
Real estate held for development and sale	26	$ 87,783
Real estate projects awaiting foreclosure related to the:		
Wachovia foreclosure agreement	(14)	(15,970)
M&T foreclosure agreement	(1)	(6,294)
Real estate held for development and sale, net of assets awaiting foreclosure	11	$ 65,519

Deteriorating market conditions, turmoil in the credit markets and increased price competition have continued to negatively impact the Company during 2008 and 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. This quarter, the Company evaluated all 25 of its projects for impairment and the evaluation resulted in zero impairment charges as compared to no impairment charges for the three months ended September 30, 2008. For the nine months ended September 30, 2009, Company recorded impairment charges of $22.9 million across nineteen projects as compared to impairment charges of $14.5 million across sixteen projects for the nine months ended September 30, 2008. As a result of this analysis, the Company believes that at September 30, 2009, book value approximates fair value for all of its projects except for one with a carrying value of $35,374.

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.

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 criteria of held for sale in accordance with ASC 360-10-45-9 Long-Lived Assets Classified as Held for Sale, the project is valued at the lower of cost or fair value less estimated selling costs. At September 30, 2009, the Company had one project with a carrying value of $35,374 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 Cornerstone Bank ("Cornerstone") relating to the Company's Gates at Luberon project ("Gates"). In June 2009, Cornerstone 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 debt remained at June 30, 2009 as the Company reduced its assets for the lots that were legally transferred to Cornerstone 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 Cornerstone relating to litigation between the Company and Cornerstone. In connection with the settlement, Cornerstone 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 lots which Cornerstone 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 Cornerstone 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 nine months ended by metropolitan area (dollars in millions):

	Nine Months Ended September 30,	
	2009	2008
Washington DC metropolitan area	15.4	6.2
Raleigh, NC metropolitan area	6.4	0.5
Atlanta, GA metropolitan area	1.1	7.9
	22.9	14.6

Selling, general and administrative

Selling general and administrative expenses for the three months ended September 30, 2009 decreased $3.1 million or 73.8% to $1.1 million, as compared to $4.2 million for the three months ended September 30, 2008. Selling general and administrative expenses for the nine months ended September 30, 2009 decreased $6.2 million or 53.4% to $5.5 million, as compared to $11.7 million for the nine months ended September 30, 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. 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 three months ended September 30, 2009, all of the Company's projects were determined to be inactive for accounting purposes. During the nine months ended September 30, 2009 the majority of the Company's projects in Washington, DC, Raleigh, NC and Atlanta, GA were determined to be inactive for accounting purposes as they were either substantially complete or management elected to suspend construction activities indefinitely. 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 (dollars in millions):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2009	2008	2009	2008
Total interest incurred and expensed for inactive projects	$ 0.2	$ 1.7	$ 2.5	$ 2.8
Total real estate taxes incurred and expensed for inactive projects	0.2	0.2	0.8	0.4
Total production overhead incurred and expensed for inactive projects	0.1	0.3	0.6	0.4
	$ 0.5	$ 2.2	$ 3.8	$ 3.6

Under the terms of the loan agreement with Guggenheim Corporate Funding ("Guggenheim") relating to the Company's Penderbrook condominium project, interest is accrued at 12% unless and until certain unit settlement thresholds are achieved. Once a threshold is achieved, the interest rate is decreased and a reduction in the interest liability is recorded. In September 2009, the Company reached 16 settlements at the Penderbrook project for the nine months ended September 30, 2009. Under the terms of the loan agreement, 16 settlements entitles the Company to an interest rate reduction from 12% to 4% on the principal balance outstanding from January 1, 2009 to September 30, 2009. The amount of that interest liability reduction was approximately $779,000 and was recorded at September 30, 2009. To the extent the Company settles additional units at Penderbrook in the fourth quarter of 2009, the interest rate could potentially be reduced from 4% to 2%, which would result in further reductions in the interest liability recorded at December 31, 2009.

Income taxes

Income taxes are accounted for under the asset and liability method in accordance with ASC 740-10, 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.

The Company is projecting a tax loss for the twelve months ended December 31, 2009. Therefore, an effective tax rate of zero was assumed in calculating the current income tax expense at September 30, 2009. This results in a zero current income tax expense for the three and nine months ended September 30, 2009. 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. At December 31, 2007, the Company recorded valuation allowances for certain tax attributes and other deferred tax assets. At this time, sufficient 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. With a full valuation allowance, any change in the deferred tax asset or liability is fully offset by a corresponding change in the valuation allowance. This results in a zero deferred tax benefit or expense for the three and nine months ended September 30, 2009.

The Company files U.S. and state income tax returns in jurisdictions with varying statutes of limitations. The 2006 through 2008 tax years generally remain subject to examination by federal and most state tax authorities.

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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 amenities. Our sources of capital include, and will continue to include where possible, funds derived from various secured and unsecured borrowings, cash flow from operations which include the sale and delivery of constructed homes and finished and raw building lots, and the sale of equity and debt securities. Our current operations and inventory home sites will require substantial capital to develop and construct.

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 for 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. At September 30, 2009, we had approximately $83.4 million of outstanding indebtedness. Approximately $22.0 million of the $83.4 million of September 30, 2009 indebtedness is related to Wachovia ($15,893) and M&T Bank ($6,121) foreclosure agreements that were executed during the third quarter of 2009 which will be extinguished after the banks foreclose on the real estate assets that secure the debt, which had not occurred at September 30, 2009. There will be no further cash outlay on this $22.0 million of debt by the Company. At September 30, 2009 we had approximately $0.9 million of unrestricted cash.

During 2008 and continuing into 2009 the banking and credit markets experienced severe disruption as a result of a collapse in the sub-prime and securitized debt markets. As a result, commercial banks and other unregulated lenders have experienced a liquidity crunch which has made funding for real estate lending extremely difficult to secure. This tightening of the credit markets presents substantial risk to our ability to secure financing for our operations, construction and land development efforts. In addition, this disruption is affecting our customers' ability to secure mortgage financing for the purchase of our homes. This limitation on available credit is having a negative effect on our sales and revenue in 2009 which undermines our ability to generate enough cash to fund our operations, meet our obligations and survive as a going concern.

Our overall borrowing capacity is constrained by loan covenants which require maximum loan-to-value ratios, minimum ratios of interest to EBITDA, minimum tangible net worth, minimum unit settlements and maximum ratios of total liabilities to total equity. Our non-compliance with certain of these covenants, for the period ending December 31, 2008, was waived, eliminated or ignored by our lenders. There is no assurance that we will return to compliance in the future or that our lenders will continue to provide us waivers of our covenants. In the event our banks discontinue funding, accelerate the maturities of their facilities, refuse to waive future covenant defaults or refuse to renew the facilities at maturity, we could experience an unrecoverable liquidity crisis in the future. We can make no assurances that internally generated cash advances available under our credit facilities, refinancing of existing underleveraged projects or access to public debt and equity markets will provide us with access to sufficient cash flow to meet our existing and expected operating capital needs in 2009. If we fail to meet our cash requirements we may be required to seek bankruptcy protection or to liquidate.

Both the Company and its subsidiaries have secured debt of approximately $6.3 million which matured prior to September 30, 2009 with another $3.3 million of debt which has curtailment requirements during the fourth quarter of 2009. In our industry it was customary for lenders to renew and extend project facilities until the project is complete provided the loans are kept current. That is no longer the case. Since we are the guarantor of a majority of our subsidiaries' debt, any significant failure to negotiate renewals and extensions to this debt would severely compromise our liquidity and could jeopardize our ability to satisfy our capital requirements. Our recently reported and cured loan covenant violations, may at some point negatively impact our ability to renew and extend our debt. Details regarding each of the Company's credit facilities and the current status are discussed in the section "Credit Facilities" below.

At September 30, 2009 we had $0.9 million in unrestricted cash and $3.4 million in restricted cash. Included in our restricted cash balance, to which we have no access, is a $3.0 million deposit with an insurance provider as security for future claims. Our access to working capital is very limited and our debt service obligations and operating costs for 2009 exceed our current cash reserves and are dependent upon settlements at the respective projects. If we are unable to identify new sources of cash and cash flow and/or successfully modify our existing facilities, we will likely deplete our cash reserves and be forced to file for bankruptcy protection in the near future. There can be no assurances that in that event we would be able to reorganize through bankruptcy and we might be forced to effect a liquidation of our assets.

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES
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Credit Facilities

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 area of interest rate changes. At September 30, 2009, the one-month LIBOR and prime rates of interest were 0.25% 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 September 30, 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 which would be expensed in the period incurred since all projects are now inactive by accounting standards.

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 numerous credit facilities and lenders. After evaluating its options with respect to restructuring its debts in 2008, the Company elected to suspend making regularly scheduled cash interest payments on a majority of its project loans, particularly where interest reserves were not available to cover the associated carry costs.

In 2009 in an effort to stabilize the Company management has focused on negotiating with our creditors to eliminate debts and otherwise settle obligations of the Company rather then pursuing new business which would have required additional borrowing facilities to be established. Early in 2009 management formulated a Strategic Realignment Plan, a strategy for eliminating debt and settling obligations of the Company and as part of this strategy the Company identified the real estate projects that it desired to retain and rebuild around with the goal of reaching amicable agreements with all of the Company's major creditors before year end 2009. As previously reported and as detailed herein the Company has made significant progress in that regard. As of September 30, 2009 the Company had successfully negotiated settlements with most of its secured lenders regarding a majority of the loans guaranteed by the Company and had reduced the outstanding balance of debt from $102.8 million at December 31, 2008 to $83.4 million at September 30, 2009. In most cases the Company was released from the obligations under the loan in return for its agreement not to contest the foreclosure of the real estate assets securing the loan and in certain cases the Company provided the lender a non-interest bearing deficiency note in an amount equal to a fraction of the original debt with a term of three years. In one instance the Company also made a cash payment to the lender. Due to the time required to complete the requisite foreclosures on certain real estate assets, the foreclosure actions were not all complete at September 30, 2009 and will occur in future periods, and at the time the foreclosures are complete the Company's debt associated with the foreclosed properties will be released.

In keeping with the Company's Strategic Realignment Plan, the project loans related to the projects that the Company desired to retain were modified to allow for the continued operation of the retained projects. Those loans include Key Bank's loan related to the Eclipse project in Arlington Virginia and the Station View project in Ashburn, Virginia, the Guggenheim Corporate Funding loan related to the Penderbrook project, the M&T loan related to the Cascades project in Sterling, Virginia, and the seller financing provided in connection with the Emerald Farm project in Frederick, Maryland.

As of September 30, 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)	$22,014
Past due(2)	6,343
2009	3,300
2010	14,528
2011	19,401
2012 and thereafter	17,831
Total	$83,417

(1) Debt related to Wachovia ($15,893) and M&T Bank ($6,121) foreclosure agreements 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 is pending but had not occurred at September 30, 2009. There will be no further cash outlay on this debt by the Company.

(2) Past due is comprised of Royal Bank of Canada ($5,602) and BB&T ($741).

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 September 30, 2009, the one-month LIBOR and prime rates of interest were 0.25% 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 September 30, 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 has numerous credit facilities and lenders. After evaluating its options with respect to restructuring its debts, the Company elected to suspend making regularly scheduled cash interest payments on all of its debt. During 2009 the Company has been in discussions with substantially all of its lenders to negotiate amendments to its loan facilities and modifications to its guarantees that were more aligned with the evolving housing market downturn and the Company's limited liquidity. The Company has been successful in renegotiating a significant portion of its debts. The Company has notified its remaining lenders that absent amicable agreements being reached within the very near term regarding the restructure of its bank debts in a manner that will provide the Company with working capital sufficient to stabilize and continue operations, that the Company expects to have exhausted its cash reserves and will be forced into reorganization under the protection of the bankruptcy court. The Company is actively working with all of its lenders in this restructuring initiative.

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As described in more detail below, at September 30, 2009 our outstanding debt by lender was as follows (dollars in 000s):

Bank	Balance as of 09/30/09	Recourse
KeyBank	$ 22,800	Secured
Wachovia (1)	15,893	Secured
Wachovia	335	Unsecured
Guggenheim Capital Partners	12,084	Secured
JP Morgan Ventures	12,743	Unsecured
M&T Bank – Belmont Bay (1)	6,121	Secured
M&T Bank – Cascades	1,016	Secured
M&T Bank	495	Secured
Royal Bank of Canada	5,602	Secured
Cornerstone (Haven Trust)	400	Unsecured
Bank of America	3,758	Unsecured
Fifth Third	1,328	Secured
Branch Banking & Trust	741	Secured
Seller – Emerald Farm	100	Secured
Total	$ 83,417	

(1) Debt related to Wachovia ($15,893) and M&T Bank ($6,121) foreclosure agreements 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 September 30, 2009. There will be no further cash outlay on this debt by the Company.

At September 30, 2009 the Company had $22.8 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. At September 30, 2009 the available balance in the interest reserve was approximately $2.0 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 of sold units on a retroactive basis for units previously settled between July 1, 2009 and October 30, 2009 which is approximately $700. The unrestricted use by the Company of a portion of the accelerated release proceeds, approximately $450, is subject to certain conditions subsequent, and continued accelerated releases for the sale of future units is subject to the occurrence of additional conditions subsequent, including the restructuring of certain of the Company's unsecured indebtedness and 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 all of the net sales price of sold units. The Modification also modified 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 be fully subordinate to the Loan.

On May 26, 2006 the Company entered into $40.0 million secured revolving borrowing base credit facility with Wachovia Bank for the financing of entitled land, land under development, construction and project related letters of credit. Funding availability was to be limited by compliance with a periodic borrowing base calculation and certain financial covenants. The Company ceased making interest payments on this loan in June 2008, which was construed by the lender to have been an event of default under the loan agreement. On July 25, 2008 Wachovia issued the Company a notice of default with respect to this facility. In December 2008 we entered into loan modification agreements with Wachovia by which the single credit facility was split into three separate notes; an $8.0 million revolving construction loan, a $7.0 million term note and a $3.0 million outstanding project note. This transaction was accounted for as a troubled debt restructuring under which we recorded a $3.3 million gain after accounting for future interest costs. The revolver and term notes matured in January 2009 and the project note matures in December 2011. On April 17, 2009, the Company received a notice of default from Wachovia based on allegations of 1) Comstock's failure to timely pay amounts due under the Agreement and the Note and 2) the existence of certain mechanics liens and liens for unpaid taxes against the collateral securing the Loans. Additionally, the revolving loan required us to meet certain settlement covenants by June 30, 2009 which we did not achieve.

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 is reduced by the principal payments related to certain homes sold by the Company prior to September 30, 2009. As of September 30, 2009 the deficiency note balance was $335 and the debt from which the Company will be released upon foreclosure of the assets was $15.9 million. On November 5, 2009, by subsequent agreement, the amount of the deficiency note was further reduced to $205. 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 September 30, 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 September 30, 2009 the Company had approximately $12.1 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 September 30, 2009 and based on the pace of Q4 2009 sales, settlements and backlog believes it will meet the minimum sales requirement as of December 31, 2009.

As of September 30, 2009, $12.7 million was outstanding to JP Morgan Ventures ("JP Morgan"), 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 JP Morgan. 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 JP Morgan 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 JP Morgan a seven-year warrant to purchase 1.5 million shares of Class A common stock at $0.70 per share. In exchange JP Morgan 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 and September 30, 2009.

At September 30, 2009 the Company had $7.6 million outstanding to M&T Bank. Under the terms of the original loan agreements, the Company was required to maintain certain financial covenants which are summarized below. In March 2007 the Company entered into loan modification agreements lowering the minimum interest coverage ratio and the minimum tangible net worth covenants. On October 25, 2007 the Company entered into loan modification agreements that extended maturities and provided for forbearance with respect to all financial covenants. On June 30, 2008, the loans with M&T matured. The Company ceased making interest payments on these loans in July 2008, which was construed by the lender to have been an event of default under the loan agreement. In connection with a dispute between Comstock and the developers of Belmont Bay in Woodbridge, Virginia the developers of Belmont Bay had filed a lis pendens against the River Club II project. The Belmont Bay River Club II project collateralizes $6.6 million of the $7.6 million of debt outstanding with M&T. On or about July 8, 2009, the Company and the developers of Belmont Bay executed a settlement agreement dismissing the cases with prejudice. As part of the settlement agreement, the Company's obligations to the developers of Belmont Bay of $1.8 million were released, subject to satisfaction of certain conditions set forth in the settlement agreement.

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 current principal balance of $6.1 million plus $0.4 million of accrued interest and fees, will be released in its entirety and the Cascades Loan, with a current balance of $1.0 million, will be 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. Foreclosure of these assets is expected in the fourth quarter of 2009 or the first quarter of 2010. 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.

At September 30, 2009 the Company had approximately $5.6 million outstanding to Royal Bank of Canada ("RBC") relating to three projects in the Atlanta market. The Company ceased making interest payments in July 2008. The Company's Parket Chandler Homes (formerly known as Comstock Homes of Atlanta, LLC)subsidiary has received a notice of default from RBC. The Company is not a guarantor of this debt.

At September 30, 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 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. Cornerstone, one of the banks to which Haven Trust participated the loan assumed control of the loan and reinstated the guarantee and foreclosure actions. Cornerstone'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 Cornerstone relating to the aforementioned litigation. In connection with the settlement, Cornerstone 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 Cornerstone 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 12 for details related to troubled debt restructuring and the Cornerstone settlement and mutual release.

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At September 30, 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.

As of September 30, 2009 the Company had $1.3 million outstanding with Fifth Third Bank, successor to First Charter Bank. The loan matures on January 10, 2010. There are no financial covenants associated with this loan. The Company is not a guarantor of this debt. On November 10, 2009 the Company entered into an agreement with Fifth Third Bank ("Fifth Third") to eliminate approximately $1.3 million of secured debt related to Comstock of Raleigh's Brookfield project located in Raleigh, N.C. The subject debt is non-recourse to Comstock Homebuilding. Under the terms of the agreement, Fifth Third agreed to release Comstock of Raleigh and its affiliates from its obligations and guarantees relating to the project loan and Comstock of Raleigh agreed to cooperate with Fifth Third with respect to a foreclosure on a portion of the Brookfield project. As an incentive to Fifth Third to expedite the foreclosure Comstock Homebuilding agreed to enter into a non-interest bearing unsecured promissory note in the amount of $25,000 with a three year term (the "Note") provided Fifth Third successfully completes the foreclosure on or before February 28, 2010, unless extended as provided for in the agreement (the "Deadline"). Should Fifth Third fail to complete the foreclosure on or before the Deadline, Comstock Homebuilding shall not be required to provide the Note but the release issued by Fifth Third will nevertheless remain effective. At September 30, 2009 the Company had approximately $0.7 million outstanding to Branch Bank & Trust Company ("BB&T") relating to three construction loans in the Company's Atlanta market. On August 29, 2008 The Company entered into a foreclosure agreement with BB&T with respect to approximately $31.4 million of debt secured by properties in Virginia and Atlanta, Georgia. Under the terms of the foreclosure agreement, the Company agreed to cooperate with BB&T with respect to its foreclosure on certain Company real estate assets and BB&T agreed to provide the Company with a full release from its related debt obligations. BB&T completed its foreclosure on the properties in September 2008. The Company retained three pre-sold lots in Atlanta which were not included in the foreclosure agreement. The Company is still awaiting its final release of liability associated with the foreclosures.

From time to time, the Company has employed subordinated and unsecured credit facilities to supplement the capital resources or a particular project or group of projects. As of September 30, 2009, there was approximately $3.7 million of outstanding variable rate unsecured loans.

Many of the Company's loan facilities contain Material Adverse Effect clauses that, if invoked, could create an event of default under the loan. In the event all the Company's loans were deemed to be in default as a result of a Material Adverse Effect, the Company's ability to meet the capital and debt obligations would be compromised and the Company would not be able to continue operations without bankruptcy protection.

The Company's senior management has succeeded in reaching amicable agreements with regards to needed modifications of all of the secured loans that the Company has guaranteed in an effort to stabilize the Company and reduce the possibility that the Company would need to seek the protections afforded by the bankruptcy code. Management continues to work on reaching amicable agreements with the Company's unsecured creditors in keeping with its Strategic Realignment Plan. The Company cannot at this time provide any assurances that it will be successful in these efforts. In the event the Company is not successful it may not be able to continue operations absent court imposed protections.

As illustrated by the preceding debt maturity schedule, we have a significant amount of debt that either has matured or will mature in the near future. In our industry, it was customary for secured debt to be renewed until a project is complete but we have no assurance that this will be the case with our debts. Our recently reported and cured loan covenant violations may impact our ability to renew and extend our debt. Failure to meet our obligations as they come due could force us to have to use court protections under bankruptcy to continue to operate.

The Company's debt with M&T Bank and JP Morgan contains certain financial covenants. The Minimum Tangible Net Worth covenants are as follows: M&T Bank, $135.0 million and JP Morgan, $35.0 million. Additionally, the M&T Bank loan contains the following additional covenants: a required Interest Coverage Ratio of 2.5 to 1, a required Debt to Net Worth Ratio of 2.5 to 1. However, as discussed above, the Company entered into a forebearance agreement with M&T Bank in September 2009. The JP Morgan loan also contains additional covenants: a required Leverage Ratio, not to exceed 3.0 to 1, and a required Fixed Charge Ratio of 0.5 to 1. The Company is not in compliance with the JP Morgan covenants and has received a default notice. Although the Company's debt with KeyBank contains a nonfinancial covenant related to a required number of settlements each month, the Company entered into a loan modification with KeyBank in October 2009 in which the existing defaults were waived.

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Cash Flow

Net cash provided by operating activities was $9.5 million for the nine months ended September 30, 2009 as compared to $13.2 million for the nine months ended September 30, 2008. The decrease is attributable primarily to our receipt of approximately $13.0 million in federal and state tax refunds during the first quarter of 2008.

Net cash used in financing activities was $14.6 million for the nine months ended September 30, 2009 as compared to $13.7 million for the nine months ended September 30, 2008. For the nine months ended September 30, 2009, cash from settlement proceeds was used to reduce debt while no additional debt was incurred.

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Subsequent Events

The Company has evaluated subsequent events through November 13, 2009, which is the date these financial statements were issued. Except for the events set forth below, no material subsequent events occurred between September 30, 2009 and November 13, 2009.

On October 30, 2009 the Company executed a loan modification with KeyBank National Association ("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 cash flow equal to fifteen percent of the net sales price of sold units on a retroactive basis for units previously settled between July 1, 2009 and October 30, 2009 which is approximately $700. The unrestricted use by the Company of a portion of the accelerated release proceeds, approximately $450, is subject to certain conditions subsequent, and continued receipt of the sales proceeds of future units is subject to the occurrence of additional conditions subsequent, including the restructuring of certain of the Company's unsecured indebtedness and 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 all of the net sales price of sold units. The Modification also modified 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 be fully subordinate to the Loan.

On November 10, 2009 the Company entered into an agreement with Fifth Third Bank ("Fifth Third") to eliminate approximately $1.3 million of secured debt related to Comstock of Raleigh's Brookfield project located in Raleigh, N.C. The subject debt is non-recourse to Comstock Homebuilding. Under the terms of the agreement, Fifth Third agreed to release Comstock of Raleigh and its affiliates from its obligations and guarantees relating to the project loan and Comstock of Raleigh agreed to cooperate with Fifth Third with respect to a foreclosure on a portion of the Brookfield project. As an incentive to Fifth Third to expedite the foreclosure Comstock Homebuilding agreed to enter into a non-interest bearing unsecured promissory note in the amount of $25,000 with a three year term (the "Note") provided Fifth Third successfully completes the foreclosure on or before February 28, 2010, unless extended as provided for in the agreement (the "Deadline"). Should Fifth Third fail to complete the foreclosure on or before the Deadline, Comstock Homebuilding shall not be required to provide the Note but the release issued by Fifth Third will nevertheless remain effective.

On November 12, 2009 the Company received a notice from NASDAQ Stock Market Listing Qualifications indicating that the Company's closing bid-price was under $1.00 for the thirty trading days ended November 11, 2009. As a result, NASDAQ issued a notice of default related to this requirement and provided the Company until May 11, 2010 to regain compliance. To regain compliance the closing bid-price must remain over $1.00 for a minimum of ten consecutive trading days prior to May 11, 2020.

On November 12, 2009, Parker Chandler Homes, LLC, formerly known as Comstock Homes of Atlanta, LLC, Buckhead Overlook, LLC, and Post Preserve, LLC (collectively, "Debtors"), each a subsidiary of Comstock Homebuilding Companies, Inc. (the "Company"), filed bankruptcy petitions (the "Petitions") in the United States Bankruptcy Court, Northern District of Georgia. The Chapter 7 Petitions were filed in furtherance of the Company's ongoing restructuring efforts; which include winding down its Atlanta division.

Recent Accounting Pronouncements

In June 2009, the FASB issued SFAS No. 168, "The FASB Accounting Standards Codification and the Hierarchy of Generally Accepted Accounting Principles, a replacement of FASB Statement No. 162," ("SFAS 168") [ASC 105-10-05]. SFAS 168 establishes the FASB Accounting Standards Codification as the source of authoritative accounting principles recognized by the FASB to be applied by nongovernmental entities in the preparation of financial statements in conformity with GAAP. SFAS 168 is effective for the Company's September 30, 2009 consolidated financial statements. SFAS 168 does not change GAAP and will not have a material impact on the Company's consolidated financial statements. However, SFAS 168 has impacted the Company's consolidated financial statements as the Company's references to authoritative accounting literature have been revised to cite the FASB's Accounting Standards Codification.

In June 2009, the FASB issued SFAS No. 167, "Amendments to FASB Interpretation No. 46(R)," ("SFAS 167"). SFAS 167 amends the consolidation guidance applicable to variable interest entities and the definition of a variable interest entity, and requires enhanced disclosures to provide more information about an enterprise's involvement in a variable interest entity. This statement also requires ongoing assessments of whether an enterprise is the primary beneficiary of a variable interest entity. SFAS 167 is effective for the Company's fiscal year beginning January 1, 2010. The Company is currently reviewing the effect of SFAS 167 on its 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" ("SFAS 166"). SFAS 166 removes the concept of a qualifying special-purpose entity from SFAS 140 and removes the exception from applying FASB Interpretation No. 46 (revised December 2003), "Consolidation of Variable Interest Entities," to qualifying special-purpose entities. SFAS 166 clarifies that the objective of paragraph 9 of SFAS 140 is to determine whether a transferor and all of the entities included in the transferor's financial statements being presented have surrendered control over transferred financial assets. That determination must consider the transferor's continuing involvement in the transferred financial asset, including all arrangements or agreements made contemporaneously with, or in contemplation of, the transfer, even if they were not entered into at the time of the transfer. SFAS 166 modifies the financial-components approach used in SFAS 140 and limits the circumstances in which a financial asset, or portion of a financial asset, should be derecognized when the transferor has not transferred the entire original financial asset to an entity that is not consolidated with the transferor in the financial statements being presented and/or when the transferor has continuing involvement with the transferred financial asset. SFAS 166 defines the term participating interest to establish specific conditions for reporting a transfer of a portion of a financial asset as a sale. If the transfer does not meet those conditions, a transferor should account for the transfer as a sale only if it transfers an entire financial asset or a group of entire financial assets and surrenders control over the entire transferred asset(s) in accordance with the conditions in paragraph 9 of SFAS 140, as amended by SFAS 166. The special provisions in SFAS 140 and FASB Statement No. 65, "Accounting for Certain Mortgage Banking Activities," for guaranteed mortgage securitizations are removed thereby requiring those securitizations to be treated the same as other transfers of financial assets within the scope of SFAS 140, as amended by SFAS 166. If such a transfer does not meet the requirements for sale accounting, the securitized mortgage loans should continue to be classified as loans in the transferor's statement of financial position. SFAS 166 requires that a transferor recognize and initially measure at fair value all assets obtained (including a transferor's beneficial interest) and liabilities incurred as a result of a transfer of financial assets accounted for as a sale. SFAS 166 shall be effective as of the beginning of each reporting entity's first annual reporting period that begins after November 15, 2009, for interim periods within that first annual reporting period, and for interim

and annual reporting periods thereafter. Earlier application is prohibited. The recognition and measurement provisions of SFAS 166 shall be applied to transfers that occur on or after the effective date. The Company is currently evaluating the impact that SFAS 166 may have on its financial position, results of operations and cash flows.

Critical Accounting Policies and Estimates

There have been no significant changes to our critical accounting policies and estimates during the six months ended September 30, 2009 compared with those disclosed in Item 7, *Management's Discussion and Analysis of Financial Condition and Results of Operations* included in our annual report on Form 10-K for the year ended December 31, 2008.

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

ITEM 3. 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 September 30, 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, most of which would be expensed as incurred if the project is 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 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 4. CONTROLS AND PROCEDURES

As of the end of the period covered by this report, our Chairman and Chief Executive Officer and Chief Financial Officer have reviewed and evaluated the effectiveness of our disclosure controls and procedures, which included inquiries made to certain other employees. Based on their evaluation, our Chairman and Chief Executive Officer and Chief Financial Officer have each concluded that our disclosure controls and procedures are effective and sufficient to ensure that we record, process, summarize, and report information required to be disclosed by us in our periodic reports filed under the Securities Exchange Act within the time periods specified by the Securities and Exchange Commission's rules and forms and are also effective to ensure that information required to be disclosed in the reports we file or submit under the Exchange Act is accumulated and communicated to management, including our Chief Executive and Chief Financial Officers, to allow timely decisions regarding required disclosure.

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.

There has been no change in the Company's internal control over financial reporting during the Company's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

PART II — OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS.

In April 2008 a wholly owned subsidiary of the Company, Mathis Partners, LLC ("Mathis Partners") received notice from Haven Trust Bank (Lender) that it filed a collection action against the Company pursuant to a guaranty agreement entered into by the Company for the outstanding balance of the indebtedness owed for the Gates of Luberon project in Atlanta, Georgia. In January 2009, prior to any substantive action taking place in the lawsuit, the Lender failed and was taken over by the Federal Deposit Insurance Corporation (FDIC). The FDIC sought a stay in the guaranty action through April 2009. Cornerstone Bank, one of the banks to whom Haven Trust participated the loan has assumed control of the collection process and has reinstated the foreclosure and guarantee actions. Foreclosure of a portion of the Property took place on June 2, 2009, at which time a bid was made on the Property by Cornerstone Bank for approximately $1.3 million. Cornerstone Bank had sought the Court's confirmation of the foreclosure sale, to which the Company and Mathis Partners objected. The confirmation of the foreclosure sale and the Company's objection was heard in September 2009. Prior to the hearing, the parties negotiated a settlement agreement to resolve both the Lender and Cornerstone Bank actions whereby the Company made a $50,000 cash payment and issued a non-interest bearing subordinated deficiency note in the amount of $0.4 million with a three year term in exchange for complete forgiveness of the outstanding indebtedness and guaranty by the Company. As a result, both lawsuits have been dismissed with prejudice.

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 has been recorded as of June 30, 2009.

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. We anticipate the court's decision in the 4th quarter 2009 or first quarter 2010. While there can be no assurance, we are optimistic that the court will not rule in favor of Balfour Beatty. The lender for the Company's subsidiary had not issued a default notice with respect to the liens but an adverse judgment with respect to the litigation could be considered an event of default under the KeyBank loan associated with the Project.

In September 30, 2009 the Company reached a final settlement in a dispute with Mooring Capital, the holder of a non-controlling interest in one of the Company's subsidiaries. Terms of the settlement called for the Company to purchase Mooring Capital's interest for 175 warrants and $20 cash. In recording the purchase of Mooring Capital's interest, the non-controlling interest liability was eliminated and a gain on the settlement of approximately $120 was recorded as an increase in additional paid-in capital.

The Company and/or its subsidiaries have also been named as a party defendant in legal actions arising from our other business operations that, on an aggregate basis, would be deemed material if decided against the Company and/or its subsidiaries for the full amounts claimed. Although the Company would not be liable in all instances for judgments against its subsidiaries, we cannot accurately predict the amount of any liability that could be imposed upon the Company with respect to legal actions currently pending against the Company or its subsidiaries.

Further, in the future the Company or its subsidiaries could be named as a defendant in additional legal actions arising from our past business activities. Although we cannot accurately predict the amount of any liability that could be imposed upon the Company with respect to legal actions that may be brought against the Company in the future, it is anticipated that any adverse ruling by a court resulting in actual liability would likely have a material adverse effect on our financial position, operating results or cash flows.

COMSTOCK HOMEBUILDING COMPANIES, INC. AND SUBSIDIARIES
MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

ITEM 1A. RISK FACTORS

We previously disclosed risk factors under "Item 1A. Risk Factors" in its Annual Report on Form 10-K for the year ended December 31, 2008. There have been no material changes these risk factors.

ITEM 6. EXHIBITS

Exhibit Number	Exhibit
10.69(10)	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(10)	Consensual Foreclosure and Settlement Agreement, dated August 17, 2009, by and among the Registrant, et.al. and.Wachovia Bank, National Association
10.71(10)	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(10)	Settlement Agreement and Mutual Release, dated September 21, 2009, by and among Registrant, Mathis Partners, LLC and Cornerstone Bank
10.73(10)	Forbearance Agreement, dated September 28, 2009, by and among Comstock Cascades, L.C., the Registrant and Manufacturers and Traders Trust Company
10.74(10)	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(10)	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(10)	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.
31.1	Certification of Chairman and Chief Executive Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a), promulgated under the Securities Exchange Act of 1934, as amended.
31.2	Certification of Chief Financial Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a), promulgated under the Securities Act of 1934, as amended.
32.1	Certification of Chairman and Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

(10) Incorporated by reference to an exhibit to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on November 13, 2009.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

COMSTOCK HOMEBUILDING COMPANIES, INC.

Date: November 13, 2009

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

By: /s/ JEFFREY R. DAUER
Jeffrey R. Dauer
Chief Financial Officer

Exhibit 10.69

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is made and entered into between Belmont Bay, L.C., Belmont Town Center Associates, LLC, Belmont Town Center Umbrella Association, Inc., Belmont Bay Homeowners Association, Inc. (collectively "the Belmont entities"); and Comstock Belmont Bay 89, L.C. (also known as Comstock Belmont Bay 8 & 9, Inc.) and Comstock Homebuilding Companies, Inc. (collectively "the Comstock entities"); and Premier Title, Inc.; and Donald J. Creasy and Stephen P. Caruthers and James R. Epstein and Lawrence A. Wilkes (collectively the "Individual Defendants"); and EFO Capital Management, Inc., Eric-Belmont Associates, LLC, Harbor Point West Associates, LLC, Harbor Point East Associates, LLC, Harbor View Associates, LLC and Harbor Side I Associates, LLC (the "Epstein entities"); and WVS Development Associates LLC, as of the ____ day of June, 2009.

WHEREAS, Belmont Bay L.C. is a Virginia limited liability company that developed, subdivided, rezoned and conveyed various Land Bays in that certain planned community commonly known as "Belmont Town Center" in Prince William County, Virginia, and that currently owns certain parcels of land commonly referred to as "Land Bays" located in Belmont Town Center, and

WHEREAS, Belmont Town Center Associates, LLC is a Delaware limited liability company that owns certain Land Bays and other real property located in Belmont Town Center in Prince William County, Virginia,

WHEREAS, Belmont Town Center Umbrella Association, Inc. is a Virginia nonstock corporation created to, among other things, enforce the land use covenants, conditions and restrictions that govern the development of "Belmont Town Center", and which owns and / or controls certain common areas, buffer zones and easements over property located in Belmont Town Center, and

WHEREAS Comstock Belmont Bay 89, L.C. acquired a portion of Belmont Town Center consisting of 4.6761 acres, more or less, of land known as "Phase 1" as defined in the Purchase and Sale Agreement dated as of June 28, 2002, as amended by Nineteen Amendments through March 9, 2006 (the "Purchase and Sale Agreement") from Belmont Bay L.C. on or about March 26, 2006 subject to the common development plan for Belmont Town Center, the provisions of the Prince William County Zoning ordinance, the Special Use Permit No. 99-0014, the Proffers, Conditions and Waivers associated therewith and the Covenants Conditions and Restrictions of record, including the Design Guidelines, and

WHEREAS Comstock Belmont Bay 89, L.C. entered into a Deferred Purchase Money Note in the face amount of $1,664,000.00 with a maturity date of March 26, 2007, and

WHEREAS Comstock Homebuilding Companies, Inc. is the parent company of Comstock Belmont Bay 89, L.C. and the guarantor of the Deferred Purchase Money Note made by Comstock Belmont Bay 89, L.C., and

WHEREAS Comstock Belmont Bay 89, L.C. submitted a final site plan for Phase 1 in or about December 2005 designating the use of all 112 dwelling units located within Phase 1 as age-restricted units and, in or about November 2007, subjected a portion of Phase 1, consisting of ____ acres and containing 28 dwelling units to a Declaration of Condominium of Beacon Park I Condominium (the "Condominium Declaration"), which it recorded among the land records of Prince William County, Virginia, as Instrument Number 200711300129374 and the associated Plats for which are recorded as Instruments No. 200711300129375 and 200711300129376, and

WHEREAS Comstock Belmont Bay 89, L.C. submitted a revised final site plan for Phase 1 to Prince William County officials in or about October 2007 that purported to change the use of all 112 dwelling units as non-age-restricted units and subsequently recorded a "Beacon Park I Condominium Declarant Election Form" as Instrument No. 200803030019281 among the Prince William County land records, without obtaining the approval of the Design Review Committee of Belmont Town Center; and

WHEREAS Donald J. Creasy is a member of Belmont Bay, L.C. and an Officer and Director of Belmont Town Center Umbrella Association, Inc.; and

WHEREAS Stephen P. Caruthers is a member of Belmont Bay, L.C., a member of the Design Review Committee for Belmont Town Center and an Officer and Director of Belmont Town Center Umbrella Association, Inc.; and

WHEREAS Lawrence A. Wilkes is a member of the Design Review Committee for Belmont Town Center; and

WHEREAS James R. Epstein is the Chairman of EFO Capital Management, Inc., a member of the Design Review Committee for Belmont Town Center and a Director of Belmont Town Center Umbrella Association, Inc.; and

WHEREAS EFO Capital Management, Inc. is the manager of Eric-Belmont Associates LLC; and

WHEREAS Eric-Belmont Associates, LLC is the owner of certain real property in Belmont Town Center in Woodbridge, Virginia; and

WHEREAS Harbor Point West Associates, LLC, Harbor Point East Associates, LLC, Harbor View Associates, LLC and Harbor Side I Associates, LLC, are declarants of respective condominium regimes at Belmont Town Center in Woodbridge, Virginia; and

WHEREAS, the Belmont entities and the Comstock entities have filed claims and counterclaims against each other in certain actions styled *Belmont Bay, L.C. v. Comstock Belmont Bay 89, L.C. and Comstock Home Building Companies, Inc.*, Civil Action No. 2008-7172, *Belmont Bay, L.C. v. Comstock Belmont Bay 89, L.C. and Premier Title, Inc.*, Civil Action No. 2008-7173, *Belmont Bay, L.C., Belmont Town Center Associates LLC and Belmont Town Center Umbrella Association, Inc. v. Comstock Belmont Bay 89, L.C.*, Civil Action No. 2008-12268, and *Comstock Belmont Bay 89, L.C. v. Lawrence A. Wilkes, James R. Epstein, Stephen P. Caruthers, Belmont Bay, L.C., Donald J. Creasy, EFO Capital Management, Inc. and Eric-Belmont Associates LLC*, Civil Action No. 2009-523, which were consolidated for trial in the Circuit Court of Fairfax County (collectively the "Consolidated Fairfax Actions"); *Comstock Belmont Bay 89, L.C v. Harbor Point West Associates, LLC, Harbor Point East Associates, LLC, Harbor View Associates, LLC, Harbor Side I Associates, LLC, Belmont Town Center Associates LLC, Stephen P. Caruthers, James Epstein, Eric-Belmont Associates, LLC, WVS Development Associates LLC, Lawrence Wilkes and Belmont Bay Homeowners Association, Inc*., Civil Action No. 88853 (the "Prince William Action"); and

WHEREAS, the parties desire to resolve all outstanding issues between them and to compromise and settle all of their respective claims against each other,

WHEREFORE, in consideration of the promises and agreement contained herein, and for good and adequate consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Consent Judgments Against Comstock Belmont Bay 89, L.C.

Comstock Belmont Bay 89, L.C. hereby consents to the entry of each of the Final Consent Judgment Orders which are attached hereto and incorporated by reference as Exhibits 1- 4 granting judgment against it in each of the following cases based on the stipulations set forth in each such Final Consent Judgment Order:

a. *Belmont Bay, L.C. v. Comstock Belmont Bay 89, L.C. and Premier Title, Inc.*, Fairfax County Civil Action No. 2008-7173 (**Exhibit 1**);

b. *Belmont Bay, L.C., Belmont Town Center Associates LLC and Belmont Town Center Umbrella Association, Inc. v. Comstock Belmont Bay 89, L.C.*, Fairfax County Civil Action No. 2008-12268 (**Exhibit 2**);

c. *Comstock Belmont Bay 89, L.C. v. Lawrence A. Wilkes, James R. Epstein, Stephen P. Caruthers, Belmont Bay, L.C., Donald J. Creasy, EFO Capital Management, Inc. and Eric-Belmont Associates LLC*, Fairfax County Civil Action No. 2009-523 (**Exhibit 3**); and

d. *Comstock Belmont Bay 89, L.C v. Harbor Point West Associates, LLC, Harbor Point East Associates, LLC, Harbor View Associates, LLC, Harbor Side I Associates, LLC, Belmont Town Center Associates LLC, Stephen P. Caruthers, James Epstein, Eric-Belmont Associates, LLC, WVS Development Associates LLC, Lawrence Wilkes and Belmont Bay Homeowners Association, Inc*., Prince William County Civil Action No. 88853 (**Exhibit 4**).

Belmont Bay, L.C., Comstock Belmont Bay 89, L.C., and Comstock Homebuilding Companies, Inc., hereby consent and agree to the entry of the Final Consent Judgment Order attached hereto as Exhibit 5 in *Belmont Bay, L.C. v Comstock Belmont Bay 89, L.C., and Comstock Homebuilding Companies, Inc.*, Fairfax County Civil Action No. CL 2008-7172

Every party to each and every Final Consent Judgment Order hereby irrevocably waives its or his right to appeal from each and every Final Consent Judgment Order.

2. Entry of Final Consent Judgment Orders.

Simultaneously with the execution of this Agreement, Comstock Belmont Bay 89, L.C. shall authorize its counsel to endorse, and its counsel shall endorse, the Final Consent Judgment Orders attached hereto as Exhibits 1-4, the endorsed originals of which shall be delivered to counsel for Belmont Bay, L.C. Counsel for Belmont Bay, L.C. shall file the endorsed Final Consent Judgment Orders in the Consolidated Fairfax Actions and the Prince William Action. Each party shall bear their own costs, expenses, and attorney's fees in the preparation, review and submission of the Final Consent Judgment Orders, and in the Consolidated Fairfax Actions and the Prince William Action.

3. Release of Liability on the Deferred Purchase Money Note and Guaranty.

Upon the entry by the Court of all of the Final Consent Judgment Orders referred to in Paragraph 1 of this Agreement, Belmont Bay, L.C. hereby releases, acquits, remises, and forever discharges Comstock Belmont Bay 89, L.C. and Comstock Homebuilding Companies, Inc. their affiliated entities and each of their past, present or future directors, officers, members or employees (collectively referred to as the "Comstock Releasees"),

or any of them, from any and all actions, allegations, charges, complaints, claims, demands, debts, liabilities, indemnities, agreements, damages, vendors liens, actions, causes of action, suits, rights, costs, expenses (including attorneys' fees and costs actually incurred) or things of any nature whatsoever and in any capacity whatsoever, known or unknown, suspected or unsuspected, vested or contingent, accrued or not accrued, liquidated or not liquidated, direct, derivative or subrogated, or any other theory of recovery under federal, state or foreign law and whether for compensatory, punitive damages, or other equitable relief which Belmont Bay, L.C. had, now has or may have against each, all, or any of the Comstock Releasees, in any combination thereof, arising out of (1) the Deferred Purchase Money Note and Deferred Purchase Money Guaranty and (2) any claims which were asserted or could have been asserted by Belmont Bay, L.C. in *Belmont Bay, L.C. v. Comstock Belmont Bay 89, L.C. and Comstock Home Building Companies, Inc.*, Fairfax County Civil Action No. 2008-7172. Belmont Bay, L.C. agrees to return the original Deferred Purchase Promissory Note and Deferred Purchase Money Guaranty to counsel for Comstock Belmont Bay 89, L.C. and Comstock Homebuilding Companies, Inc. 91 days after entry of the Final Consent Judgment Orders.

Should either of Comstock Belmont Bay 89, L.C. or Comstock Homebuilding Companies, Inc. file a petition, voluntary or involuntary, under any Chapter of Title 11 of the United States Code, as amended, within 90 days of the entry of the Final Consent Judgment Orders and as a result of such filing, an adversary proceeding or other similar action is filed in such case that results in the Final Consent Judgment Orders being set aside, then the release given hereby shall be null and void and of no force and effect from

its inception, and Belmont Bay, L.C. shall not be obliged to return the original Deferred Purchase Promissory Note and Deferred Purchase Money Guaranty to counsel for Comstock Belmont Bay 89, L.C. and Comstock Homebuilding Companies, Inc. in accordance with the immediately preceding paragraph.

Belmont Bay, L.C. also expressly covenants and agrees not to sue the Comstock Releasees for any claim arising out of the Purchase and Sale Agreement, as amended by Amendments One through Nineteen, that gave rise to the Deferred Purchase Money Note or Guaranty or the cancellation of that Purchase and Sale Agreement by the Final Consent Judgment Order, except in an action for the purpose of enforcing the terms of this Agreement or as an additional party joined in any claim, counterclaim, cross claim or third party claim asserted in an action by any individual or entity asserting claims as an assignee of Comstock Belmont Bay 89, L.C. under that Purchase and Sale Agreement.

4. Release of the Belmont Entities.

Comstock Belmont Bay 89, LC releases, acquits, remises, and forever discharges Belmont Bay, L.C., Belmont Town Center Associates, LLC, Belmont Town Center Umbrella Association, Inc. and Belmont Bay Homeowners Association, Inc., their affiliated entities and each of their past, present or future directors, officers, members or employees (collectively referred to as the "Belmont Releasees"), or any of them, from any and all actions, allegations, charges, complaints, claims, demands, debts, liabilities, indemnities, agreements, damages, vendor's and other liens, actions, causes of action, suits, rights, costs, expenses (including attorneys' fees and costs actually incurred) or things of any nature whatsoever and in any capacity whatsoever, known or unknown, suspected or unsuspected, vested or contingent, accrued or not accrued, liquidated or not

liquidated, direct, derivative or subrogated, or any other theory of recovery under federal, state or foreign law and whether for compensatory, punitive damages, or other equitable relief which Comstock Belmont Bay 89, L.C. had, now has or may have against each, all, or any of the Belmont Releasees, in any combination thereof, arising out of (1) the Purchase and Sale Agreement, as amended by Amendments One through Nineteen, (2) any claims which were asserted or could have been asserted by Comstock Belmont Bay 89, L.C. in *Comstock Belmont Bay 89, L.C. v. Lawrence A. Wilkes, James R. Epstein, Stephen P. Caruthers, Belmont Bay, L.C., Donald J. Creasy, EFO Capital Management, Inc. and Eric-Belmont Associates LLC*, Fairfax County Civil Action No. 2009-523, (3) any claims which were asserted or could have been asserted by Comstock Belmont Bay 89, L.C. in *Comstock Belmont Bay 89, L.C v. Harbor Point West Associates, LLC, Harbor Point East Associates, LLC, Harbor View Associates, LLC, Harbor Side I Associates, LLC, Belmont Town Center Associates LLC, Stephen P. Caruthers, James Epstein, Eric-Belmont Associates, LLC, WVS Development Associates LLC, Lawrence Wilkes and Belmont Bay Homeowners Association, Inc*., Prince William County Civil Action No. 88853, (4) any claims which were asserted or could have been asserted by Comstock Belmont Bay 89, L.C. in *Belmont Bay, L.C. v. Comstock Belmont Bay 89, L.C. and Comstock Home Building Companies, Inc.*, Fairfax County Civil Action No. 2008-7172, (5) any claims which were asserted or could have been asserted by Comstock Belmont Bay 89, L.C. in *Belmont Bay, L.C. v. Comstock Belmont Bay 89, L.C. and Premier Title, Inc.*, Fairfax County Civil Action No. 2008-7173, and (6) any claims which were asserted or could have been asserted by Comstock Belmont Bay 89, L.C. in *Belmont Bay, L.C., Belmont Town Center Associates LLC and Belmont Town Center Umbrella Association, Inc. v. Comstock Belmont Bay 89, L.C.*, Fairfax County Civil Action No. 2008-12268.

5. Release of the Individual Defendants.

Comstock Belmont Bay 89, L.C. hereby irrevocably and unconditionally releases, acquits, remises, and forever discharges Donald J. Creasy, Stephen P. Caruthers, James R. Epstein and Lawrence A. Wilkes, their successors, heirs, assigns, beneficiaries, and estate (collectively referred to as the "Individual Releasees") from any and all actions, allegations, charges, complaints, claims, demands, debts, liabilities, indemnities, agreements, damages, actions, causes of action, suits, rights, costs, expenses (including attorneys' fees and costs actually incurred) or things of any nature whatsoever and in any capacity whatsoever, known or unknown, suspected or unsuspected, vested or contingent, accrued or not accrued, liquidated or not liquidated, direct, derivative or subrogated, or any other theory of recovery under federal, state or foreign law and whether for compensatory, punitive damages, or other equitable relief, including, but not limited to, any claim which Comstock Belmont Bay 89, L.C. had, now has or may have against each, all, or any of the Individual Releasees, in any combination thereof, arising out of (1) Comstock Belmont Bay 89, L.C.'s ownership or development of, and every other matter or thing related to, Phase 1 of Belmont Town Center and Beacon Park Condominium or Phase 2, Land Bays J and K, Belmont Town Center, (2) any claims which were asserted or could have been asserted by Comstock Belmont Bay 89, L.C. in *Comstock Belmont Bay 89, L.C. v. Lawrence A. Wilkes, James R. Epstein, Stephen P. Caruthers, Belmont Bay, L.C., Donald J. Creasy, EFO Capital Management, Inc. and Eric-Belmont Associates LLC*, Fairfax County Civil Action No. 2009-523, and (3) any

claims which were asserted or could have been asserted by Comstock Belmont Bay 89, L.C. in *Comstock Belmont Bay 89, L.C v. Harbor Point West Associates, LLC, Harbor Point East Associates, LLC, Harbor View Associates, LLC, Harbor Side I Associates, LLC, Belmont Town Center Associates LLC, Stephen P. Caruthers, James Epstein, Eric-Belmont Associates, LLC, WVS Development Associates LLC, Lawrence Wilkes and Belmont Bay Homeowners Association, Inc*., Prince William County Civil Action No. 88853.

6. Release of the Epstein Entities.

Comstock Belmont Bay 89, L.C. releases, acquits, remises, and forever discharges EFO Capital Management, Inc., Eric-Belmont Associates LLC, Harbor Point West Associates, LLC, Harbor Point East Associates, LLC, Harbor View Associates, LLC and Harbor Side I Associates, LLC, and their affiliated entities and each of their past, present or future directors, officers, members or employees (collectively referred to as the "Epstein Releasees"), and any of them, from any and all actions, allegations, charges, complaints, claims, demands, debts, liabilities, indemnities, agreements, damages, vendor's or other liens, actions, causes of action, suits, rights, costs, expenses (including attorneys' fees and costs actually incurred) or things of any nature whatsoever and in any capacity whatsoever, known or unknown, suspected or unsuspected, vested or contingent, accrued or not accrued, liquidated or not liquidated, direct, derivative or subrogated, or any other theory of recovery under federal, state or foreign law and whether for compensatory, punitive damages, or other equitable relief which Comstock Belmont Bay 89, L.C. had, now has or may have against each, all, or any of the Epstein Releasees, in any combination thereof, arising out of (1) any claims which were asserted or could have

been asserted by Comstock Belmont Bay 89, L.C. in *Comstock Belmont Bay 89, L.C. v. Lawrence A. Wilkes, James R. Epstein, Stephen P. Caruthers, Belmont Bay, L.C., Donald J. Creasy, EFO Capital Management, Inc. and Eric-Belmont Associates LLC*, Fairfax County Civil Action No. 2009-523 and (2) any claims which were asserted or could have been asserted by Comstock Belmont Bay 89, L.C. in *Comstock Belmont Bay 89, L.C v. Harbor Point West Associates, LLC, Harbor Point East Associates, LLC, Harbor View Associates, LLC, Harbor Side I Associates, LLC, Belmont Town Center Associates LLC, Stephen P. Caruthers, James Epstein, Eric-Belmont Associates, LLC, WVS Development Associates LLC, Lawrence Wilkes and Belmont Bay Homeowners Association, Inc*., Prince William County Civil Action No. 88853.

7. Release of WVS Development Associates LLC.

Comstock Belmont Bay 89, L.C. releases, acquits, remises, and forever discharges WVS Development Associates LLC, its affiliated entities and its past, present or future directors, officers, members or employees, or any of them, from any and all actions, allegations, charges, complaints, claims, demands, debts, liabilities, indemnities, agreements, damages, vendors liens, actions, causes of action, suits, rights, costs, expenses (including attorneys' fees and costs actually incurred) or things of any nature whatsoever and in any capacity whatsoever, known or unknown, suspected or unsuspected, vested or contingent, accrued or not accrued, liquidated or not liquidated, direct, derivative or subrogated, or any other theory of recovery under federal, state or foreign law and whether for compensatory, punitive damages, or other equitable relief which Comstock Belmont Bay 89, L.C. had, now has or may have against WVS Development Associates LLC arising out of (1) any claims which were asserted or could

have been asserted by Comstock Belmont Bay 89, L.C. in *Comstock Belmont Bay 89, L.C v. Harbor Point West Associates, LLC, Harbor Point East Associates, LLC, Harbor View Associates, LLC, Harbor Side I Associates, LLC, Belmont Town Center Associates LLC, Stephen P. Caruthers, James Epstein, Eric-Belmont Associates, LLC, WVS Development Associates LLC, Lawrence Wilkes and Belmont Bay Homeowners Association, Inc*., Prince William County Civil Action No. 88853.

8. Release of the Comstock Entities.

(a) Belmont Bay, L.C., Belmont Town Center Associates, LLC, Belmont Town Center Umbrella Association, Inc. Belmont Bay Homeowners Association, Inc., (collectively, for purposes of this paragraph only, the "Belmont Releasors") release, acquit, remise, and forever discharge Comstock Belmont Bay 89, L.C., its affiliated entities and each of its past, present or future directors, officers, members or employees (collectively referred to as the "Comstock BB 89 Releasees"), or any of them, from any and all actions, allegations, charges, complaints, claims, demands, debts, liabilities, indemnities, agreements, damages, vendor's and other liens, actions, causes of action, suits, rights, costs, expenses (including attorneys' fees and costs actually incurred) or things of any nature whatsoever and in any capacity whatsoever, known or unknown, suspected or unsuspected, vested or contingent, accrued or not accrued, liquidated or not liquidated, direct, derivative or subrogated, or any other theory of recovery under federal, state or foreign law and whether for compensatory, punitive damages, or other equitable relief which the Belmont Releasors had, now has or may have against each, all, or any of the Comstock BB 89 Releasees, in any combination thereof, arising out of (1) the Purchase and Sale Agreement, as amended by Amendments One through Nineteen, (2)

any claims which were asserted or could have been asserted by the Belmont Releasors in *Comstock Belmont Bay 89, L.C. v. Lawrence A. Wilkes, James R. Epstein, Stephen P. Caruthers, Belmont Bay, L.C., Donald J. Creasy, EFO Capital Management, Inc. and Eric-Belmont Associates LLC*, Fairfax County Civil Action No. 2009-523, (3) any claims which were asserted or could have been asserted by the BelmontReleasors in *Comstock Belmont Bay 89, L.C v. Harbor Point West Associates, LLC, Harbor Point East Associates, LLC, Harbor View Associates, LLC, Harbor Side I Associates, LLC, Belmont Town Center Associates LLC, Stephen P. Caruthers, James Epstein, Eric-Belmont Associates, LLC, WVS Development Associates LLC, Lawrence Wilkes and Belmont Bay Homeowners Association, Inc*., Prince William County Civil Action No. 88853, (4) any claims which were asserted or could have been asserted by the Belmont Releasors in *Belmont Bay, L.C. v. Comstock Belmont Bay 89, L.C. and Comstock Home Building Companies, Inc.*, Fairfax County Civil Action No. 2008-7172, (5) any claims which were asserted or could have been asserted by the Belmont Releasors in *Belmont Bay, L.C. v. Comstock Belmont Bay 89, L.C. and Premier Title, Inc.*, Fairfax County Civil Action No. 2008-7173, and (6) any claims which were asserted or could have been asserted by the Belmont Releasors in *Belmont Bay, L.C., Belmont Town Center Associates LLC and Belmont Town Center Umbrella Association, Inc. v. Comstock Belmont Bay 89, L.C.*, Fairfax County Civil Action No. 2008-12268, except that this release does not include and does not operate to release the Final Consent Judgment Orders or the obligations and claims created thereby.

(b) Donald J. Creasy, Stephen P. Caruthers, James R. Epstein and Lawrence A. Wilkes, their successors, heirs, assigns, beneficiaries, and estate (collectively, for purposes of this paragraph only, the "Individual Releasors") release, acquit, remise, and forever discharge Comstock Belmont Bay 89, L.C., its affiliated entities and each of its past, present or future directors, officers, members or employees (collectively referred to as the "Comstock BB 89 Releasees"), or any of them, from any and all actions, allegations, charges, complaints, claims, demands, debts, liabilities, indemnities, agreements, damages, vendor's and other liens, actions, causes of action, suits, rights, costs, expenses (including attorneys' fees and costs actually incurred) or things of any nature whatsoever and in any capacity whatsoever, known or unknown, suspected or unsuspected, vested or contingent, accrued or not accrued, liquidated or not liquidated, direct, derivative or subrogated, or any other theory of recovery under federal, state or foreign law and whether for compensatory, punitive damages, or other equitable relief which the Individual Releasors had, now has or may have against each, all, or any of the Comstock BB 89 Releasees, in any combination thereof, arising out of (1) Comstock Belmont Bay 89, L.C.'s ownership or development of, and every other matter or thing related to, Phase 1 of Belmont Town Center and Beacon Park Condominium or Phase 2, Land Bays J and K, Belmont Town Center, (2) any claims which were asserted or could have been asserted by the Individual Releasors in *Comstock Belmont Bay 89, L.C. v. Lawrence A. Wilkes, James R. Epstein, Stephen P. Caruthers, Belmont Bay, L.C., Donald J. Creasy, EFO Capital Management, Inc. and Eric-Belmont Associates LLC,* Fairfax County Civil Action No. 2009-523, (3) any claims which were asserted or could have been asserted by the Individual Releasors. in *Comstock Belmont Bay 89, L.C v. Harbor Point West Associates, LLC, Harbor Point East Associates, LLC, Harbor View Associates, LLC, Harbor Side I Associates, LLC, Belmont Town Center Associates LLC,*

Stephen P. Caruthers, James Epstein, Eric-Belmont Associates, LLC, WVS Development Associates LLC, Lawrence Wilkes and Belmont Bay Homeowners Association, Inc., Prince William County Civil Action No. 88853, except that this release does not include and does not operate to release the Final Consent Judgment Orders or the obligations and claims created thereby.

(c) EFO Capital Management, Inc., Eric-Belmont Associates LLC, Harbor Point West Associates, LLC, Harbor Point East Associates, LLC, Harbor View Associates, LLC and Harbor Side I Associates, LLC, and their affiliated entities and each of their past, present or future directors, officers, members or employees, (collectively, for purposes of this paragraph only, the "Epstein Releasors") release, acquit, remise, and forever discharge Comstock Belmont Bay 89, L.C., its affiliated entities and each of its past, present or future directors, officers, members or employees (collectively referred to as the "Comstock BB 89 Releasees"), or any of them, from any and all actions, allegations, charges, complaints, claims, demands, debts, liabilities, indemnities, agreements, damages, vendor's and other liens, actions, causes of action, suits, rights, costs, expenses (including attorneys' fees and costs actually incurred) or things of any nature whatsoever and in any capacity whatsoever, known or unknown, suspected or unsuspected, vested or contingent, accrued or not accrued, liquidated or not liquidated, direct, derivative or subrogated, or any other theory of recovery under federal, state or foreign law and whether for compensatory, punitive damages, or other equitable relief which the Epstein Releasors had, now has or may have against each, all, or any of the Comstock BB 89 Releasees, in any combination thereof, arising out of (1) any claims which were asserted or could have been asserted by the Epstein Releasors in *Comstock*

Belmont Bay 89, L.C. v. Lawrence A. Wilkes, James R. Epstein, Stephen P. Caruthers, Belmont Bay, L.C., Donald J. Creasy, EFO Capital Management, Inc. and Eric-Belmont Associates LLC, Fairfax County Civil Action No. 2009-523, (2) any claims which were asserted or could have been asserted by the Epstein Releasors. in *Comstock Belmont Bay 89, L.C v. Harbor Point West Associates, LLC, Harbor Point East Associates, LLC, Harbor View Associates, LLC, Harbor Side I Associates, LLC, Belmont Town Center Associates LLC, Stephen P. Caruthers, James Epstein, Eric-Belmont Associates, LLC, WVS Development Associates LLC, Lawrence Wilkes and Belmont Bay Homeowners Association, Inc*., Prince William County Civil Action No. 88853, except that this release does not include and does not operate to release the Final Consent Judgment Orders or the obligations and claims created thereby.

(d) WVS Development Associates LLC, its affiliated entities and its past, present or future officers, directors, members or employees (collectively, for purposes of this paragraph only, the "WVS Releasors") release, acquit, remise, and forever discharge Comstock Belmont Bay 89, L.C., its affiliated entities and each of its past, present or future directors, officers, members or employees (collectively referred to as the "Comstock BB 89 Releasees"), or any of them, from any and all actions, allegations, charges, complaints, claims, demands, debts, liabilities, indemnities, agreements, damages, vendor's and other liens, actions, causes of action, suits, rights, costs, expenses (including attorneys' fees and costs actually incurred) or things of any nature whatsoever and in any capacity whatsoever, known or unknown, suspected or unsuspected, vested or contingent, accrued or not accrued, liquidated or not liquidated, direct, derivative or subrogated, or any other theory of recovery under federal, state or foreign law and

whether for compensatory, punitive damages, or other equitable relief which the Releasors had, now has or may have against each, all, or any of the Comstock BB 89 Releasees, in any combination thereof, arising out of (1) any claims which were asserted or could have been asserted by the WVS Releasors. in *Comstock Belmont Bay 89, L.C v. Harbor Point West Associates, LLC, Harbor Point East Associates, LLC, Harbor View Associates, LLC, Harbor Side I Associates, LLC, Belmont Town Center Associates LLC, Stephen P. Caruthers, James Epstein, Eric-Belmont Associates, LLC, WVS Development Associates LLC, Lawrence Wilkes and Belmont Bay Homeowners Association, Inc*., Prince William County Civil Action No. 88853, except that this release does not include and does not operate to release the Final Consent Judgment Orders or the obligations and claims created thereby.

(e) If the events described in Section 3(b) hereof occur, then the releases given hereby shall be null and void and of no force and effect from their inception.

8.1 No Release of this Agreement.

Notwithstanding anything to the contrary in the foregoing paragraphs 3 through 8, nothing herein releases any of the released parties from any claim arising out of this Agreement or any breach hereof.

8.2 All parties Represented by Counsel.

Each party represents that he or it has carefully read and fully understands all the provisions of this Agreement, that there has been an adequate opportunity to consult with an attorney regarding this Agreement, and that he or it is executing this Agreement voluntarily because he or it wishes to take advantage of the consideration provided.

9. Fully Integrated Settlement Agreement.

Each party hereto represents and acknowledges for himself or itself that in executing this Agreement, he or it does not rely upon, and has not relied upon, any representation or statement not set forth herein. This Agreement sets forth the entire agreement between the parties hereto, and fully supersedes any and all prior agreements or understandings between the parties hereto. The parties acknowledge that there are no agreements, understandings, warranties or representations between them other than those set forth herein.

10. Further Assurances

Each party hereto agrees that they are sole legal owners of all rights, title and interest in all claims or other matters arising from the subject matter of this Agreement, and that they have not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or other matter released herein.

11. Choice of Law

This Agreement shall be construed in accordance with, and governed by, the laws of the Commonwealth of Virginia excluding its choice of law rules.

13. Prevailing Party Attorneys Fees

If any proceeding is initiated by any party against another party to enforce this Agreement, the party prevailing in such litigation or proceeding shall be entitled to recover in addition to damages allowed by law and other relief, all court costs and reasonable attorney fees incurred in connection therewith.

14. Severability

If, at any time after the effective date of this Agreement, any provision of this Agreement shall be held by any court of competent jurisdiction to be illegal, or void such provision shall be of no force and effect. The illegality or unenforceability of such provision, however, shall have no effect upon, and shall not impair the enforceability of, any other provision of this Agreement.

15. Counterparts

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same agreement.

WITNESS the execution of this Agreement effective as of the day and year first set forth above:

Belmont Bay, L.C.

By: _____
Donald J. Creasy, Manager

By: _____
Charles P. Miller, Manager

Belmont Town Center Associates, LLC

By: _____
Stephen P. Caruthers, Manager

By: _____
James R. Epstein, Manager

Belmont Town Center Umbrella Association, Inc.

By: _____
Donald J. Creasy
Its: Treasurer

[SIGNATURES CONTINUE ON NEXT PAGE]

Belmont Bay Homeowners Association, Inc.

By: _____
Donald J. Creasy,
Its: Secretary/Treasurer

Comstock Belmont Bay 89, L.C. (also known as Comstock Belmont Bay 8 & 9, L.C.)
by Comstock Homebuilding Company, Inc., Manager

By: _____
Gregory V. Benson
Its: Chief Operating Officer

Comstock Homebuilding Companies, Inc.

By: _____
Gregory V. Benson
Its: Chief Operating Officer

Premier Title, Inc.

By: _____
Gregory D. Haight,
Its: Secretary/Treasurer

_____
Donald J. Creasy

_____
Stephen P. Caruthers

_____
James R. Epstein

[SIGNATURES CONTINUE ON NEXT PAGE]

Lawrence A. Wilkes

EFO Capital Management, Inc.

By: _____
J. Mitchell Neitzey, President

Eric-Belmont Associates, LLC
by EFO Capital Management, Inc., Manager

By: _____
J. Mitchell Neitzey
Its: President

Harbor Point West Associates, LLC
by EFO Capital Management, Inc., Non-Member Manager

By: _____
J. Mitchell Neitzey
Its: President

Harbor Point East Associates, LLC
by EFO Capital Management, Inc., Non-Member Manager

By: _____
J. Mitchell Neitzey
Its: President

Harbor View Associates, LLC
by EFO Capital Management, Inc., Non-Member Manager

By: _____
J. Mitchell Neitzey
Its: President

[SIGNATURES CONTINUE ON NEXT PAGE]

Harbor Side I Associates, LLC
by EFO Capital Management, Inc., Non-Member Manager

By: _____
J. Mitchell Neitzey
Its: President

WVS Development Associates LLC

By: _____

CONSENSUAL FORECLOSURE AND SETTLEMENT AGREEMENT

This CONSENSUAL FORECLOSURE AND SETTLEMENT AGREEMENT ("***Agreement***") is made and entered into as of August ____, 2009 (the "***Effective Date***") by and among COMSTOCK HOMEBUILDING COMPANIES, INC., a Delaware corporation ("***Borrower***"); COMSTOCK MASSEY PRESERVE, L.L.C., a Virginia limited liability company ("***Comstock Massey***"); COMSTOCK HOMES OF RALEIGH, L.L.C., a North Carolina limited liability company ("***Comstock Raleigh***"); COMSTOCK HOLLAND ROAD, L.L.C., a Virginia limited liability company ("***Comstock Holland***"); COMSTOCK HOMES OF ATLANTA, LLC, a Georgia limited liability company ("***Comstock Atlanta***"); COMSTOCK JAMES ROAD, LLC, a Georgia limited liability company ("***Comstock James Road***"); TRIBBLE ROAD DEVELOPMENT, LLC, a Georgia limited liability company ("***Tribble Road Development***"); COMSTOCK SUMMERLAND, L.C., a Virginia limited liability company ("***Comstock Summerland***"); COMSTOCK LANDING, LLC, a Virginia limited liability company ("***Comstock Landing***"); COMSTOCK WAKEFIELD, LLC, a Virginia limited liability company ("***Comstock Wakefield***"); COMSTOCK WAKEFIELD II, LLC, a Virginia limited liability company ("***Comstock Wakefield II***"); and WACHOVIA BANK, NATIONAL ASSOCIATION, a national banking association ("***Wachovia***" or "***Lender***") (Comstock Massey, Comstock Raleigh, Comstock Holland, Comstock Atlanta, Comstock James Road, Tribble Road Development, Comstock Summerland, Comstock Wakefield, and Comstock Wakefield II are collectively referred to as "***Guarantors***"; Borrower and Guarantors are collectively referred to as "***Obligors***" and each, individually, as an "***Obligor***"; Wachovia and the Obligors are collectively referred to as the "***Parties***" and each, individually, as a "***Party***"). Capitalized terms used but not defined in this Agreement shall have their meaning in the "***Existing Loan Documents***" defined below.

RECITALS

A. Comstock was originally indebted to Lender under a Revolving Promissory Note dated May 26, 2006 in the principal amount of $40,000,000.00 (as modified and amended, if applicable, the "***Original Note***").

B. In connection with the Original Note, the Obligors, as applicable, executed the following documents and agreements:

1. Credit Agreement (the "***Credit Agreement***") dated May 26, 2006 between Lender and Comstock, joined into by Comstock Raleigh (formerly Capitol Homes, Inc.) and Comstock Massey (formerly Comstock Wesel, L.L.C.), as modified and amended;

2. Deed of Trust, Security Agreement and Financing Statement dated May 26, 2006 from Comstock Massey (formerly Comstock Wesel, L.L.C.) to TRSTE, Inc., a Virginia corporation ("***TRSTE***") and recorded in the Wake County Register of Deeds in Book 11976, Page 1996;

3. Deed of Trust, Security Agreement and Financing Statement dated May 26, 2006 from Comstock Raleigh (formerly Capitol Homes, Inc.) to TRSTE and recorded in the Durham County Register of Deeds in Book 5222, Page 995;

4. Deed of Trust, Security Agreement and Financing Statement dated May 26, 2006 from Comstock Raleigh (formerly Capitol Homes, Inc.) to TRSTE and recorded in the Johnston County Register of Deeds in Book 3128, Page 783;

5. Deed of Trust, Security Agreement and Financing Statement dated May 26, 2006 from Comstock Raleigh (formerly Capitol Homes, Inc.) to TRSTE and recorded in the Wake County Register of Deeds in Book 11976, Page 1982;

6. Supplemental Deed of Trust, Security Agreement and Financing Statement dated June 26, 2006 from Comstock Raleigh (formerly Capitol Homes, Inc.) to TRSTE and recorded in the Wake County Register of Deeds in Book 12031, Page 441;

7. Supplemental Deed of Trust, Security Agreement and Financing Statement dated July 21, 2006 from Comstock Raleigh (formerly Capitol Homes, Inc.) to TRSTE and recorded in the Johnston County Register of Deeds in Book 3165, Page 476;

8. Supplemental Deed of Trust, Security Agreement and Financing Statement dated July 25, 2006 from Comstock Raleigh (formerly Capitol Homes, Inc.) to TRSTE and recorded in the Wake County Register of Deeds in Book 12079, Page 404;

9. Deed of Trust, Security Agreement and Financing Statement dated July 21, 2006 from Comstock Landing, LLC to TRSTE and recorded in the Wake County Register of Deeds in Book 12080, Page 830;

10. Supplemental Deed of Trust, Security Agreement and Financing Statement dated July 27, 2006 from Comstock Wakefield and Comstock Wakefield II to TRSTE and recorded in the Wake County Register of Deeds in Book 12094, Page 1730;

11. Deed to Secure Debt, Security Agreement and Financing Statement dated August 29, 2006 from Comstock Atlanta to Lender and recorded with Cherokee County Clerk of Superior Court in Book 9018, Page 173;

12. Deed to Secure Debt, Security Agreement and Financing Statement dated August 29, 2006 from Comstock Atlanta to Lender and recorded with Forsyth County Clerk of Superior Court in Book 4428, Page 387;

13. Deed to Secure Debt, Security Agreement and Financing Statement dated August 29, 2006 from Comstock Atlanta to Lender and recorded with Jackson County Clerk of Superior Court in Book 45I, Page 458;

14. Deed to Secure Debt, Security Agreement and Financing Statement dated September 14, 2006 from Comstock James Road to Lender and recorded with Forsyth County Clerk of Superior Court in Book 4450, Page 620;

15. Deed to Secure Debt, Security Agreement and Financing Statement dated September 27, 2006 from Tribble Road Development to Lender and recorded with Forsyth County Clerk of Superior Court on in Book 4469, Page 410;

16. Supplemental Deed of Trust, Security Agreement and Financing Statement dated October 18, 2006 from Comstock Raleigh to TRSTE and recorded in the Wake County Register of Deeds in Book 12223, Page 2235;

17. Supplemental Deed of Trust, Security Agreement and Financing Statement dated November 9, 2006 from Comstock Raleigh to TRSTE and recorded in the Wake County Register of Deeds in Book 12261, Page 489;

18. Deed of Trust, Security Agreement and Financing Statement dated November 13, 2006 from Comstock Summerland to TRSTE and recorded in the Prince William County Register of Deeds as instrument number 200611170162991;

19. Supplemental Deed of Trust, Security Agreement and Financing Statement dated December 13, 2006 from Comstock Raleigh to TRSTE and recorded in the Wake County Register of Deeds in Book 12308, Page 2241;

20. Unconditional Guaranty dated May 26, 2006 by Comstock Raleigh (formerly Capitol Homes, Inc.) in favor of Lender;

21. Unconditional Guaranty dated May 26, 2006 by Comstock Massey (formerly Comstock Wesel, L.L.C.) in favor of Lender;

22. Unconditional Guaranty dated July 17, 2006 by Comstock Holland in favor of Lender;

23. Unconditional Guaranty dated July 21, 2006 by Comstock Landing in favor of Lender;

24. Unconditional Guaranty dated August 1, 2006 by Comstock Wakefield in favor of Lender;

25. Unconditional Guaranty dated August 1, 2006 by Comstock Wakefield II in favor of Lender;

26. Unconditional Guaranties dated August 29, 2006 by Comstock Atlanta in favor of Lender;

27. Unconditional Guaranty dated September 14, 2006 by Comstock James Road in favor of Lender;

28. Unconditional Guaranty dated September 27, 2006 by Tribble Road Development in favor of Lender;

29. Unconditional Guaranty dated October 18, 2006 by Comstock Raleigh in favor of Lender; and

30. Unconditional Guaranty dated November 13, 2006 by Comstock Summerland in favor of Lender.

C. Thereafter, the Parties entered into that certain Forbearance Agreement made effective February 21, 2007, as modified and amended by letter agreements dated January 15, 2008, March 3, 2008, and April 14, 2008 (the "***Original Forbearance Agreement***").

D. Thereafter, the Parties entered into that certain Loan Modification and Forbearance Agreement made effective December 10, 2008 (the "***Second Forbearance Agreement***"). In conjunction with the Second Forbearance Agreement, the Original Note was amended and split into three separate notes: (1) a term note in the principal amount of $11,608,484.00 (the "***Term Note***"); (2) a revolving note in the principal amount of $8,000,000.00 (the "***Revolver***"); and (3) a term note in the principal amount of $3,000,000.00 (the "***Tribble Road Note***"). The Term Note, the Revolver, and the Tribble Road Note are collectively referred to as the "***Amended Notes***".

E. The documents described in Paragraphs A through D, all financing statements filed in conjunction therewith, and all other documents executed or authorized by Obligors in connection with the Original Note, the Credit Agreement, the Original Forbearance Agreement, the Second Forbearance Agreement, and the Amended Notes are collectively referred to as the "***Existing Loan Documents***". The Existing Loan Documents, together with this Agreement and any documents executed pursuant to this Agreement, are collectively referred to as the "***Loan Documents***". All indebtedness whether now existing or hereafter arising that is due and owing by Obligors to Lender under the Loan Documents is collectively referred to as the "***Obligations***". All real and personal property and fixtures pledged as collateral for the Obligations is collectively referred to as the "***Property***".

F. Obligors acknowledge that (1) the Forbearance Period has terminated; (2) as of the Effective Date, Borrower is in default under the Existing Loan Documents; and (3) as a result of the default, all Obligations are immediately due and payable in full and Lender is presently entitled to exercise all rights and remedies available to it under the Existing Loan Documents and under applicable law.

G. Subject to the terms and conditions of this Agreement (1) Obligors have given their consent to, and have agreed to cooperate with Lender in, the foreclosure of the Collateral (hereafter defined), and (2) Lender has agreed to accept a promissory note in the amount of $1,805,243.00 in full satisfaction of any and all claims Lender has or may have against Obligors, including but not limited to any deficiency following completion of the foreclosures, with the exception of any claim for a breach of the representations and warranties contained in this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, the Parties due hereby stipulate, covenant and agree as follows:

1. Representations, Warranties and Acknowledgements. Obligors, jointly and severally, hereby represent, warrant and acknowledge to Lender, upon which Lender is relying, that:

1.1 The foregoing recitals are true and correct.

1.2 Each is authorized under applicable law to execute, deliver and perform this Agreement and all documents, instruments and agreements executed in connection herewith and neither the execution and delivery of this Agreement nor the fulfillment of or compliance with any of the terms and conditions of this Agreement will, to the best of each Obligor's knowledge, conflict with or result in a breach of the terms, conditions or provisions of or constitute a violation or default under any contract, agreement, applicable law, regulation, judgment, writ, order or decree to which any of Obligors, or their respective properties are subject.

1.3 The Existing Loan Documents are legal, valid and binding obligations of Obligors in accordance with their respective terms. The liens, security interests and other encumbrances in favor of Lender granted under the Existing Loan Documents are duly perfected and are not subject to avoidance or invalidation for any reason.

1.4 There are no pending, nor to the best knowledge of Obligors, threatened actions, litigation, disputes, alleged defaults for breaches, suits or proceedings against or in any way relating adversely to any Obligor or its properties before any court, arbitrator or governmental or administrative body or agency, except as described in Schedule 1.4 attached hereto.

1.5 Obligors have received no notice of default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which any of them is a party or by which their properties are bound except as described in this Agreement or set forth in Schedule 1.5 attached hereto.

1.6 Neither this Agreement nor any report, schedule, certificate, agreement or any instrument heretofore or contemporaneously herewith provided to Lender by Obligors contain any misrepresentation or untrue statement of facts or omits to state any material facts.

1.7 Neither the execution and delivery of this Agreement nor the performance of any actions required by this Agreement is being consummated by any party to hinder, delay or defraud any entity to which any Obligors were or are now or will hereafter become indebted.

1.8 As of the Effective Date, the balances due under the Amended Notes, excluding Lender's attorneys' fees and costs, were as follows:

Term Note	
Principal	$
Accrued Interest	$
Total	**$**

Revolver	
Principal	$
Accrued Interest	$
Total	**$**

Tribble Road Note	
Principal	$
Accrued Interest	$
Total	**$**

2. Foreclosure of Collateral. Obligors acknowledge that Lender intends to commence proceedings to foreclose its security title, liens, and security interests in and to all Property securing the Obligations, as described in the Loan Documents (collectively, the "***Collateral***"), in accordance with the provisions of the Loan Documents and applicable law (the "***Foreclosure Proceedings***"). Obligors jointly and severally (i) ratify and affirm Lender's security title, liens, and security interests in and to the Collateral, (ii) acknowledge and agree that Obligors have received commercially reasonable, timely, and accurate notice of Lender's intention to foreclose its security title, liens, and security interests in the Collateral and that Lender has satisfied all requirements set forth in the Loan Documents relating to commencement of the Foreclosure Proceedings, (iii) covenant and agree to use commercially reasonable efforts to cooperate with Lender in connection with the Foreclosure Proceedings, (iv) covenant and agree that none of Obligors, or any person claiming by or through any of Obligors, shall contest, oppose, delay, or otherwise interfere with the commencement and prosecution of the Foreclosure Proceedings (or any foreclosure sale arising from the Foreclosure Proceedings), and (v) covenant and agree not to file any voluntary bankruptcy petition (or solicit the filing of an involuntary bankruptcy petition) with respect to any owner of Collateral other than Comstock Atlanta before the earlier of (a) completion of the foreclosure of Lender's liens and security interests in that Collateral, or (b) the 181st day following the Effective Date. Lender agrees to reimburse Obligors for any out-of-pocket expenses incurred by Obligors in connection with Obligors' assistance with the Foreclosure Proceedings, but only to the extent such expenses have been approved by Lender in writing.

3. Foreclosure Waivers. To facilitate the expeditious conduct of the foreclosure proceedings, Obligors, as applicable, shall execute and deliver to Lender such documents as may be permitted under the laws of Virginia, North Carolina, and Georgia in order to expedite the foreclosure process, including, without limitation, a "Waiver of Right to Notice of Hearing and Right to Hearing" in the form attached hereto as Exhibit A for each of the deeds of trust on record in North Carolina (collectively, the "***Waivers***"). Obligors authorize Lender to change the first page of each of the Waivers to reflect the proper caption of the foreclosure proceedings in North Carolina.

4. Deliveries by Obligors. Obligors covenant to Lender that within five (5) business days after each written request therefor (to the extent that any of such items are in the possession or direct control of Obligors), Obligors will deliver or cause the following items relating to the Collateral to be delivered to Lender whether such request is made prior or subsequent to the date of this Agreement or the foreclosure of any of the Collateral: (i) any warranties, guaranties, and assurances given by third parties; (ii) any certificates of occupancy, licenses, and other governmental permits or notices; (iii) any surveys, plats, drawings, engineering reports, environmental reports, appraisal reports, maps, plans and specifications, and other similar matters; (iv) any service contracts, supply contracts, management agreements, employment agreements, maintenance agreements, or other similar agreements; (v) any tax assessments, notices, bills and/or statements; and (vi) any keys necessary to obtain full access to the Collateral.

5. Contracts. Obligors represent and warrant to Lender that, as of the date of this Agreement and to the actual knowledge of Obligors after due inquiry and investigation, attached hereto as Schedule 5 is a true, complete, and correct listing of all material commitments, rental agreements, equipment leases, guaranties, leases, or contracts entered into by any Obligor that could affect Lender's rights with respect to the Collateral.

6. Payables. Obligors represent and warrant to Lender that, as of the date of this Agreement and to the actual knowledge of Obligors after due inquiry and investigation, attached hereto as Schedule 6 is a true and correct listing of all known payables owing in connection with the Collateral, including trade payables, mechanics' liens, real and personal property taxes, utility charges, lease payments, and license and permit fees (hereafter collectively called the "***Payables***").

7. Bonds. Obligors represent and warrant to Lender that Schedule 7, attached hereto, contains a complete list of all bonds, letters of credit and cash escrows (the "***Bonds***") posted by any Obligor with the local governmental authorities (each an "***Authority***" and, together, the "***Authorities***") having jurisdiction over the Collateral as of the date of this Agreement. Each of the Bonds shall remain the obligation of the Obligor posting the applicable Bond, and Lender agrees that Obligors shall be authorized to communicate with the Authorities with respect to extensions, renewals or reductions of the Bonds and, if required by the Authority, shall execute such standard authorization forms as any Authority may require for an Obligor to transact with the Authority with respect to the Bonds. Lender shall allow Obligors reasonable access to the Collateral for the purpose of performing any work which may be required in order to obtain a reduction or release of the Bonds, and Obligors agree to indemnify and save Lender harmless from any claim that may arise against Lender by virtue of any Obligor, its agents or employees entering on the Collateral. Prior to entry on the Collateral, the applicable Obligor shall deliver to Lender a certificate of insurance evidencing commercial general liability insurance in the amount of One Million Dollars ($1,000,000) per occurrence and in the aggregate (which limits shall apply for single limit bodily injury, property damage and products-completed operations), listing the Lender as an additional insured. Lender and Obligors shall designate individuals responsible for receiving and sharing correspondence related to the Bonds, and each shall forward all such correspondence or other information related to the Bonds to the other party within fifteen (15) days of its receipt thereof. Lender's and Obligors' designated Bond contacts are as follows:

Lender:
Phone:
E-mail:

Obligor: Kelly Wyche
Phone: (703) 230-1112
E-mail: kwyche@comstockhomebuilding.com

8. Closing of Units. Obligors shall use commercially reasonable efforts to close the sale of the following units on or before September 30, 2009 (subject to Lender's written approval of the HUD-1 settlement statement in each instance):

Obligation Number	Market	Community	Bldg	Lot
000-26-8356-3	VA	Summerland	13	2B
000-26-8353-0	VA	Summerland	13	3A
000-26-8358-9	VA	Summerland	13	5B
000-26-8359-7	VA	Summerland	14	3A
000-26-8368-8	VA	Summerland	14	5B
000-26-8369-6	VA	Summerland	14	2B

9. Subordinate Deficiency Note. In consideration of Lender's entering into this Agreement and in full settlement of all any all claims Lender has or may have against Obligors under the Existing Loan Documents, including but not limited to any deficiency claims of Lender against the Obligors arising out of the Foreclosure Proceedings, Borrower will execute and deliver to Lender at Closing a promissory note in the principal amount of $1,805,243.00 substantially in the form of Exhibit B attached hereto (the "***Subordinate Deficiency Note***"). The Subordinate Deficiency Note shall be due and payable in full on the third anniversary of the Subordinate Deficiency Note. The Subordinate Deficiency Note shall be non-interest bearing unless there is a default, in which event interest shall accrue on the unpaid principal balance of the Subordinate Deficiency Note at the rate of 3% per annum from and after the date of the default. Borrower shall be entitled to a dollar-for-dollar credit against the unpaid principal amount of the Subordinate Deficiency Note for any proceeds paid to Lender from the closing of any completed units, including but not limited to the units described in paragraph 8 above, subject to (a) Lender's written approval of the HUD-1 settlement statement in each instance , and (b) such payment being received by Lender on or before September 30, 2009. Any credits to which Borrower becomes entitled under this section shall be reflected in an Amended and Restated Subordinate Deficiency Note, which shall be issued by Lender on or before October 14, 2009.

10. Release of Liability under the Loan Documents. Notwithstanding any provision in this Agreement to the contrary, in consideration of Obligors' agreement to cooperate with the foreclosure of Lender's liens and security interests and Obligors' execution of the Subordinate Deficiency Note, Lender hereby releases Obligors from any liability under the Loan Documents except for the liability evidenced by the Subordinate Deficiency Note (as amended, if applicable) and any liability associated with a breach of the representations and warranties contained in this Agreement (provided, however, that the Amended Notes shall remain in full force and effect and shall continue to be enforceable against the Collateral for purposes of the Foreclosure Proceedings).

11. Cash Collateral. Obligors acknowledge and agree that (a) Lender has lawfully enforced its security interest in the accrued interest on Borrower's Certificate of Deposit #514291620837144 (the "***Cash Collateral***"), such that Borrower no longer has any right, title or interest in the Cash Collateral, and (b) Lender has the right to apply the Cash Collateral to the Obligations in any manner in Lender's discretion.

12. Reaffirmation of Obligations. Except as expressly stated in this Agreement, no action of Lender under this Agreement or otherwise shall act to release Obligors from the Obligations, all of which are hereby ratified and affirmed the same as if repeated on this date, and Obligors acknowledge that none of them has any legal or equitable defenses or offsets with respect to the Obligations except to the extent of the release contained in Section 10 above. Obligors ratify and confirm all terms and conditions of the Obligations and the Loan Documents, and acknowledge that the same are in full force and effect and constitute the legal, valid and binding obligations of Obligors enforceable against Obligors in accordance with their terms.

13. No Novation. Obligors stipulate and agree that:

13.1 This Agreement is not a novation and, except as otherwise modified hereby, the terms and provisions of the Existing Loan Documents shall remain in full force and effect. In the event of any conflict between the terms of this Agreement and the terms of the Existing Loan Documents, the terms of this Agreement shall control.

13.2 The liens and security interests granted under the Existing Loan Documents will continue to secure payment of the Obligations (including the Amended Notes) in accordance with their original priorities.

14. Affirmative Covenants. Obligors covenant and agree that from the date hereof and until payment in full of the Subordinate Deficiency Note, unless Lender shall otherwise consent in writing:

14.1 Obligors shall execute such other and further documents, instruments and agreements as Lender may reasonably request to effect the express provisions of this Agreement; and

14.2 Obligors shall allow Lender and its agents, during normal business hours, to have access to the Property and all books, records and such other documents of Obligors as Lender shall reasonably require, and allow Lender to make copies thereof; and deliver promptly such other information regarding the operation, business affairs, and financial condition of Obligors which Lender may reasonably request.

15. Additional Representations and Warranties. As of the effective date of this Agreement, Obligors make the following representations and warranties with respect to all of the Property except the Tribble Road Property, as that term is defined in the Second Forbearance Agreement (the "Non-Tribble Property"):

15.1 the following projects have adequate legal vehicular and pedestrian access to public roads:

(i) _____,

(ii) _____,

(iii) _____ and

(iv) _____;

15.2 to the best of Obligors' knowledge, sewer, water and all other appropriate utilities are available at ordinary costs at the Non-Tribble Property through public or unencumbered private easements, and in sufficient quantities to serve the Non-Tribble Property;

15.3 if applicable, required written approvals of septic tanks or wells have been issued by all appropriate governmental authorities in respect of the Non-Tribble Property;

15.4 the Plans and Specifications and the anticipated use of the Non-Tribble Property materially comply with all applicable restrictive covenants, zoning ordinances, building laws and codes, and other applicable laws, regulations and requirements (including without limitation, the Americans with Disabilities Act, as amended);

15.5 the current zoning classification of the Non-Tribble Property and any covenants and restrictions affecting the Non-Tribble Property permit construction of the planned improvements on the Non-Tribble Property;

15.6 Borrower has obtained, or has the present ability to obtain, all permits and approvals of any type required to complete the improvements on the Non-Tribble Property (subject to any moratoria which may be imposed by the applicable governmental authorities after the Effective Date, although Obligors warrant that they are unaware of any impending or threatened moratoria), provided however, Lender acknowledges permits may become unavailable should the previously approved development plans for the Non-Tribble Property expire;

15.7 all public improvements appurtenant to the Non-Tribble Property have been fully authorized by appropriate ordinance or municipal action;

15.8 as of the Effective Date, Borrower has satisfied all conditions imposed by any governmental authority in connection with any grant of subdivision or land development approval;

15.9 no notice of taking by eminent domain or condemnation of any part of the Non-Tribble Property has been received, and Borrower has no knowledge that any such proceeding is contemplated;

15.10 to the best of Obligors' knowledge, no part of the Non-Tribble Property has been damaged as a result of any fire, explosion, accident, flood or other casualty which is not now fully restored; and

15.11 to the best of Obligors' knowledge, there are presently no environmental conditions on the Non-Tribble Property that may require remedial action in the future.

16. **Release of Claims and Covenant Not to Sue. As a material inducement to Lender to enter into this Agreement and to grant the additional concessions to Obligors reflected herein, all in accordance with and subject to the terms and conditions of this Agreement, and all of which are to their direct advantage and benefit, Obligors, jointly and**

severally, do hereby: (a) remise, release, acquit, satisfy and forever discharge Lender, and all of the past, present and future officers, directors, employees, agents, attorneys, representatives, participants, successors and assigns of Lender, from any and all manner of debts, accountings, bonds, warranties, representations, covenants, promises, contracts, controversies, agreements, liabilities, obligations, expenses, damages, judgments, executions, actions, claims, demands and causes of action of any nature whatsoever, whether at law or in equity, either now accrued or hereafter maturing and whether known or unknown, which any Obligor now has or hereafter can, shall or may have by reason of any matter, cause or thing, from the beginning of the world to and including the date of this Agreement, including specifically, but without limitation, matters arising out of, in connection with or relating to (i) the Obligations, (ii) the Loan Documents or the obligations evidenced thereby, including, the administration or funding thereof, and (iii) any other relationship, agreement or transaction between any Obligor and Lender or any of their respective subsidiaries or affiliates; and (b) covenant and agree never to institute or cause to be instituted or continue prosecution of any suit or other form of action or proceeding of any kind or nature whatsoever against Lender or any subsidiaries or affiliates of Lender, or any of its past, present or future officers, directors, employees, agents, attorneys, representatives, participants, successors or assigns, by reason of or in connection with any of the foregoing matters, claims or causes of action, provided, however, that the foregoing release and covenant not to sue shall not apply to any claims arising out of the performance of this Agreement with respect to acts, occurrences or events transpiring after the date of this Agreement.

17. Waiver of Automatic Stay; Supplemental Stay. Obligors acknowledge and agree that in the event of the filing of any petition for bankruptcy relief filed by or against any Obligor:

17.1 Obligors consent to the entry of an order granting Lender relief from the automatic stay of section 362 of the Bankruptcy Code and shall not assert or request any other party to assert that the automatic stay provided by section 362 of the Bankruptcy Code shall operate or be interpreted to stay, interdict, condition, reduce or inhibit the ability of Lender to enforce any rights it has under the Loan Documents or any other rights Lender has against any Obligor or against any property owned by any Obligor; and

17.2 Obligors shall not seek or request any other party to seek a supplemental stay or any other relief, whether injunctive or otherwise, pursuant to section 105 of the Bankruptcy Code or any other provision of the Bankruptcy Code, to stay, interdict, condition, reduce or inhibit the ability of Lender to enforce any rights it has under the Loan Documents or any other rights Lender has against any Obligor or against any property which it owns.

18. Miscellaneous.

18.1 Cumulative Rights. No right, power or remedy conferred upon or reserved to Lender in the Loan Documents is exclusive of any other right, power or remedy conferred upon the Lender thereunder or at law or in equity. Each remedy shall be cumulative and may be exercised by Lender concurrently or consecutively in its discretion.

18.2 No Waiver. Lender may, in its discretion, from time to time waive or forbear from enforcing any provision contained in this Agreement or the Subordinate Deficiency Note, and no such waiver or forbearance shall be deemed a waiver by Lender of any other right or remedy provided herein or by law or be deemed a waiver of the right at any later time to enforce strictly all provisions contained in this Agreement or the Subordinate Deficiency Note and to exercise any and all remedies provided herein and by law.

18.3 Headings. The headings of the articles, sections and subsections of this Agreement are for the convenience of reference only, are not to be considered a part hereof, and shall not limit or otherwise affect any of the terms hereof or thereof.

18.4 Admissions. Obligors expressly acknowledge and agree that the waivers, estoppels and releases contained in this Agreement shall not be construed as an admission of wrongdoing, liability or culpability on the part of Lender or an admission by Lender of the existence of any claims of any Obligor against Lender.

18.5 Construction of Agreement. Each party acknowledges that it has participated in the negotiation of this Agreement, and no provision of this Agreement shall be construed against or interpreted to the disadvantage of any party hereto by any court or other governmental or judicial authority by reason of such party having or being deemed to have structured, dictated or drafted such provision. Obligors acknowledge that at all times they have been represented by an attorney in the negotiation of the terms of and in the preparation and execution of this Agreement, and have had the opportunity to review and analyze this Agreement for a sufficient period of time prior to the execution and delivery thereof. No representations or warranties have been made by or on behalf of Lender, or relied upon by any Obligor, pertaining to the subject matter of this Agreement, other than those set forth in this Agreement. This Agreement embodies the entire agreement and understanding among the parties to the subject matter hereof and supersede all prior proposals, negotiations, agreements and understanding relating to such subject matter.

18.6 Notices. Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed given on the third day following the date deposited in the United States mail, postage prepaid, sent by first class mail and, alternatively, shall be deemed given on the next day following the date such notice is delivered to a nationally recognized overnight delivery service such as Federal Express and addressed as follows:

Obligors: Comstock Homebuilding Companies, Inc.
Attn: Christopher Clemente
11465 Sunset Hills Road
5th Floor
Reston, VA 20190

copy to: Jubal R. Thompson, Esq.
General Counsel
11465 Sunset Hills Road
5th Floor
Reston, VA 20190

Lender: Wachovia Bank, National Association
Attn: Ron J. Sanders
1753 Pinnacle Drive
5th Floor, South Tower
McLean, VA 22102
Mail Code VA1927

copy to: Kiah T. Ford IV, Esq.
Parker Poe Adams & Bernstein LLP
Three Wachovia Center, Suite 3000
401 S. Tryon Street,
Charlotte, NC 28202

Either party may, from time to time, designate a different notice address by notice given as herein provided.

18.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

18.8 No Assignment by Obligors. The rights and obligations of Obligors hereunder may not be assigned or transferred to any person or entity without the express written consent of Lender.

18.9 No Modifications. The terms of the Loan Documents may not be changed, modified, waived, discharged or terminated orally, but only by an instrument or instruments in writing, signed by the party against whom the enforcement of the change, modification, waiver, discharge or termination is asserted.

18.10 Invalid Provision to Affect No Others. If any provisions of this Agreement shall be held invalid, then such provision only shall be deemed invalid, and the remainder of this Agreement shall remain operative and in full force and effect.

18.11 Time of Essence. Time is of the essence in respect of this Agreement.

18.12 Arbitration. Upon demand of any party hereto, whether made before or after institution of any judicial proceeding, any dispute, claim or controversy arising out of, connected with or relating to the Loan Documents ("***Disputes***") between or among parties to this Agreement shall be resolved by binding arbitration as provided herein. Institution of a judicial proceeding by a party does not waive the right of that party to demand arbitration hereunder. Disputes may include, without limitation, tort claims, counterclaims, disputes as to whether a matter is subject to arbitration, claims brought as class actions, claims arising from Loan Documents executed in the future, or claims arising out of or connected with the transaction reflected by this Agreement.

Arbitration shall be conducted under and governed by the Commercial Financial Disputes Arbitration Rules (the "***Arbitration Rules***") of the American Arbitration Association (the "***AAA***") and Title 9 of the U.S. Code. All arbitration hearings shall be conducted in the city in which the office of Lender first stated above is located. The expedited procedures set forth in Rule 51 et seq. of the Arbitration Rules shall be applicable to claims of less than $1,000,000.00. All applicable statutes of limitation shall apply to any Dispute. A judgment upon the award may be entered in any court having jurisdiction. The panel from which all arbitrators are selected shall be comprised of licensed attorneys. The single arbitrator selected for expedited procedure shall be a retired judge from the highest court of general jurisdiction, state or federal, of that state where the hearing will be conducted or if such person is not available to serve, the single arbitrator may be a licensed attorney. Not withstanding the foregoing, this arbitration provision does not apply to disputes under or related to swap agreements.

18.13 Preservation and Limitation of Remedies. Notwithstanding the preceding arbitration provisions, Lender and Obligors agree to preserve, without diminution, certain remedies that any party hereto may employ or exercise freely, independently or in connection with an arbitration proceeding after any arbitration action is brought. Lender and Obligors shall have the right to proceed in any court of proper jurisdiction or by self-help to exercise or prosecute the following remedies, as applicable: (i) all rights to foreclose against any real or personal property or other security by exercising a power of sale granted under Loan Documents or under applicable law or by judicial foreclosure and sale, including a proceeding to confirm the sale; (ii) all rights of self-help including peaceful occupation of real property and collection of rents, set-off, and peaceful possession of personal property; (iii) obtaining provisional or ancillary remedies including injunctive relief, sequestration, garnishment, attachment, appointment of receiver and filing an involuntary bankruptcy proceeding; and (iv) when applicable, a judgment by confession of judgment. Preservation of these remedies does not limit the power of an arbitrator to grant similar remedies that may be requested by a part in a Dispute.

Obligors and Lender agree that no party shall not have a remedy of punitive or exemplary damages against the other in any Dispute and hereby waive any right or claim to punitive or exemplary damages they have now or which may arise in the future in connection with any Dispute where the Dispute is resolved by arbitration or judicially.

18.14 Counterparts; Facsimile Signatures. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all counterparts together shall constitute one and the same instrument. Facsimile signatures are acceptable under this Agreement.

18.15 Reaffirmation of Guaranties. Guarantors, jointly and severally, do hereby:

(i) acknowledge their consent and approval to the terms of this Agreement;

(ii) stipulate that the Guaranties remain in full force and effect, and are not subject to offset, defense, reduction or counterclaim except to the extent of the release contained in Section 10 above; and

(iii) reaffirm the Guaranties in all respects.

18.16 Closing. The closing of this Agreement must occur on or before August ____, 2009.

18.17 Conditions Precedent to Closing. The obligation of Lender to close this Agreement is subject to Obligors, as applicable, delivering and/or satisfying each of the following conditions precedent in a form and content satisfactory to Lender:

(i) executed duplicate originals of this Agreement;

(ii) executed Subordinate Deficiency Note;

(iii) executed Waivers;

(iv) certified resolutions approving the execution and delivery of this Agreement, the Subordinate Deficiency Note, and the Waivers by Obligors; and

(v) such other documents, instruments, agreements and information as Lender may reasonably request.

"***Closing***" shall occur when Lender declares that the foregoing conditions have been satisfied as evidenced by Lender's execution of this Agreement.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement under seal, pursuant to authority duly given as of the day and year first above written.

BORROWER:

COMSTOCK HOMEBUILDING COMPANIES, INC.

By: _____
Christopher Clemente, CEO

GUARANTORS:

COMSTOCK MASSEY PRESERVE, L.L.C.
(formerly Comstock Wesel, L.L.C.)

By: Comstock Homebuilding Companies, Inc.
its Manager

By: _____
Christopher Clemente, CEO

COMSTOCK HOMES OF RALEIGH, LLC
(formerly Capitol Homes Inc.)

By: Comstock Homebuilding Companies, Inc.
its Manager

By: _____
Christopher Clemente, CEO

COMSTOCK HOMES OF ATLANTA, LLC

By: Comstock Homebuilding Companies, Inc.
its Manager

By: _____
Christopher Clemente, CEO

COMSTOCK JAMES ROAD, LLC

By: Comstock Homebuilding Companies, Inc.
its Manager

By: _____
Christopher Clemente, CEO

TRIBBLE ROAD DEVELOPMENT, LLC

By: Comstock Homebuilding Companies, Inc.
its Manager

By: _____
Christopher Clemente, CEO

COMSTOCK SUMMERLAND, L.C.

By: Comstock Homebuilding Companies, Inc.
its Manager

By: _____
Christopher Clemente, CEO

COMSTOCK HOLLAND ROAD, LLC

By: Comstock Homebuilding Companies, Inc.
its Manager

By: _____
Christopher Clemente, CEO

COMSTOCK LANDING, LLC

By: Comstock Homebuilding Companies, Inc.
its Manager

By: _____
Christopher Clemente, CEO

COMSTOCK WAKEFIELD, LLC

By: Comstock Homebuilding Companies, Inc.
its Manager

By: _____
Christopher Clemente, CEO

COMSTOCK WAKEFIELD II, LLC

By: Comstock Homebuilding Companies, Inc.
its Manager

By: _____
Christopher Clemente, CEO

LENDER:

WACHOVIA BANK, NATIONAL ASSOCIATION

By: _____
Ron J. Sanders
Vice President

Schedule 1.4

Pending Litigation

Schedule 1.5

Pending Default Notices

Schedule 5

Contracts

Schedule 6

Payables

Schedule 7

Bonds

Exhibit A

Waiver of Right to Notice of Hearing and Right to Hearing

Exhibit B

Subordinated Deficiency Note

THIRD AMENDMENT OF LOAN AGREEMENT

THIS THIRD AMENDMENT OF LOAN AGREEMENT (the "Third Amendment"), is made as of the _____ day of September, 2009 ("Third Amendment 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, Administrative Agent and Lenders entered into a Loan Agreement dated February 22, 2007, as amended by that certain First Amendment of Loan Agreement dated April 10, 2007 (the "First Amendment"), and as further amended by that Forbearance Agreement and Second Amendment of Loan Agreement dated January 27, 2009 (the "Second Amendment") (collectively the foregoing documents being hereafter referenced as the "Loan Agreement"), pursuant to which the Lenders agreed to and did make loans to the Borrower in the original 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, with the Loan Agreement, the "Loan Documents"); and

WHEREAS, a number of defaults occurred under the Loan Documents including the failure by Borrower to make payment in full of amounts due and owing under the Loan Documents. As a result of such defaults, the Borrower, Guarantor, Lenders and Adminstrative Agent entered into the Second Amendment. The Borrower and Guarantor have now requested that the Administrative Agent continue to forebear from exercising certain of its rights, and make certain additional modifications to the terms and provisions of the Loans and the Loan Agreement; and

WHEREAS, the Administrative Agent and the Lenders are willing to continue forebearing from exercising certain rights and remedies under the Loan Agreement and to make certain additional modifications to the terms and provisions of the Loans and the Loan Agreement as hereafter amended in accordance with the provisions of this Third Amendment.

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 Third Amendment. Capitalized terms that are not otherwise defined in this Third Amendment shall have the same meanings herein as ascribed to such terms in the Loan Agreement.

2. Acknowledgment of Loan Balances.

a) Borrower and Guarantor hereby represent, warrant, agree and acknowledge that the outstanding balances on the Loans as of September 11, 2009 are as follows:

Tranche A Term Loan:

Principal	$0.00
Interest	0.00
Total	$0.00

Tranche B Term Loan:

Principal	$12,141,351.32
Accrued PIK Interest	1,022,773.89
Total	$13,164,125.21

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 other 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 (i) the quarterly administration fee due and owing to the Administrative Agent pursuant to the Fee Letter through June 30, 2009 on the Tranche B Term Loan has been paid and received by Administrative Agent, (ii) the prinicipal balance of the Tranche B Term Loan as of September 11, 2009 is $ 12,141,351.32, and (iii) PIK Interest accrued as of September 11, 2009 in accordance with Section 2.6(g) of the Loan Agreement is $ 1,022,773.89 and shall be recomputed for the full calendar 2009 year as required by Section 2(g)(ii).

3. Payment of Fees and Costs. Simultaneously with the execution of this Third Amendment, Borrower agrees to reimburse Administrative Agent for all reasonable attorney's fees and costs incurred by Administrative Agent, not to exceed $25,000.

4. Modification of Loan Agreement.

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

a) Section 2.6(g)(ii) of the Loan Agreement is amended to read as follows:

(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 and Interest paid on the Loans during the preceding tweleve (12) months 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, and any excess cash Interest paid in calendar year 2009 as a result of the retroactive recalculation of PIK Interest would be applied as a credit against future Interest due. The PIK Interest for Q1 2010 would then begin to accrue at a rate of 1200 basis points.

b) 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 preceeding month, and a rent roll for the Project in form acceptable to Administrative Agent for the current month.

c) 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 settlement statement 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 settlement statement 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 the greater of (i) 75% of the Net Sales Price for such Residential Unit and its Parking Units, or (ii) $125,000, subject to adjustment in accordance with Section 7.7(c). 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.

d) The following is added to Section 7.7 of the Loan Agreement:

(c) Adjustment to Unit Release Payment.

(i) The "Unit Release Payment", as defined in Section 7.7(b), is subject to the Borrower meeting the following monthly and quarterly requirements:

(A) The Borrower completing no less than three (3) Residential Unit settlements per month (the "Monthly Sales Requirement"), measured on the last calendar day of each month (the "Monthly Measuring Date");

(B) The Borrower completing no less than ten (10) Residential Unit settlements per calendar quarter (the "Quarterly Sales Requirement"), measured on the last calendar day of each calendar quarter (the "Quarterly Measuring Date");

(C) The average Unit Release Payment, measured on a monthly basis on each Monthly Measuring Date, shall not be less than $135,000 (the "Average Price Requirement").

(D) For purposes of verifying compliance with the Monthly Sales Requirement and the Quarterly Sales Requirement, Administrative Agent acknowledges that Borrower shall be entitled to apply any Residential Unit settlements in excess of either the Monthly Sales Requirement or the Quarterly Sales Requirement to the next applicable Monthly Sales Requirement and Quarterly Sales Requirement, on a cumulative basis. Should Borrower not be in compliance with the Monthly Sales Requirement, the Quarterly Sales Requirement or the Average Price Requirement on the applicable measuring date, the unit release payment required under Section 7.7(b) shall automatically be adjusted so that it is equal to the greater of (i) 90% of the Net Sales Price for such Residential Unit and its Parking Units, or (ii) $135,000 (the "Revised Unit Release Payment") and, in addition, if the Borrower is not in compliance with the Average Price Requirement on such measuring date, the Borrower shall make a payment to Administrative Agent within five (5) days of such measuring date in an amount that will cause the Borrower to be compliant with the Average Price Requirement for such measuring date (the "Average Price Requirement True-Up Payment"). Upon the Borrower (i) making the required Average Price Requirement True-Up Payment (to the extent applicable), and (ii) re-establishing compliance (to the extent the Borrower was not in compliance) with the Monthly Sales Requirement and the Quarterly Sales Requirement upon a future measuring date, the release payment required under Section 7.7(b) shall be equal to the Unit Release Payment, subject to further adjustment in accordance with this Section 7.7(c) upon any future non-compliance with the requirements hereof.

e) The following are added to Article VI of the Loan Agreement:

6.18 Subordinate Debt. So long as any obligations remain outstanding under the Loans, the Subordinate Debt shall be (i) unsecured and (ii) fully subordinate to the Loans, as evidenced by subordination language set forth

in the Deficiency Notes. Further, the JP Morgan Subordinate Debt shall at all times be unsecured and subject to the JP Morgan Subordination and Standstill Agreement. Without the prior written consent of the Administrative Agent, which consent may be withheld in its sole and absolute discretion, the Guarantor shall not modify or amend the Deficiency Note Subordinate Debt except for a reduction in principal amount.

6.19 Potomac Yard Project Sale Activity. Borrower shall provide Administrative Agent by the fifteenth (15th) day of each month with a report for the preceding month for the Potomac Yard Project in the same form as the Sales Report. Within ten (10) days after written request from Administrative Agent, Borrower shall provide Administrative Agent with any additional information reasonably requested by Administrative Agent or Lenders regarding sales activity at the Potomac Yard Project.

f) Exhibit I attached to this Third Amendment is added to the Loan Agreement as Exhibit I.

g) The following is added to the Table of Exhibits to the Loan Agreement:

Exhibit I – List of Deficiency Note Subordinate Debt

h) The following definitions in Appendix A of the Loan Agreement are amended to read as follows:

"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) (i) customary closing costs both paid by the Borrower and paid by the Borrower on behalf of the Unit buyer, (ii) reasonable warranty reserves (not to exceed $750.00), (iii) brokerage commissions (including a 1.5% internal sales commission paid to Borrower's sales agent), expenses and prorations, paid by Borrower as shown on the HUD-1 settlement statement for such sale and approved by Administrative Agent, and (iv) the costs to convert the Unit and otherwise make the Unit ready for sale in accordance with the Condominium Contract, such costs to be shown on the HUD-1 settlement statement for each Unit settlement, except as otherwise agreed to by Borrower and Administrative Agent in writing prior to a Unit settlement.

"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, Unit Release Payments made pursuant to Section 7.7(b), and Operating Expenses.

i) The following definitions are added to Appendix A of the Loan Agreement:

"Average Price Requirement" shall have the meaning set forth in Section 7.7(c)(i)(C).

"Average Price Requirement True-Up Payment" shall have the meaning set forth in Section 7.7(c)(i)(D).

"Deficiency Notes" means the unsecured promissory notes evidencing the Deficiency Note Subordinate Debt, which obligations shall be fully subordinate to the Loans.

"Deficiency Note Subordinate Debt" means the unsecured promissory notes representing the deficiency claims against Guarantor by the lenders set forth on Exhibit I, as more particularly described and set forth in the Deficiency Notes; provided, however, no amounts due to Bank of America, N.A. pursuant to that certain modification to the line of credit agreement dated 11/26/08 with Guarantor shall be deemed to be Deficiency Note Subordinate Debt.

"JP Morgan Subordinate Debt" means the promissory notes issued pursuant to that certain Indenture dated March 15, 2007, by and between Guarantor and Wells Fargo Bank, N.A., or its assigns ("Trustee"), as amended and restated pursuant to that certain Amended and Restated Indenture dated March 14, 2008, by and between Guarantor and Trustee. These promissory notes have been or shall be acquired by an entity controlled or sponsored by Christopher Clemente ("Purchaser") pursuant to that certain Note Purchase Agreement by and among Trustee and the Purchaser, and as thereafter amended and restated and subject to a JP Morgan Subordination and Standstill Agreement.

"JP Morgan Subordination and Standstill Agreement" means a subordination and standstill agreement, by and among Administrative Agent, Guarantor and the holder of the JP Morgan Subordinate Debt, as applicable, as the same may be modified or amended.

"Monthly Measuring Date" shall have the meaning set forth in Section 7.7(c)(i)(A).

"Monthly Sales Requirement" shall have the meaning set forth in Section 7.7(c)(i)(A).

"Potomac Yard Project" means a mixed use 465-unit condominium project located in Alexandria, Virginia between U.S. Route 1 and the Potomac River more commonly known as Eclipse at Center Park Condominium.

"Quarterly Measuring Date" shall have the meaning set forth in Section 7.7(c)(i)(B).

"Quarterly Sales Requirement" shall have the meaning set forth in Section 7.7(c)(i)(B).

"Revised Unit Release Payment" shall have the meaning set forth in Section 7.7(c)(i)(D).

"Subordinate Debt" means, collectively, the JP Morgan Subordinate Debt and the Deficiency Note Subordinate Debt.

5. Release of Escrowed Funds. The parties hereto acknowledge that Administrative Agent has been holding in escrow the difference between the amount of money actually paid by Borrower pursuant to the terms of Section 5(h) of the Second Amendment and the amount of money to be paid to Administrative Agent pursuant to the terms of Section 4(c) of this Third Amendment ("Escrowed Funds"). The parties hereto represent, warrant, agree and acknowledge that the amount of the Escrowed Funds as of September 11, 2009 is $ 267,459.00. Upon satisfaction of all of the conditions set forth in Section 6(a) of this Third Amendment, Administrative Agent shall release to Borrower fifty percent (50%) of the Escrowed Funds. Upon satisfaction of the conditions set forth in Sections 6(b)(iv) and 6(b)(v) of this Third Amendment, Administrative Agent shall release to Borrower the remainder of the Escrowed Funds.

6. Conditions to Effectiveness/Termination of Effectiveness.

(a) This Third Amendment shall become effective upon the occurrence of each of the following, to the satisfaction of the Administrative Agent:

(i) the Administrative Agent shall have received counterparts of this Third Amendment, duly executed and delivered by all parties; and

(ii) the Administrative Agent shall have received such other information and documents as the Administrative Agent may reasonably request, in form and substance satisfactory to the Administrative Agent.

(b) In the event that any of the conditions set forth in subsections (i) – (v) below (the "Termination Conditions") are not satisfied by October 30, 2009, upon notice being given to the Borrower from the Administrative Agent, this Third Amendment shall no longer be effective, the Loans shall thereafter be administered in accordance with the terms of the Second Amendment and the balance of the Escrowed Funds (if any) shall be applied by the Administrative Agent to the principal balance due on the Tranche B Term Loan. Failure to satisfy any or all of the Termination Conditions by October 30, 2009 shall not be deemed an Event of Default under this Third Amendment. The Termination Conditions are as follows:

(i) the JP Morgan Subordination and Standstill Agreement shall have been executed and delivered to Administrative Agent in form and substance acceptable to the Administrative Agent;

(ii) the JP Morgan Subordinate Debt and Deficiency Notes shall have been executed and delivered to Administrative Agent in form and substance acceptable to the Administrative Agent;

(iii) The JP Morgan Subordinate Debt shall have been purchased by those entities set forth in the definition thereof;

(iv) Administrative Agent, Borrower and Guarantor shall enter into a Cash Collateral Agreement incorporating the terms and provisions set forth in Exhibit 6(b)(iv) attached to this Third Amendment and otherwise containing terms and provisions in form and substance acceptable to Administrative Agent ("Cash Collateral Agreement"); and

(v) Comstock Potomac Yard, L.C. ("CPY"), Guarantor and KeyBank shall enter into an amendment to the Potomac Yard Loan (as defined below) containing terms and conditions consistent with that certain letter dated September 14, 2009 from Guarantor to Administrative Agent regarding the amendment to the Potomac Yard Loan, and such other terms and conditions that are acceptable to Administrative Agent. "Potomac Yard Loan" shall mean that certain loan made by KeyBank to CPY in the original principal amount of $40,000,000 for the Potomac Yard Project.

7. 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 Third Amendment, do not waive any existing default or any default which may occur subsequent to execution of this Third Amendment; and

b) Administrative Agent and Lenders have not waived and, by entering into this Third Amendment do not waive, any of their respective remedies against the Borrower or the Guarantor.

8. General Release of Claims.

a) For any time in the past up to and including the Third Amendment 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 Third Amendment, 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 THIRD AMENDMENT EFFECTIVE DATE HEREOF, WHICH THEY INDIVIDUALLY AND/OR COLLECTIVLEY 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 THIRD AMENDMENT, THE LOAN AGREEMENT, DEED OF TRUST OR ANY OTHER LOAN DOCUMENT, THEN BY EXECUTING THIS THIRD AMENDMENT, THEY FOREVER WAIVE AND RELINQUISH THEM.

9. 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 the Loan Documents, as modified by this Third Amendment;

b) Failure by Borrower or Guarantor to perform any term, covenant or agreement in this Third Amendment;

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

d) The filing by Borrower or Guarantor of any voluntary or involuntary petition under any Chapter of the Bankruptcy Code, Title 11, U.S.C.A.

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 (as defined in the Second Amendment). Upon the occurrence of an Event of Default, and at any time thereafter, the Administrative Agent and

the Lenders, in addition to all other rights and remedies provided for in the Loan Documents and the Third Amendment 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.

10. 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 Third Amendment or of any documents executed pursuant hereto, the terms and conditions of the Third Amendment and the documents executed pursuant hereto shall supersede and control the terms of the Loan Document in conflict therewith.

11. Time is of the Essence.

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

12. Applicable Law.

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

13. 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.

14. Binding Effect.

This Third Amendment 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.

15. Entire Agreement.

This Third Amendment 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 Third Amendment 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 Third Amendment and in the Loan Documents.

16. Modifications and Waiver.

No modification or waiver of any of the provisions of this Third Amendment 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.

17. Severability.

Should any one or more of the provisions contained in this Third Amendment 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.

18. Successors and Assigns.

This Third Amendment 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 Third Amendment 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 Third Amendment 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.

19. Number and Gender.

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

20. Counterparts.

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

21. Notices.

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

22. 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 Third Amendment if this provision had not been included.

23. 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 THIRD AMENDMENT, 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 THIRD AMENDMENT WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE). THIS WAIVER IS A MATERIAL INDUCEMENT FOR THE ADMINSTRATIVE AGENT AND THE LENDERS TO ENTER INTO THIS THIRD AMENDMENT.

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 THIRD AMENDMENT 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.

24. Power and Authority.

Each of the parties to this Third Amendment warrants that it has full power and authority to enter into, execute, deliver and perform this Third Amendment, 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 Third Amendment or the documents to be executed in connection herewith.

25. 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 THIRD AMENDMENT AND HAVE BEEN FULLY ADVISED OF ITS CONTENTS AND THE MEANING THEREOF. BORROWER AND GUARANTOR FURTHER REPRESENT THAT THEY ARE SIGNING THIS THIRD AMENDMENT VOLUNTARILY AND WITH FULL UNDERSTANDING OF ITS CONTENTS AND MEANING.

[Remainder of page intentionally left blank. 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: Christopher Clemente
Title: CEO

STATE OF _____

CITY/COUNTY OF _____, to-wit:

I, _____, a Notary Public in and for the City/County and Sate aforesaid, do hereby certify that Christopher Clemente, CEO 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 ____ day of September, 2009, has acknowledged the same before me in my City/County and State aforesaid.

GIVEN under my hand and seal this _____ day of September, 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: Christopher Clemente
Title: CEO

STATE OF _____

CITY/COUNTY OF _____, to-wit:

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

GIVEN under my hand and seal this _____ day of September, 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 Sate aforesaid, do hereby certify that _____, _____ of Guggenheim Corporate Funding, LLC, whose name as such is signed to the foregoing instrument bearing date on the _____ day of September, 2009, has acknowledged the same before me in my City/County and State aforesaid.

GIVEN under my hand and seal this _____ day of September, 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 Sate 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 _____ day of September, 2009, has acknowledged the same before me in my City/County and State aforesaid.

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

_____
Notary Public

My Commission Expires: _____

Notary No. _____

Exhibit 10.72

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE (hereinafter the "Agreement") is entered into effective as of this ____ day of September, 2009 by and between CORNERSTONE BANK (the "Lender"), and COMSTOCK HOMEBUILDING COMPANIES, INC. ("CHCI") and MATHIS PARTNERS, LLC ("Mathis") (collectively, the "Borrower"). The above identified parties are at times referred to herein collectively as "Parties" and individually as a "Party".

R E C I T A L S :

WHEREAS, Haven Trust Bank made a loan consisting of eight individual construction loans with Mathis for the acquisition and construction of single family homes on real property more commonly known as the Gates of Luberon in Forsyth County, Georgia (the "Property") and executed individual promissory notes ("Promissory Notes") and deeds to secure debt with Mathis in the original committed amount of Six Million Eight Hundred Six Thousand and Five Hundred and No Dollars ($6,806,500.00) (collectively, the "Loan" or "Loans");

WHEREAS, Haven Trust Bank and CHCI entered into a certain guaranty agreement to secure repayment of the Loans (the "Guaranty Agreement");

WHEREAS, Haven Trust Bank was taken into receivership by the Federal Deposit Insurance Corporation ("FDIC") and the FDIC became the successor in interest to Haven Trust Bank;

WHEREAS, pursuant to that certain Transfer, Assignment and Assumption Agreement dated April 14, 2009 (the "Assignment"), which is attached hereto as Exhibit A, the FDIC assigned and transferred all of its right, title and interest in and to the Servicing Rights, the Loan Documents and its status as the Originating Bank under the Participation Agreement, all such terms being defined in the Assignment, to Cornerstone Bank, making Cornerstone Bank the lead lender;

WHEREAS, Lender, through the Assignment, and CHCI are involved in a civil action in the State Court of Gwinnett County, Georgia, identified as Federal Deposit Insurance Corporation as Receiver of Haven Trust Bank v. Comstock Homebuilding Companies, Inc., Civil Action No. 08C-05846-2 (hereinafter "the Civil Action");

WHEREAS, the Property was subject to a foreclosure sale on or about June 2, 2009 in accordance with the Notices of Sale, attached hereto as Exhibit B, and a portion of the Property is pending confirmation of sale;

WHEREAS, Lender filed that certain action in the Superior Court of Forsyth County, Georgia styled Cornerstone Bank v. Mathis Partners, LLC and Comstock Homebuilding Companies, Inc., Civil Action File No. 09CV-1858 (the "Confirmation");

WHEREAS, As Originating Bank under the Participation Agreement, Lender has received assurance from the participant banks that said participant banks approve of the settlement evidenced herein and have agreed that Lender should execute all documents and undertake all actions necessary to consummate the settlement;

WHEREAS, the Parties have agreed to a compromise and settlement of the Civil Action, the Confirmation, and of the Loans and desire to memorialize the settlement of the disputes between them as more fully set forth hereafter.

NOW, THEREFORE, in consideration of the foregoing and in further consideration of the covenants, representations and warranties contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby conclusively acknowledged, the Parties hereto agree to bind themselves as follows:

1. **REPAYMENT of the LOANS.** Within two business days of the full execution of this Agreement and as full and final satisfaction of any and all claims by the Lender, CHCI shall pay the Lender, **Fifty Thousand and No/100ths Dollars ($50,000.00)** in cash as a reimbursement of previously expended legal fees and associated costs of enforcing the Loans (the "Cash Payment"). CHCI also promises to pay Lender the total sum of **Four Hundred Thousand and No/100ths Dollars ($400,000)**, the obligation to be evidenced by an unsecured subordinated promissory note, the form of which is attached hereto as Exhibit C (the "Deficiency Note"). All terms and conditions of the Deficiency Note shall be contained therein. In consideration of the foregoing and concurrent with the delivery of the Note, Lender agrees the original Promissory Notes are satisfied. Lender further agrees to provide such reasonable written assurances as may be requested by Borrowers from time to time to evidence the satisfaction of the Loans.

2. **DISMISSAL OF LITIGATION.** Upon receipt of the Cash Payment, Lender shall prepare and Lender and Borrowers' counsel shall endorse and file Dismissals, with prejudice, dismissing the Civil Action and the Confirmation.

3. **RELEASES.** For and in consideration of the execution of this Agreement, the deliveries and payments hereunder, the receipt and sufficiency of which are expressly acknowledged, the Parties do for themselves, and for each of its members, current or former officers, directors, shareholders, employees, insurers, attorneys, administrators, agents, assigns, or successors hereby fully release, discharge, quit and exonerate each other of and from any and all claims, causes of action, demands, rights, damages, costs, debts, losses of service, expenses, compensation and sums of money, known or unknown, on account of, relating to or growing out the Loans, the Property, or any claims asserted or possible of being asserted in the Civil Action and the Confirmation and agree to defend, indemnify, and hold each other harmless from and against any losses, damages, costs (including, without limitation, attorneys' fees), expenses, judgments, liens, decrees, fines, penalties, liabilities, claims, actions, suits, and causes of action arising, directly or indirectly, related thereto.

4. **COOPERATION.** Borrower agrees to cooperate with Lender in a commercially reasonable manner with respect to the following items related to the Property for a period of one year from the effective date of this Agreement. Within ten (10) business days after each written request therefor (to the extent that any of such items are in the possession or direct control of Borrower), Borrower will deliver or cause the following items relating to the Property to be delivered to Lender: (i) any certificates of occupancy, licenses, and other governmental permits or notices; (ii) any surveys, plats, drawings, engineering reports, environmental reports, maps and site and development plans; (iii) any service contracts, supply contracts, maintenance agreements or other similar agreements; (iv) any tax assessments, notices, bills and/or statements; (v) any keys or information necessary to obtain full access and operation of the Property ; and (vi) any other property or tangible reasonably requested by Lender.

5. **NO ADMISSIONS.** The Parties acknowledge and agree that this Agreement is in compromise of disputed claims, that the compromises are not to be construed as admissions of liability on the part of any party and the said Parties deny liability and intend merely to avoid litigation and buy their peace.

6. **VOLUNTARY ACT.** The Parties acknowledge, represent and agree, each with the other that they have read this Agreement and the documents referenced herein in their entirety, have consulted their respective attorneys concerning the same, if desired, and have signed the same as their respective free and voluntary act.

7. **NO ORAL MODIFICATIONS.** This Agreement may not be altered, amended, modified or rescinded in any way except by written instrument duly executed by the Parties.

8. **AUTHORITY.** The Parties represent and warrant they have the full power and authority to enter into this Agreement and to incur the obligations and consummate the transactions described herein, all of which have been authorized by all proper and necessary corporate action and each Lender further represents and warrants it has the authority to act on behalf of itself and that this Agreement constitutes the valid and legally binding obligation of Lender and does not violate, conflict with, or constitute any default under any law, government regulation, organizational documents, or any other agreement or instrument binding upon or applicable to Lender, including but not limited to, the Assignment and each Lender shall indemnify Borrower, on a joint and several basis, the fullest extent allowed by Paragraph 3 hereunder, from any attempt by an individual Lender to seek collection under the Loans or to otherwise assert any claim, whether known or unknown at the time of this Agreement, against Borrower in any way related to the Loans, the Property, the Civil Action, or for collection of the Deficiency Note for an amount in excess of the percentage set forth in Paragraph 1 hereof.

9. **ENTIRE AGREEMENT.** The Parties agree and acknowledge that 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.

10. **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 Georgia.

11. **COUNTERPARTS**. This Agreement may be executed in several counterparts, each of which shall constitute an original.

12. **ASSIGNS.** This Agreement is fully assignable, and may be assigned by either Party without the consent of the other Party.

13. **EFFECTIVE DATE**. As used herein, the term "Effective Date" shall be the date on which this Agreement is executed by the last party.

IN WITNESS WHEREOF, the Parties, having read the foregoing Agreement and fully understanding it, voluntarily execute this Agreement effective as of the last date below written.

BORROWER:

MATHIS PARTNERS, LLC

By: Comstock Homebuilding Companies, Inc.,
its Manager

BY: _____
Christopher Clemente, CEO

Date: __/__/2009

COMSTOCK HOMEBUILDING COMPANIES, INC.

BY: _____
Christopher Clemente, CEO

Date: __/__/2009

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LENDER:

CORNERSTONE BANK

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT A

TRANSFER, ASSIGNMENT AND ASSUMPTION AGREEMENT

EXHIBIT B

NOTICES OF FORECLOSURE SALE

EXHIBIT C

PROMISSORY NOTE

EXHIBIT D

BONDS

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Exhibit 10.73

FORBEARANCE AGREEMENT
(Comstock Cascades, L.C.)

THIS FORBEARANCE AGREEMENT dated as of September ____, 2009 (which, together with all amendments and modifications hereto, is hereinafter referred to as this "Agreement") is made by and among COMSTOCK CASCADES, L.C., a Virginia limited liability company (the "Borrower"), COMSTOCK HOMEBUILDING COMPANIES, INC., a Delaware corporation (the "Guarantor"), and MANUFACTURERS AND TRADERS TRUST COMPANY, a New York banking corporation and successor-by-merger to M&T Mortgage Corporation (the "Bank").

RECITALS

Pursuant to a Disbursement and Development Loan Agreement dated July 14, 2004 by and between the Borrower and the Bank (as the same may be amended, restated, supplemented, extended, or otherwise modified from time to time, the "Loan Agreement"), the Bank agreed to make available to the Borrower an acquisition, development, and construction loan in the principal amount of up to $9,200,000 (the "Loan"), the proceeds of which were to be used to acquire and develop not less than three (3) pad sites, approved for up to three (3) separate buildings (collectively, the "Buildings"), containing a total of not less than one hundred sixty-eight (168) condominium units (the "Units"), of which no more than thirty-eight (38) Units will be designated with a government classification of affordable dwelling units (the "ADUs") or "ADU") (collectively, the "Project").

Contemporaneously therewith, the Borrower and the Bank entered into a Disbursement and Construction Loan Agreement dated July 14, 2004 (as the same may be amended, restated, supplemented, extended or otherwise modified from time to time, the "Construction Loan Agreement"), setting forth the terms upon which the Bank agreed to disburse the construction portion of the Loan to the Borrower, in no event to exceed $3,200,000 at any one time outstanding.

The Borrower's obligation to repay the Loan with interest is evidenced by the Borrower's Deed of Trust Note (No. 1) dated July 14, 2004 in the original principal amount of $6,000,000 (as the same may be amended, restated, supplemented, extended, or otherwise modified from time to time "Note No. 1"), and Borrower's Deed of Trust Note (No. 2) dated July 14, 2004 in the original principal amount of $3,200,000 (as the same may be amended, restated, supplemented, extended, or otherwise modified from time to time "Note No. 2") (Note No. 1 and Note No. 2 being hereinafter called collectively, the "Notes").

The Borrower's obligations in connection with the Loan are secured by, among other things, (a) a Purchase Money Deed of Trust dated July 14, 2005 from the Borrower to certain trustees for the benefit of the Bank (as the same may be amended, restated, supplemented, extended, or otherwise modified from time to time, the "Credit Line Deed of Trust"), which Credit Line Deed of Trust covers certain real property owned by the Borrower and located in Loudoun County, Virginia (the "Property"), and (b) an Assignment of Leases, Interests, Contracts, Plans and Profits dated July 14, 2004 from the Borrower in favor of the Bank (as the same may be amended, restated, supplemented, extended or otherwise modified from time to time, the "Assignment").

The Borrower's obligations were initially guaranteed by Christopher D. Clemente, Gregory V. Benson and Comstock Holding Company, Inc. (collectively, the "Original Guarantors"), pursuant to a Guaranty Agreement dated July 14, 2005 executed by the Original Guarantors in favor of the Bank (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "Guaranty").

Pursuant to a Modification Agreement dated as of May 24, 2005 (the "Guarantor Modification"), the Guarantor assumed all obligations of the Original Guarantors to the Bank under the Guaranty and the Bank released the Original Guarantors from all further liabilities and obligations thereunder.

Pursuant to a Modification Agreement dated as of March 14, 2007 (the "Covenant Modification") by and among the Borrower, Comstock Belmont Bay 89, L.C., the Guarantor, and the Bank (the "Covenant Modification"), the parties agreed to modify the Loan Agreement to incorporate certain additional covenants.

In connection with the Borrower's development of the Project, the Bank also issued for the account of the Borrower two separate Irrevocable Standby Letters of Credit, Nos. SB-906402-2000 and SB-906166-0001 in the current face amount of $67,140 and $461,000, respectively (as amended, supplemented or otherwise extended from time to time, the "Letters of Credit"). The Borrower's obligations to the Bank in connection with the Letters of Credit are evidenced by two separate Demand Promissory Notes (collectively, the "Demand Notes") and are secured by, among other things, that certain Deed of Trust dated as of June 1, 2004 from the Borrower to certain trustees for the benefit of the Bank (as the same may be amended, restated, supplemented, extended, or otherwise modified from time to time, the "Letter of Credit Deed of Trust"), which Letter of Credit Deed of Trust also covers the Property.

As used herein, (a) the term "Financing Documents" means, collectively, the Loan Agreement, the Construction Loan Agreement, the Notes, the Credit Line Deed of Trust, the Guaranty, the Letter of Credit Deed of Trust, the Guarantor Modification, the Covenant Modification, and all other documents previously, simultaneously or hereafter executed and delivered by the Borrower, any or all of the Guarantors, or any other party or parties to evidence, secure, or guarantee, or in connection with, the Loan and/or the Letters of Credit, and (b) the term "Obligations" means, collectively, all obligations of the Borrower and the Guarantor under and in connection with any or all of the Financing Documents.

Pursuant to various Allonges and Modification Agreements (collectively, the "Allonges"), the parties have agreed, among other things, to extend the maturity of the Loan to June 1, 2008. Pursuant to various amendments (collectively, the "Letter of Credit Amendments" the expiry date of the respective Letters of Credit has been extended to April 19, 2009 and March 30, 2009, respectively.

The Borrower is now in default under the Financing Documents by virtue of the Borrower's failure to comply with the various financial covenants set forth therein and to repay all sums due under Note No. 1 on or before June 1, 2008 (the "Stated Maturity Date").

The Borrower and the Guarantor (collectively, the "Obligors") have requested that the Bank forbear temporarily from exercising its available rights and remedies under the Financing Documents. The Bank is willing to grant the Obligors' request, subject to and upon the terms, conditions and understandings contained in this Agreement.

NOW, THEREFORE, in consideration of the premises and of the representations and mutual agreements made herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1

DEFINITIONS

Section 1.1. Defined Terms. Capitalized terms used herein and in the Preamble and not otherwise defined shall have the meanings given to such terms in the Loan Agreement.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES

Section 2.1. Acknowledgments of the Obligors. The Obligors hereby acknowledge that:

(a) The Recitals set forth above are true and complete in all respects and are incorporated herein by reference.

(b) As of the date hereof, the Borrower is currently in default of its obligations under the Loan Agreement and the Notes and, as a result thereof, is now also in default of its obligations under the other Financing Documents.

(c) As of September 15, 2009, the Borrower owed the Bank, pursuant to the terms of Note No. 1, $1,100,435.29 consisting of $1,016,237.64 in principal, $80,418.98 in accrued but unpaid interest, $3,778.67 in late charges, plus, fees (including legal fees), costs and other expenses.

(d) As of September 15, 2009, the Borrower owed the Bank, pursuant to Note No. 2, $0.00.

(e) The Obligors have no defenses, affirmative or otherwise, rights of setoff, rights of recoupment, claims, counterclaims, actions or causes of action of any kind or nature whatsoever against the Bank or any past, present or future agent, attorney, legal representative, predecessor-in-interest, affiliate, successor, assign, employee, director or officer of the Bank (collectively, the "Bank Group"), directly or indirectly, arising out of, based upon, or in any manner connected with, any transaction, event, circumstance, action, failure to act, or occurrence of any sort or type, whether known or unknown, which occurred, existed, was taken, permitted, or began prior to the execution of this Agreement and accrued, existed, was taken, permitted or begun in accordance with, pursuant to, or by virtue of, the Financing Documents or the Obligations; TO THE EXTENT ANY SUCH DEFENSES, AFFIRMATIVE OR OTHERWISE, RIGHTS OF SETOFF, RIGHTS OF RECOUPMENT, CLAIMS, COUNTERCLAIMS, ACTIONS OR CAUSES OF ACTION EXIST OR EXTEND, SUCH DEFENSES, RIGHTS, CLAIMS, COUNTERCLAIMS, ACTIONS AND CAUSES OF ACTION ARE HEREBY FOREVER WAIVED, DISCHARGED AND RELEASED.

(f) The Obligors have freely and voluntarily entered into this Agreement after an adequate opportunity and sufficient period of time to review, analyze and discuss all terms and conditions of this Agreement and all factual and legal matters relevant hereto with its counsel. Each Obligor further acknowledges that it has actively and with full understanding participated in the negotiation of this Agreement and that this Agreement has been negotiated, prepared and executed without fraud, duress, undue influence or coercion of any kind or nature whatsoever having been exerted by or imposed upon any party to this Agreement.

(g) There is (i) to the Obligors' knowledge, no statute, rule, regulation, order or judgment, and (ii) no provision in any articles of organization, operating agreement, charter or bylaws with respect to any Obligor, and (iii) no provision of any mortgage, indenture, contract or other agreement binding on any Obligor or any of its properties which, in each case, would prohibit or cause a default under or in any way prevent the execution, delivery, performance, compliance or observance of any of the terms or conditions of this Agreement.

(h) The Borrower has not, voluntarily or involuntarily, granted any liens on or security interests in the Property to any creditor not previously disclosed to the Bank in writing on or before the date of this Agreement and have not otherwise taken any action or failed to take any action which could or would impair, change, jeopardize or otherwise adversely affect the priority, perfection, validity or enforceability of any liens or securing interests securing all or any portion of the Obligations or the priority or validity of the Bank's claims with respect to the Obligations relative to any other creditor of the Borrower.

(i) Each Obligor has the full legal right, power and authority to enter into and perform its obligations under this Agreement, and the execution and delivery of this Agreement by the Obligors and the consummation by the Obligors of the transactions contemplated hereby have been duly authorized by all appropriate action (corporate or otherwise).

(j) This Agreement constitutes the valid, binding and enforceable agreement of the Obligors, enforceable against the Obligors in accordance with the terms hereof.

ARTICLE 3

COVENANTS

In consideration of the Bank's agreement to forbear during the Forbearance Period (as hereinafter defined) from taking any further action against the Obligors or any of their respective assets, the Obligors hereby agree with the Bank as follows:

Section 3.1. Covenants of the Obligors.

(a) Payments of Principal and Interest during Forbearance Period.

(i) From and after the date hereof, until the Obligations have been indefeasibly paid in full, interest shall accrue on the unpaid principal balance of Note No. 1 at a floating and fluctuating per annum rate of interest equal to the LIBOR Rate (as hereinafter defined), plus 3.00% per annum. As used herein, the following terms shall have the following meanings:

"LIBOR" means, at any time, the rate of interest per annum determined on the basis of the rate for deposits in dollars for a one-month period which is quoted in The Wall Street Journal (Money Rates Section) (rounded upward, if necessary, to the nearest one-sixteenth of one percent (1 /16%)).

"LIBOR Rate" means a rate per annum (rounded upwards, if necessary, to the next higher 1/100th of 1%) determined by the Bank pursuant to the following formula:

$$\text{LIBOR Rate} = \frac{\text{LIBOR}}{\text{1.00 - Eurodollar Reserve Requirements}}$$

Anything in the foregoing to the contrary notwithstanding, if the Bank determines in its reasonable discretion (i) that any applicable law, rule, or regulation, or any change in the interpretation of any such law, rule, or regulation shall make it unlawful or impossible for the Bank to charge or collect interest at a rate of interest based upon the LIBOR Rate, or (ii) that quotations of interest rates for the relevant deposits referred to in the definition of the LIBOR Rate are not being provided in the relevant amounts or for the relevant maturities, (a) the Bank shall promptly give written notice of such circumstances to the Borrower (which notice shall be withdrawn whenever such circumstances no longer exist), and (b) the interest rate applicable to the Loan shall be converted to a rate of interest equal to the sum of the Prime Rate (as defined in Note No. 1) plus 3.00% per annum, and the interest rate applicable to the Loan shall remain at such converted rate until the Bank shall notify the Borrower that the circumstances giving rise to such condition no longer exist.

Where applicable, the interest rate on all amounts on which interest is calculated with respect to the Prime Rate or the LIBOR Rate shall change immediately and contemporaneously with each change of the Prime Rate or LIBOR Rate, as applicable

(ii) As of the date hereof, all accrued but unpaid interest due on Note No. 1 shall be deferred and repaid in full on the Termination Date.

(iii) Commencing October 1, 2009 and on the first day of each month thereafter (each, an "Interest Payment Date"), until all sums due under Note No. 1 have been repaid in full, the Borrower shall make consecutive monthly payments of accrued interest on the outstanding principal balance of Note No. 1.

(iv) From and after the date hereof, either of the unimproved pad sites (the "Pad Sites") may be released from the lien of the Credit Line Deed of Trust only upon payment in full of the entire unpaid principal balance of the Loan, plus all accrued and unpaid interest thereon and all other sums due in connection therewith.

(v) Upon termination of this Agreement, but in no event later than January 31, 2011, the Borrower shall pay to the Bank all sums then due and payable under Note No. 1 and the other Financing Documents, including all principal, interest (at the rate set forth above), late charges, fees, and other expenses, and shall otherwise satisfy its remaining Obligations.

(b) Sale of Remaining Pad Sites. On or prior to December 31, 2009, the Borrower shall deliver to the Bank its written proposal for marketing and selling the remaining Pad Sites. During the Forbearance Period, the Borrower shall actively market and attempt to sell the remaining Pad Sites to third-party purchasers. In addition to all other reporting obligations set forth in the Financing Documents, the Borrower shall provide the bank quarterly progress reports for the first two (2) calendar quarters of 2010 and monthly reports for all periods

thereafter, detailing all sales efforts. Within three (3) days of its receipt thereof, the Borrower shall deliver to the Bank all documents relating to all contracts of sale with third-party purchasers and, prior to any such sale, the Borrower shall deliver to the Bank a copy of the proposed HUD-1 settlement statement showing the name of the third-party purchaser, the price payable, the release price to be paid to the Bank and the date of sale.

Upon the sale of any Pad Site, all issued and outstanding letters of credit (the "Existing Letters of Credit") relating thereto shall be replaced by the purchaser thereof with its own letters of credit and all Existing Letters of Credit shall be returned to the Bank undrawn.

(c) Advances. The Obligors acknowledge that the Bank is under no further obligation to continue to make Advances under the Loan.

(d) Letters of Credit. Contemporaneously herewith, the Bank shall extend the maturity dates of the Letters of Credit for up to an additional twelve (12) months.

(e) Fees and Expenses. On the date hereof, the Borrower shall owe the Bank a $50,000 non-refundable forbearance fee, which fee shall be deemed fully earned as of closing but be payable on the Termination Date. All legal fees and other out-of-pocket costs and expenses hereafter incurred by or on behalf of the Bank in connection with the enforcement, preservation, or collection of the Obligations and and/or this Agreement, including, without limitation, reasonable attorneys fees and expenses, and recordation and filing fees and taxes (collectively, the "Enforcement Costs") shall be deemed to be part of the Obligations and shall be payable within ten (10) days after receipt of an invoice therefore and, if not then paid, the Bank shall be entitled to auto-debit one or more of the Borrower's accounts at the Bank to pay said Enforcement Costs.

ARTICLE 4

STANDSTILL PROVISIONS

Section 4.1. No Exercise of Remedies. During the period (the "Forbearance Period") from the date hereof until the earlier of (a) payment in full of all of the Obligations, or (b) the occurrence of a Default hereunder, or (c) the Termination Date (as hereinafter defined), the Bank agrees it will not take any further action against the Borrower or the Guarantor or exercise or enforce any other rights or remedies provided for in the Financing Documents or otherwise available to it, at law or in equity, by virtue of the occurrence of the defaults which now exist or take any action against any property in which the any Obligor has any interest, which action is available to the Bank as a result of said Defaults.

Section 4.2. No Waiver of Rights or Remedies. The parties hereto acknowledge and agree that the Bank (a) shall retain all rights and remedies it may have with respect to the Obligations and the Financing Documents and the Borrower's previous failure to honor or otherwise comply with said obligations (such rights and remedies being hereinafter collectively referred to as "Default Rights"), and (b) shall have the right to exercise and enforce such Default Rights immediately upon termination of the Forbearance Period. The parties further agree that the exercise of any Default Rights by the Bank upon termination of the Forbearance Period shall not be affected by reason of this Agreement, and the parties hereto shall not assert as a defense thereto the passage of time, estoppel, laches or any statute of limitations to the extent that the exercise of any Default Rights was precluded by this Agreement.

Section 4.3. Other Obligations. Except to the extent modified or altered by the terms of this Agreement or waived in writing by the Bank, the Obligors shall continue to perform and comply with its obligations under the Financing Documents, which obligations shall remain in full force and effect and unchanged.

ARTICLE 5

RELEASES

Section 5.1. Releases and Waivers.

(a) Each Obligor hereby knowingly and voluntarily forever releases, acquits and discharges the Bank and the Bank Group from and of any and all claims that the Bank or any member of the Bank Group is in any way responsible for the past, current or future condition or deterioration of the business operations and/or financial condition of any Obligor, and from and of any and all claims that the Bank or any member of the Bank Group breached any agreement to loan money or make other financial accommodations available to the Obligors or to fund any operations of the Obligors at any time. Each Obligor also hereby knowingly and voluntarily forever releases, acquits and discharges the Bank and the Bank Group, from and of any and all other claims, damages, losses, actions, counterclaims, suits, judgments, obligations, liabilities, defenses, affirmative defenses, setoffs, and demands of any kind or nature whatsoever, in law or in equity, whether presently known or unknown, which such Obligor may have had, now have, or which it can, shall or may have for, upon, or by reason of any matter, course or thing whatsoever relating to, arising out of, based upon, or in any manner connected with, any transaction, event, circumstance, action, failure to act, or occurrence of any sort or type, whether known or unknown, which occurred, existed, was taken, permitted, begun, or otherwise related or connected to or with any of the Obligations and the Financing Documents, and/or any direct or indirect action or omission of the Bank and/or any of the Bank Group. Each Obligor further agrees that from and after the date hereof, it will not assert to any person or entity that any deterioration of the business operations or financial condition of any Obligor was caused by any breach or wrongful act of the Bank or any of the Bank Group which occurred prior to the date hereof.

(b) Upon the indefeasible payment in full of all sums due to the Bank and satisfaction of all of the Obligations and the release of the Letter of Credit (or the expiration thereof without a draw), the Bank shall, at the Obligor' sole cost and expense, release its liens on all collateral pledged or given to secure said obligations and, in connection therewith, forever release, acquit and discharge the Obligors from and of any and all other future claims, suits, actions, obligations and liabilities of any kind or nature whatsoever arising out of or relating to or due in connection with the Financing Documents.

ARTICLE 6

TERMINATION

Section 6.1. Termination.

(a) The Forbearance Period shall terminate automatically and without notice to the Obligors upon the earliest of (i) the occurrence of a Default (as hereinafter defined), (ii) the indefeasible payment in full of all amounts due to the Bank from the Obligors, or (iii) 5:00 p.m. on January 31, 2011 (the "Termination Date").

(b) For purposes hereof, the Obligors shall be in default (each, a "Default") if:

(i) the Obligors or any other person authorized to act on behalf of the Obligors (other than the Bank) fail to observe, perform, or comply with any of the terms, conditions or provisions of this Agreement, as and when required;

(ii) any additional defaults (other than those described in the Recitals hereto or a failure to comply with the provisions of Sections 3(a), 3(b), 3(c), 3(d), 3(e) or Exhibit B of the Covenant Modification) shall occur under any of the Financing Documents;

(iii) any recital, representation or warranty made herein, in any document executed and delivered in connection herewith, or in any report, certificate, financial statement or other instrument or document previously, now or hereafter furnished by or on behalf of the Obligors in connection with this Agreement or any other document executed and delivered in connection with this Agreement, shall prove to have been false, incomplete or misleading in any material respect on the date as of which it was made;

(iv) the Guarantor shall fail to observe, perform or otherwise comply with any terms, conditions or provisions of the Forbearance and Conditional Release Agreement of even date herewith by and among Comstock Belmont Bay 89, L.C., the Guarantor and the Bank; or

(v) the Obligors shall fail to observe, perform or otherwise comply with any terms, conditions or provisions of any other agreement between them and any other creditor where the amount in controversy exceeds $500,000 (either individually or in the aggregate) and such creditor has commenced any collection or other enforcement action against them or any of their property.

Upon termination of the Forbearance Period, should any of the Obligations not be satisfied in full, the Bank shall be entitled to immediately pursue its various rights and remedies, including its Default Rights, against the Obligors and their respective assets, including all collateral given to secure the Obligations or any other person liable therefor.

ARTICLE 7

MISCELLANEOUS

Section 7.1. Headings. Descriptive headings are for convenience only and will not control or affect the meaning or construction of any provision of this Agreement.

Section 7.2. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and each of its respective heirs, personal representatives, successors and assigns.

Section 7.3. Time of Essence. Time is of the essence of this Agreement.

Section 7.4. Counterparts. This Agreement may be executed in any number of duplicate originals or counterparts, each of such duplicate originals or counterparts shall be deemed to be an original and all taken together shall constitute but one and the same instrument. The parties further agree that facsimile signatures shall be binding on all parties and have the same force and effect as original signatures.

Section 7.5. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Virginia.

Section 7.6. Severability. In case one or more provisions contained in this Agreement shall be invalid, illegal, or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions contained herein shall remain effective and binding and shall not be affected or impaired thereby.

Section 7.7. Amendments. This Agreement may be amended, modified or supplemented only by written agreement signed by all parties hereto. No provision of this Agreement may be waived except in writing signed by the party against whom such waiver is sought to be enforced.

Section 7.8. Entire Agreement. This Agreement and the Financing Documents set forth the entire agreement and understanding of the parties hereto with respect to payment and performance of the Obligations, superseding all prior representations, understandings and agreements, whether written or oral.

Section 7.9. Effective Date. This Agreement shall be effective immediately upon the execution and delivery of this Agreement by all persons who are parties hereto.

Section 7.10. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH IT MAY BE PARTIES, ARISING OUT OF OR IN ANY WAY PERTAINING TO (A) THIS AGREEMENT (B) ANY OF THE OTHER DOCUMENTS EXECUTED BY IT IN CONNECTION HEREWITH, (C) ANY OF THE OBLIGATIONS, AND/OR (D) ANY OF THE FINANCING DOCUMENTS. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS AGREEMENT.

THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY THE PARTIES HERETO, AND EACH OF THE PARTIES HERETO HEREBY REPRESENT AND WARRANT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY NOTIFY OR NULLIFY ITS EFFECT. EACH OF THE PARTIES HERETO FURTHER REPRESENT THAT IT HAVE BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, SELECTED OF ITS OWN FREE WILL, AND THAT IT HAVE HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

Section 7.11. Further Assurances. The Obligors hereby agree to execute and deliver to the Bank from time to time such other Documents and instruments and to take such other actions as the Bank may reasonably request in order to more effectively carry out the terms hereof.

[Signatures Follow on Next Page]

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

WITNESS:

COMSTOCK CASCADES, L.C.

By: Comstock Homebuilding Companies, Inc.,
its Manager

By: _____
Name:
Title:

COMSTOCK HOMEBUILDING COMPANIES, INC.,

By: _____
Name:
Title:

MANUFACTURERS AND TRADERS TRUST COMPANY

By: _____
Frederick Potter
Vice President

FORBEARANCE AND CONDITIONAL RELEASE AGREEMENT

(Comstock Belmont Bay 89, L.C.)

THIS FORBEARANCE AND CONDITIONAL RELEASE AGREEMENT dated as of September ____, 2009 (this "Agreement") is made by and among COMSTOCK BELMONT BAY 89, L.C., a Virginia limited liability company (the "Borrower"), COMSTOCK HOMEBUILDING COMPANIES, INC., a Delaware corporation (the "Guarantor"), and MANUFACTURERS AND TRADERS TRUST COMPANY, a New York banking corporation and successor-by-merger to M&T Mortgage Corporation (the "Bank").

RECITALS

Pursuant to a Disbursement and Construction Loan Agreement dated October 12, 2006 by and between the Borrower and the Bank (as the same may be amended, restated, supplemented, extended, or otherwise modified from time to time, the "Loan Agreement"), the Bank agreed to make available to the Borrower a construction loan in the principal amount of up to $17,300,000 (the "Loan"), the proceeds of which were to be used to acquire and construct up to four (4) buildings, with each building containing twenty-eight (28) condominium units. The Borrower's obligation to repay the Loan with interest is evidenced by the Borrower's Deed of Trust Note dated October 12, 2006 in the original principal amount of $17,300,000 (as the same may be amended, restated, supplemented, extended, or otherwise modified from time to time, the "Note).

The Borrower's obligations in connection with the Loan are secured by, among other things, a Credit Line Deed of Trust dated October 12, 2006 from the Borrower to certain trustees for the benefit of the Bank (as the same may be amended, restated, supplemented, extended, or otherwise modified from time to time, the "Deed of Trust"), which Deed of Trust covers certain real property owned by the Borrower and located in Prince William County, Virginia (the "Property"). The Property and all property serving as security for the repayment of the Loan is hereinafter collectively referred to as the "Collateral").

The repayment of all of the Borrower's obligations are guaranteed by the Guarantor pursuant to a Guaranty Agreement dated October 12, 2006 from the Guarantor to the Bank (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "Guaranty").

As used herein, (a) the term "Financing Documents" means collectively, the Loan Agreement, the Note, the Deed of Trust, the Guaranty and all other documents, instruments and written agreements previously, simultaneously or hereafter executed and delivered by the Borrower, any or all of the Guarantor, or any other party or parties to evidence, secure, or guarantee, or in connection with, the Loan, and (b) the term "Obligations" means, collectively, all obligations of the Borrower and the Guarantor under and in connection with any or all of the Financing Documents.

The Borrower has defaulted under the Financing Documents by virtue of the Borrower's failure to comply with the various financial covenants set forth therein and to repay the Loan on or before October 12, 2008 (the "Maturity Date").

The Borrower has advised the Bank that, following the Borrower's acquisition of the Property, the Borrower previously recorded that certain "Beacon Park I Condominium Declarant Election Form," among the land records of Prince William County, Virginia as instrument no. 200803030019281 (the "Declarant Election Form") and, according to the Borrower, received approval from Prince William County, Virginia of a change in land use designation for the Property from elderly age restricted ("Age-Restricted") to market rate ("Market Rate"). Following its receipt of such approval, the Borrower conveyed nine (9) completed condominium units in Building A to third party purchasers as Market Rate units.

As a result of disputes with respect to the Property and the conflicting obligations of various parties related thereto, the Obligors have been engaged in multiple litigation matters in Fairfax County and Prince William County Circuit Courts more specifically styled as *Belmont Bay, L.C. v. Comstock Belmont Bay 89, L.C. and Comstock Home Building Companies, Inc.*, Civil Action No. 2008-7172, *Belmont Bay, L.C. v. Comstock Belmont Bay 89, L.C. and Premier Title, Inc.*, Civil Action No. 2008-7173, *Belmont Bay, L.C., Belmont Town Center Associates LLC and Belmont Town Center Umbrella Association, Inc. v. Comstock Belmont Bay 89, L.C.*, Civil Action No. 2008-12268,

and *Comstock Belmont Bay 89, L.C. v. Lawrence A. Wilkes, James R. Epstein, Stephen P. Caruthers, Belmont Bay, L.C., Donald J. Creasy, EFO Capital Management, Inc. and Eric-Belmont Associates LLC*, Civil Action No. 2009-523, which were consolidated for trial in the Circuit Court of Fairfax County (collectively the "Consolidated Fairfax Actions"); *Comstock Belmont Bay 89, L.C v. Harbor Point West Associates, LLC, Harbor Point East Associates, LLC, Harbor View Associates, LLC, Harbor Side I Associates, LLC, Belmont Town Center Associates LLC, Stephen P. Caruthers, James Epstein, Eric-Belmont Associates, LLC, WVS Development Associates LLC, Lawrence Wilkes and Belmont Bay Homeowners Association, Inc*., Civil Action No. 88853 (the "Prince William Action"). Collectively, the Fairfax Actions and the Prince William Action are referred to as the "Litigation". As part of the Fairfax Action, a Notice of Lis Pendens was filed and recorded in the land records (the "Lis Pendens"), resulting in a cloud on the Collateral.

By various Consent and Dismissal Orders dated as of July 9, 2009, the Litigation has been settled. Pursuant to that certain Final Consent Judgment Order dated and entered as of July 9, 2009 in the Fairfax Action, the Declarant Election Form was declared a legal nullity and ordered stricken from the Land Records. Pursuant to that same order in the Fairfax Action, the Lis Pendens was released.

The Borrower and the Guarantor (collectively, the "Obligors") have requested that the Bank conditionally release the Obligors pursuant to the terms and conditions set forth herein. The Bank is willing to grant the Obligors' request, subject to and upon the terms, conditions and understandings contained in this Agreement and provided the Obligors execute and deliver this Agreement and all documents called for by this Agreement.

NOW, THEREFORE, in consideration of the premises and of the representations and mutual agreements made herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Defined Terms. Capitalized terms used herein and in the Preamble and not otherwise defined shall have the meanings given to such terms in the Loan Agreement.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.1. Acknowledgments of the Obligors. The Obligors hereby acknowledge that:

(a) The Recitals set forth above are true and complete in all respects and are incorporated herein by reference.

(b) As of the date hereof, the Borrower is currently in default of its obligations under the Financing Documents by virtue of its failure to comply with the various financial covenants set forth therein and to repay the Loan on or before the Maturity Date (collectively, the "Existing Defaults").

(c) As of September 15, 2009, the Borrower owed the Bank, pursuant to the terms of the Note, $7,034,545.03, consisting of $6,617,284.51 in principal, $398,487.59 in accrued but unpaid interest, $18,772.93 in late charges, plus fees, costs and other expenses.

(d) The Obligors have no defenses, affirmative or otherwise, rights of setoff, rights of recoupment, claims, counterclaims, actions or causes of action of any kind or nature whatsoever against the Bank or any past, present or future agent, attorney, legal representative, predecessor-in-interest, affiliate, successor, assign, employee, director or officer of the Bank (collectively, the "Bank Group"), directly or indirectly, arising out of, based upon, or in any manner connected with, any transaction, event, circumstance, action, failure to act, or occurrence of any sort or type, whether known or unknown, which occurred, existed, was taken, permitted, or began prior to the execution of this Agreement and accrued, existed, was taken, permitted or begun in accordance with,

pursuant to, or by virtue of, the Financing Documents or the Obligations; TO THE EXTENT ANY SUCH DEFENSES, AFFIRMATIVE OR OTHERWISE, RIGHTS OF SETOFF, RIGHTS OF RECOUPMENT, CLAIMS, COUNTERCLAIMS, ACTIONS OR CAUSES OF ACTION EXIST OR EXTEND, SUCH DEFENSES, RIGHTS, CLAIMS, COUNTERCLAIMS, ACTIONS AND CAUSES OF ACTION ARE HEREBY FOREVER WAIVED, DISCHARGED AND RELEASED.

(e) The Obligors have freely and voluntarily entered into this Agreement after an adequate opportunity and sufficient period of time to review, analyze and discuss all terms and conditions of this Agreement and all factual and legal matters relevant hereto with its counsel. Each Obligor further acknowledges that it has actively and with full understanding participated in the negotiation of this Agreement and that this Agreement has been negotiated, prepared and executed without fraud, duress, undue influence or coercion of any kind or nature whatsoever having been exerted by or imposed upon any party to this Agreement.

(f) There is (i) to the Obligors' knowledge, no statute, rule, regulation, order or judgment, and (ii) no provision in any articles of organization, operating agreement, charter or bylaws with respect to the any Obligor, and (iii) no provision of any mortgage, indenture, contract or other agreement binding on any Obligor or any of its properties which, in each case, would prohibit or cause a default under or in any way prevent the execution, delivery, performance, compliance or observance of any of the terms or conditions of this Agreement.

(g) The Borrower has not, voluntarily or involuntarily, granted any liens or security interests to any creditor not previously disclosed to the Bank in writing on or before the date of this Agreement and have not otherwise taken any action or failed to take any action which could or would impair, change, jeopardize or otherwise adversely affect the priority, perfection, validity or enforceability of any liens or securing interests securing all or any portion of the Obligations or the priority or validity of the Bank's claims with respect to the Obligations relative to any other creditor of the Borrower.

(h) Each Obligor has the full legal right, power and authority to enter into and perform its obligations under this Agreement, and the execution and delivery of this Agreement by the Obligors and the consummation by the Obligors of the transactions contemplated hereby have been duly authorized by all appropriate action (corporate or otherwise).

(i) This Agreement constitutes the valid, binding and enforceable agreement of the Obligors, enforceable against the Obligors in accordance with the terms hereof.

ARTICLE III

COVENANTS AND AMENDMENTS

In consideration of the Bank's agreement to forbear during the Forbearance Period (as hereinafter defined) from taking any further action against the Obligors or any of their respective assets, the Obligors hereby agree with the Bank as follows:

Section 3.1. Forbearance Covenant against Guarantor Only. Notwithstanding the Existing Defaults under the Financing Documents, but subject to the terms and conditions stated in this Agreement, the Bank agrees that it will not take any action or file any proceedings against the Guarantor, whether under the Guaranty, at law, or in equity, or otherwise exercise any of its rights and remedies against the Guarantor (the foregoing covenant being hereinafter referred to as the "Forbearance Covenant") other than the Foreclosure Proceedings (hereafter defined). The Forbearance Covenant will remain in effect until the occurrence of a Forbearance Termination Event (as defined below) or the Release Issuance Date (hereafter defined), whichever is earlier. Immediately upon the occurrence of a Forbearance Termination Event, the Bank will have the right, at any time and from time to time, to exercise any and all rights and remedies available against Guarantor under the Guaranty, at law or in equity, to the same extent as the Bank would be entitled if the Forbearance Covenant had never been part of this Agreement. As used herein, the term "Forbearance Termination Event" means the occurrence of one or more of the following events:

(a) if prior to the foreclosure of the Collateral, the Bank reasonably determines that any representation or warranty made by any Obligor in this Agreement is untrue or inaccurate in any material respect;

(b) if prior to the foreclosure of the Collateral, any Obligor breaches, defaults, repudiates, or fails to perform or observe any of that Obligor's obligations or agreements stated in this Agreement, which is not cured within fifteen (15) days after Bank gives Obligors written notice thereof;

(c) if, prior to the foreclosure of the Collateral or the Release Issuance Date, whichever is earlier, any Obligor (other than Guarantor) files, or has filed against it, a petition for relief under the United States Bankruptcy Code or any present or future federal, state, or other statute, law, or regulation relating to bankruptcy, insolvency, or other relief for debtors, or any Obligor (other than Guarantor) seeks, consents to, or acquiesces in, the appointment of any trustee, receiver, or liquidator of that Obligor or of all or any substantial part of that Obligor's Collateral; or

(d) if prior to the foreclosure of the Collateral, any Obligor commences, joins in, assists, cooperates in, or participates as an adverse party or as an adverse witness (subject to compulsory legal process which requires testimony) in any suit or other proceeding against Bank or any affiliate, officer, director, or employee of Bank, relating to the Loan or any Collateral for the Loan (an "Adversarial Action").

Section 3.2. Additional Covenants.

(a) Foreclosure of Collateral. The Obligors hereby acknowledge that Bank intends to commence proceedings to foreclose its Collateral in accordance with the provisions of the Financing Documents and applicable law (the "Foreclosure Proceedings"). In consideration of the Forbearance Covenant, the Obligors jointly and severally (i) ratify and affirm Bank's security title, lien, and security interest in and to the Collateral pursuant to the Financing Documents, (ii) acknowledge and agree that Obligors have received commercially reasonable, timely, and accurate notice of Bank's intention to foreclose its security title, lien, and security interest in the Collateral and that the Bank has satisfied all requirements set forth in the Financing Documents relating to commencement of the Foreclosure Proceedings, and (iii) covenant and agree to use commercially reasonable efforts to cooperate with Bank in connection with the Foreclosure Proceedings, with such cooperation to include the Obligors' agreement hereby that they will not contest, object to, file exceptions with respect to, or otherwise hinder or delay any Foreclosure Action in any way, shape or form, and will not request, induce or influence other third parties to do so. This Agreement expressly authorizes the Bank to commence and prosecute the Foreclosure Proceedings.

(b) Deliveries by Obligors. The Obligors hereby covenant to Bank that within fifteen (15) days after each written request therefor (to the extent that any of such items are in the possession or direct control of Obligors), the Obligors will deliver or cause the following items relating to the Collateral to be delivered to the Bank, whether such request is made prior or subsequent to the date of this Agreement or the foreclosure of the Deed of Trust: (i) any warranties, guaranties, and assurances given by third parties; (ii) any certificates of occupancy, licenses, and other governmental permits or notices; (iii) any surveys, plats, drawings, engineering reports, maps, plans and specifications, and other similar matters; (iv) any service contracts, supply contracts, management agreements, maintenance agreements, or other similar agreements; (v) any tax assessments, notices, bills and/or statements; (vi) copies of all rental agreements, equipment leases and other contracts affecting the Collateral; and (vii) any keys necessary to obtain full access to the Collateral.

(c) Contracts. The Obligors hereby represent and warrant to the Bank that, as of the date of this Agreement and to the actual knowledge of Obligors after due inquiry and investigation, attached hereto as Schedule I is a true, complete, and correct listing of all material commitments, rental agreements, equipment leases, guaranties, leases, or contracts entered into by any Obligor that could impair Bank's rights with respect to the Collateral.

(d) Payables. The Obligors hereby further represent and warrant to Bank that, as of the date of this Agreement and to the actual knowledge of Obligors after due inquiry and investigation, attached hereto as Schedule II is a true and correct listing of all known payables owing in connection with the Collateral, including trade payables, real and personal property taxes, utility charges, lease payments, and license and permit fees (hereafter collectively called the "Payables"). It is specifically understood that Obligor has not and will not agree to assume or incur any responsibility with respect to payment of the Payables as a condition of its receipt of the Release.

(e) Bonds. The Obligors further represent and warrant to Bank that Schedule III attached hereto contains a complete list of all bonds, letters of credit or cash escrows (the "Bonds") posted by the Obligors with all local governmental authorities having jurisdiction over the Collateral as of the date of this Agreement. The Bank agrees to replace or contract with a third party to replace any Bonds posted by any Obligor with any such local governmental authority within the earlier of: (i) five (5) days prior to the maturity of a Bond obligation, (ii) one hundred eighty (180) days after completed foreclosure of the Collateral to which a Bond pertains, or (iii) as a condition precedent to the conveyance of the Collateral to a third party. The Bank hereby designates Trey Mason, Vice President (tmason@mtb.com) as the individual responsible for processing Bond replacement and receiving Bond correspondence and the Obligors shall forward all information received by them relating to any such Bonds within fifteen (15) days of their receipt thereof.

(f) Sale of Collateral. The Borrower hereby acknowledges and agrees that if the Bank is the successful bidder for the Collateral following any Foreclosure Proceedings, then and in such event, at the Bank's discretion and if requested by the Bank in a subsequent writing, the Borrower shall actively assist the Bank in completing construction of, and to actively market and sell, the remaining 19 condominium units in Building A on the Property, know to the parties as the "Phase I Units" and in such event the parties shall enter into a separate construction, sales, and marketing agreement related thereto.

(g) Deficiency Note. As additional consideration for execution of this Agreement, the Guarantor shall execute and deliver to the Bank a non-interest bearing subordinate promissory note dated the date hereof and made payable to the order of the Bank in the principal amount of $496,000 (the "Deficiency Note"), which Deficiency Note shall be amortized over a period of five (5) years and be payable as follows:

25% after the 3rd anniversary thereof;
25% after the 4th anniversary thereof; and
50% upon maturity.

In the event any payment due under the Deficiency Note is not made as and when due, the Delivery Note shall thereafter bear interest at the rate of 3% per annum (the "Default Rate") until paid in full.

As provided above, the Deficiency Note shall be executed concurrent with this Agreement and delivered to Bank and shall be deemed full satisfaction for any and all liabilities of the Guarantor with respect to the Financing Documents, including, but not limited to, any deficiency amounts resulting from Foreclosure Proceedings of the Collateral. The form of the Deficiency Note shall be as set forth on Schedule V attached to this Agreement.

(h) Assignment of Special Declarant's Rights. Upon execution thereof, the Borrower shall execute and deliver to the Bank an assignment, substantially in the form of Schedule VI attached to this Agreement (the "Assignment"), of its rights and interests in and to the "Special Declarant Rights" as reserved to it in the Declaration of Beacon Park I Condominium dated November 29, 2007 and recorded November 30, 2007 in the Land Records of Prince William County, Virginia as Instrument Number 200711300129374, and as defined in Section 55-79.41 of the Condominium Act, Va. Code. As provided in the Assignment, the Assignment shall become effective only upon the transferee's acceptance thereof, otherwise to be of no force and effect.

(i) **Consent to Relief from Automatic Stay. The Obligors hereby further agree that, in the event that any Obligor (by its or his own action or the action of any of its beneficial owners) shall, prior to the completion of the Foreclosure Proceedings: (i) file with any bankruptcy court of competent jurisdiction or be the subject of any petition for relief under the United States Bankruptcy Code, as amended, (ii) be the subject of any order for relief issued under the United States Bankruptcy Code, as amended, (iii) file any petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, receivership,**

or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or other relief for debtors, or (iv) seek, consent to, or acquiesce in the appointment of any trustee, receiver, conservator, or liquidator, then and in such event the Bank will thereupon be entitled to relief from any automatic stay imposed by Section 362 of the United States Bankruptcy Code or otherwise, on or against the exercise of the rights and remedies otherwise available to Bank as provided in any of the Financing Documents, and as otherwise provided by law, and Obligors hereby waive the benefits of such automatic stay and consent and agree to raise no objection to such relief.

ARTICLE IV

CONDITION PRECEDENT

4.1. Conditions Precedent. On or prior to the date hereof, the Borrower shall deliver this Agreement fully executed together with the fully executed original Deficiency Note.

ARTICLE V

STANDSTILL PROVISIONS

Section 5.1. No Exercise of Remedies. During the period (the "Forbearance Period") from the date hereof until the earlier of (a) payment in full of all of the Obligations, or (b) the occurrence of a Default hereunder, or (c) the Termination Date (as hereinafter defined), the Bank agrees that other than the Foreclosure Proceedings, it will not take any further action against the Borrower or the Guarantor or exercise or enforce any other or further rights or remedies provided for in the Financing Documents or otherwise available to it, at law or in equity, by virtue of the occurrence of the defaults which now exist.

Section 5.2. No Waiver of Rights or Remedies. The parties hereto acknowledge and agree that the Bank shall retain all rights and remedies it may have with respect to the Obligations and the Financing Documents and the Borrower's previous failure to honor or otherwise comply with said obligations.

ARTICLE VI

RELEASES

Section 6.1. Releases and Waivers.

(a) Each Obligor hereby knowingly and voluntarily forever releases, acquits and discharges the Bank and the Bank Group from and of any and all claims that the Bank or any member of the Bank Group is in any way responsible for the past, current or future condition or deterioration of the business operations and/or financial condition of any Obligor, and from and of any and all claims that the Bank or any member of the Bank Group breached any agreement to loan money or make other financial accommodations available to the Obligors or to fund any operations of the Obligors at any time. Each Obligor also hereby knowingly and voluntarily forever releases, acquits and discharges the Bank and the Bank Group, from and of any and all other claims, damages, losses, actions, counterclaims, suits, judgments, obligations, liabilities, defenses, affirmative defenses, setoffs, and demands of any kind or nature whatsoever, in law or in equity, whether presently known or unknown, which such Obligor may have had, now have, or which it can, shall or may have for, upon, or by reason of any matter, course or thing whatsoever relating to, arising out of, based upon, or in any manner connected with, any transaction, event, circumstance, action, failure to act, or occurrence of any sort or type, whether known or unknown, which occurred, existed, was taken, permitted, begun, or otherwise related or connected to or with any of the Obligations and the Financing Documents, and/or any direct or indirect action or omission of the Bank and/or any of the Bank Group. Each Obligor further agrees that from and after the date hereof, it will not assert to any person or entity that any deterioration of the business operations or financial condition of any Obligor was caused by any breach or wrongful act of the Bank or any of the Bank Group which occurred prior to the date hereof.

(b) Concurrent with the execution of this Agreement, the Bank will enter into and issue a conditional release (the "Release of Obligors"), pursuant to which Bank will fully and unconditionally release Obligors from all claims, liabilities, and obligations under the Financing Documents or otherwise with respect to the Loan and the Collateral which will become effective retroactive to the Effective Date of this Agreement upon the earlier of (i) Bank's successful foreclosure of the Collateral, or (ii) November 30, 2009, (the "Release Issuance Date"), provided that the Obligors have taken no action to frustrate Bank's Foreclosure Proceedings.

The form of Release shall be as set forth on Schedule IV attached to this Agreement. The Release shall be executed by the Bank and shall be held in escrow by Bank's counsel (the "Escrow Agent") until the earlier of (i) the completion of the Foreclosure Proceedings on the Collateral by Bank, or the Release Issuance Date and shall thereafter be delivered to the Obligors by the Escrow Agent without further requirement or consent of the Parties. In no event shall the Release act to release Guarantor from its obligations pursuant to the Deficiency Note.

ARTICLE VII

TERMINATION

Section 7.1. Termination.

(a) The Forbearance Period shall terminate automatically and without notice to the Obligors upon the earliest of (i) the occurrence of a Default (as hereinafter defined), (ii) the indefeasible payment in full of all amounts due to the Bank from the Obligors, (iii) the approval of the Commissioner's Account following any Foreclosure Proceedings; or (iv) 5:00 p.m. on March 31, 2010 (the "Termination Date").

(b) For purposes hereof, the Obligors shall be in default (each, a "Default") if:

(i) the Obligors or any other person authorized to act on behalf of the Obligors (other than the Bank) fail to observe, perform, or comply with any of the terms, conditions or provisions of this Agreement, as and when required; or

(ii) any recital, representation or warranty made herein, in any document executed and delivered in connection herewith, or in any report, certificate, financial statement or other instrument or document previously, now or hereafter furnished by or on behalf of the Obligors in connection with this Agreement or any other document executed and delivered in connection with this Agreement, shall prove to have been false, incomplete or misleading in any material respect on the date as of which it was made.

Upon termination of the Forbearance Period, should any of the Obligations not be satisfied in full, the Bank shall be entitled to immediately pursue its various rights and remedies, including its Default Rights, against the Obligors and their respective assets, including all collateral given to secure the Obligations or any other person liable therefore and the Deficiency Note shall be of no force and effect.

ARTICLE VIII

MISCELLANEOUS

Section 8.1. Headings. Descriptive headings are for convenience only and will not control or affect the meaning or construction of any provision of this Agreement.

Section 8.2. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and each of its respective heirs, personal representatives, successors and assigns.

Section 8.3. Time of Essence. Time is of the essence of this Agreement.

Section 8.4. Counterparts. This Agreement may be executed in any number of duplicate originals or counterparts, each of such duplicate originals or counterparts shall be deemed to be an original and all taken together shall constitute but one and the same instrument. The parties further agree that facsimile signatures shall be binding on all parties and have the same force and effect as original signatures.

Section 8.5. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Virginia.

Section 8.6. Severability. In case one or more provisions contained in this Agreement shall be invalid, illegal, or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions contained herein shall remain effective and binding and shall not be affected or impaired thereby.

Section 8.7. Amendments. This Agreement may be amended, modified, from time to time or supplemented only by written agreement signed by all parties hereto. No provision of this Agreement may be waived except in writing signed by the party against whom such waiver is sought to be enforced.

Section 8.8. Entire Agreement. This Agreement and the Financing Documents set forth the entire agreement and understanding of the parties hereto with respect to payment and performance of the Obligations, superseding all prior representations, understandings and agreements, whether written or oral.

Section 8.9. Effective Date. This Agreement shall be effective immediately upon the execution and delivery of this Agreement by all persons who are parties hereto.

Section 8.10. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH IT MAY BE PARTIES, ARISING OUT OF OR IN ANY WAY PERTAINING TO (A) THIS AGREEMENT (B) ANY OF THE OTHER DOCUMENTS EXECUTED BY IT IN CONNECTION HEREWITH, (C) ANY OF THE OBLIGATIONS, AND/OR (D) ANY OF THE FINANCING DOCUMENTS. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS AGREEMENT.

THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY THE PARTIES HERETO, AND EACH OF THE PARTIES HERETO HEREBY REPRESENT AND WARRANT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY NOTIFY OR NULLIFY ITS EFFECT. EACH OF THE PARTIES HERETO FURTHER REPRESENT THAT IT HAVE BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, SELECTED OF ITS OWN FREE WILL, AND THAT IT HAVE HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

Section 8.11. Further Assurances. The Obligors hereby agree to execute and deliver to the Bank from time to time such other Documents and instruments and to take such other actions as the Bank may reasonably request in order to more effectively carry out the terms hereof.

[Signature Page to Follow]

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

WITNESS:

COMSTOCK BELMONT 89, L.C.

By: Comstock Homebuilding Companies, Inc.
its Manager

By: _____
Name:
Title:

COMSTOCK HOMEBUILDING COMPANIES, INC.,

By: _____
Name:
Title:

MANUFACTURERS AND TRADERS TRUST COMPANY

By: _____
Frederick F. Potter
Vice President

SCHEDULE I

List of Contracts

SCHEDULE II

List of Payables

SCHEDULE III

List of Bonds

SCHEDULE IV

Form of Bank Release

RELEASE AND COVENANT NOT TO SUE

THIS RELEASE AND COVENANT NOT TO SUE is entered into the ____ day of September, 2009 for the benefit of COMSTOCK BELMONT BAY 89, L.C., a Virginia limited liability company ("Borrower" and COMSTOCK HOMEBUILDING COMPANIES, INC., a Delaware corporation ("Guarantor", and together with the Borrower, the "Obligors") by MANUFACTURERS AND TRADERS TRUST COMPANY (the "Bank").

RECITALS:

The Bank and the Obligors have entered into that certain Forbearance and Conditional Release Agreement dated September ____, 2009 (the "Agreement"). In consideration for entry into the Agreement, the Bank has agreed to release Obligors from all claims and other matters relating to the Loan, the Financing Documents and the Collateral (as such terms are defined in the Agreement), except as specifically set forth in the Agreement.

The Bank has entered into this instrument to evidence the full release of Obligors, except to the extend provided herein.

NOW, THEREFORE, in consideration of the foregoing recitals, and other good and valuable consideration contained herein, the sufficiency of which is hereby acknowledged, the Bank and the Obligors agree as follows:

1. Capitalized terms not defined herein shall have the meanings ascribed to such terms by the Agreement.

2. The Bank, for itself, successors, shareholders, predecessors, affiliates, assigns, officers, directors, employees, attorneys, and agents (collectively, the "Releasing Parties") hereby absolutely, fully, and forever release, relinquish, waive, forever discharge, and covenant not to sue Obligors, their shareholders, officers, directors, agents, employees, attorneys, successors, assigns, and any other person or entity representing or acting on behalf of each of them on account of any and all claims arising under the Financing Documents or otherwise with respect to the Loan and the Collateral which the Releasing Parties may have had, may presently have, or in the future may have against the Obligors arising from acts or omissions prior to the date hereof; **provided, however, that the release and covenant not to sue granted by the Bank in favor of Obligors shall be subject to the condition subsequent that no Obligor (or any person acting on behalf of any Obligor) has taken any action to frustrate the Bank's Foreclosure Proceedings and no Obligor (or any person acting on behalf of any Obligor) shall commence, join in, assist, cooperate in, or otherwise participate as an adverse party or as an adverse witness (subject to compulsory legal process which requires testimony) in any suit or other proceeding against The Bank or any affiliate, officer, director, or employee of the Bank, relating to the Loan. Additionally, this Release shall not release Guarantor from its liability under the Deficiency Note, which shall remain in full force and effect in accordance with its terms.**

3. The Releasing Parties acknowledge that this Release constitutes a legal, valid and binding obligation. Its terms cannot be modified except in writing signed by the party against whom the modification is sought to be enforced. The consideration referred to herein is not to be construed as an admission of liability and admitted to be sufficient to create binding obligations on all parties; provided, however, that upon the occurrence of a Condition Subsequent, this Release shall no longer be binding on Bank.

4. This Release shall be binding upon the Releasing Parties, their respective successors and assigns.

5. This Release shall be governed by, and construed in accordance with, the laws of the Commonwealth of Virginia.

IN WITNESS WHEREOF, the Bank has executed this Agreement under seal with the intention that this Release shall be effective as of the date first above written.

MANUFACTURERS AND TRADERS AND TRUST COMPANY

By: _____

Frederick F. Potter
Vice President

SCHEDULE V

SUBORDINATE DEFICIENCY NOTE

$ 496,000 September ____, 2009

FOR VALUE RECEIVED, the undersigned, COMSTOCK HOMEBUILDING COMPANIES, INC., a Delaware corporation (the "Maker"), hereby promises to pay to the order of MANUFACTURERS TRADERS AND TRUST COMPANY (the "Noteholder"), the sum of Four Hundred Ninety Six Thousand and No/100ths Dollars ($496,000) (the "Deficiency Sum"), or so much thereof as shall remain unpaid; this Deficiency Note being non-interest bearing provided that the Maker is not in Default of payment hereunder. This Deficiency Note is issued pursuant to that certain Forbearance and Conditional Release Agreement dated as of even date herewith (the "Forbearance Agreement"). The Maker hereby agrees to pay Noteholder the Deficiency Sum in accordance with the payment schedule set forth herein. As additional consideration for the entry into the Deficiency Note and payment by the Maker thereunder, the Noteholder has executed the Release dated the same day hereof.

Payment Schedule: The Noteholder shall receive payment (principal curtailment) of Twenty-Five percent (25%) of the principal balance of the Deficiency Note on the third anniversary of this Deficiency Note and shall receive payment (principal curtailment) of Twenty-Five percent (25%) of the principal balance of the Deficiency Note on the fourth anniversary of this Deficiency Note. The balance of the Deficiency Note shall be paid at the Maturity of the Deficiency Note.

Subordination. By acceptance of this Deficiency Note, Holder of the Indebtedness (as defined below) agrees to each of the following provisions:

As used in this paragraph , 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 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 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 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 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.

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 Deficiency Note, shall be deemed to have agreed, notwithstanding anything to the contrary in this 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 subordination paragraph.

2. 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:

(a) 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

(b) 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 subordination paragraph, 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.

3. By acceptance of this 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.

4. 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.

5. By acceptance of this 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 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 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 an 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.

6. The provisions of this subordination paragraph 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 subordination paragraph 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 Deficiency Note, each holder of the Subordinated Indebtedness expressly covenants and agrees that this 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.

7. 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).

8. 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 subordination paragraph 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.

9. 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.

10. 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 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).

Maturity: This Deficiency Note, the entire unpaid principal amount hereof, shall mature and become finally due and payable five (5) years from the date of this Deficiency Note.

In addition to all other rights contained in this Deficiency Note, if a Default (as defined herein) occurs and so long as a Default continues, this Deficiency Note shall bear interest at three percent (3%) per annum (the "Default Rate").

The Maker hereby expressly agrees that in the event it fails to make any payment due hereunder within five (5) days after the date hereof (a "Default"), then, in any or all such events, the entire principal sum outstanding, together with all accrued and unpaid interest, shall at once be and become immediately due and payable at the option of the Noteholder.

Any notice, request, or demand to be given to the Maker under this Deficiency Note shall be in writing and shall be deemed to have been given if delivered to the Maker at 11465 Sunset Hills Road, Suite 500, Reston, Virginia 20190, Attention: Mr. Christopher Clemente, copy to Mr. Jubal Thompson, either (i) on the date of delivery of the notice 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, addressed to the Maker at the address provided herein.

The Maker hereby represents and warrants that the loan evidenced hereby was made and transacted solely for the purpose of carrying on a business or other commercial activity.

This Deficiency Note may be prepaid, in whole or in part, at any time without penalty or premium.

The validity and construction of this Deficiency Note and all matters pertaining thereto are to be determined according to the laws of the Commonwealth of Virginia.

In the event any provision of this 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 Deficiency Note; but this Deficiency Note shall be construed as if such invalid, illegal or unenforceable provision (or part thereof) had not been contained in this Deficiency Note, but only to the extent it is invalid, illegal or unenforceable.

This 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.

IN WITNESS WHEREOF, the Maker has executed and sealed, or caused to be executed and sealed, this Note on the date first above written.

BORROWER:

Comstock Homebuilding Companies, Inc.,
a Delaware corporation

By: _____ (SEAL)
Christopher Clemente
Chief Executive Officer

SCHEDULE VI

TRANSFER AND ASSIGNMENT OF SPECIAL DECLARANT RIGHTS

THIS TRANSFER AND ASSIGNMENT OF SPECIAL DECLARANT RIGHTS ("Assignment"), made this ____ day of _____, 2009, by and between COMSTOCK BELMONT BAY 89, L.C., a Virginia limited liability company (the "Declarant") and _____, a _____ (the "Transferee"), recites and provides as follows:

RECITALS:

1. By the Declaration of Beacon Park I Condominium dated November 29, 2007 and recorded November 30, 2007 in the Land Records (the "Land Records") of Prince William County, Virginia, as Instrument Number 200711300129374, the Declarant submitted certain land located in Prince William County, Virginia to the provisions of the Condominium Act, Va. Code Section 55-79.39 et seq. (the "Condominium Act"), thereby establishing an expandable condominium development known as Beacon Park I Condominium (the "Condominium"). Capitalized terms not otherwise defined herein shall have the meanings set forth in the Declaration or the Condominium Act.

2. The Declarant now desires to transfer, assign and convey to the Transferee all of its right, title and interest in and to the "Special Declarant Rights" as reserved for the benefit of the Declarant in the aforesaid Declaration and as defined in Section 55-79.41 of the Condominium Act, as amended (the "Special Declarant Rights"), and the Transferee, by its execution hereof, has agreed to accept the assignment, transfer and conveyance of the Special Declarant Rights and in furtherance of the foregoing, both the Declarant and the Transferee have executed this Agreement.

AGREEMENT:

NOW, THEREFORE, WITNESSETH: That, pursuant to Section 55-79.74:3 of the Condominium Act, the Declarant and the Transferee do hereby agree as follows:

1. Effective as of the date of acceptance of this Assignment by the Transferee (which acceptance shall be evidenced by the Transferee filling in its name and legal status above), the Declarant hereby absolutely conveys, assigns, transfers and sets over unto the Transferee, as successor declarant, any and all Special Declarant Rights heretofore retained or reserved by the Declarant, with respect to the Condominium, including, but not limited to, the following:

(a) the right to expand the Condominium, to contract the Condominium, and to convert convertible land or convertible space or both;

(b) the right to appoint or remove any officers of the unit owners association or the executive organ;

(c) the right to exercise any power or responsibility otherwise assigned by any Condominium Instrument or by the provisions of the Condominium Act to the Association or any of its officers or its executive organ; and

(d) the right(s) to maintain sales offices, management offices, model units and signs.

2. To the extent that there exist rights reserved to the Declarant in the Condominium Instrument in addition to the Special Declarant Rights, the Declarant also hereby absolutely conveys, assigns, transfers and sets over unto the Transferee as successor declarant any such additional rights.

3. Transferee hereby accepts the aforesaid assignment from Declarant.

4. Each of the parties hereto does hereby certify and represent that the Transferee is not an "affiliate of the declarant" as that term is defined in the Condominium Act.

5. The provisions of this Assignment shall be binding upon and inure to the benefit of the parties thereto and their respective successors and assigns. This Assignment sets forth the entire agreement of the parties with respect to the subject matter and supersedes all previous understandings, written or oral in respect thereof. This Assignment may be executed in counterparts, each of which shall be an original and all of which together shall constitute a fully-executed instrument.

6. In the event the Transferee opts not to accept this Assignment, this Assignment shall be deemed null and void *ab initio* and of no force and effect.

WITNESS, the following signatures and seals as of the day and year first above written.

DECLARANT

COMSTOCK BELMONT BAY 89, L.C.,

By: Comstock Homebuilding Companies, Inc.,
its Manager

By: _____
Name:
Title:

COMMONWEALTH OF VIRGINIA:

CITY/COUNTY of _____, to-wit:

The foregoing instrument was acknowledged before me in the City/County of _____, Virginia, this ____ day of _____, 2009, by _____, who presented a valid drivers license and acknowledged this instrument as _____ of Comstock Homebuilding Companies, Inc., Manager of Comstock Belmont Bay 89, L.C., a Virginia limited liability company on behalf of the company.

(SEAL)

_____
Notary Public

My commission expires: _____
Registration No. _____

TRANSFEREE

_____
a _____

By: _____
Its: _____

COMMONWEALTH OF VIRGINIA:

CITY/COUNTY of _____, to-wit:

The foregoing instrument was acknowledged before me in the City/County of _____, Virginia, this ____ day of _____, 2009, by _____, who presented a valid drivers license and acknowledged this instrument as _____ of _____, a _____ on behalf of the _____.

(SEAL)

_____
Notary Public

My commission expires: _____
Registration No. _____

Exhibit 10.75

FIRST AMENDMENT TO LOAN AGREEMENT

THIS FIRST AMENDMENT TO LOAN AGREEMENT (this "Agreement") is made and entered into as of October 30, 2009, by and among **COMSTOCK STATION VIEW, L.C.**, a Virginia limited liability company ("Station View"), **COMSTOCK POTOMAC YARD, L.C.**, a Virginia limited liability company ("Potomac"; Station View and Potomac are sometimes hereinafter referred to individually as "Borrower" and collectively as "Borrowers"), **COMSTOCK HOMEBUILDING COMPANIES, INC.**, a Delaware corporation ("Guarantor"; Borrowers and Guarantor are sometimes hereinafter referred to individually as a "Loan Party" and collectively as the "Loan Parties"), and **KEYBANK NATIONAL ASSOCIATION**, a national banking association ("KeyBank"), individually and as Agent for the Lenders (the "Agent").

W I T N E S S E T H:

WHEREAS, Borrowers and KeyBank, individually and as Agent, entered into that certain Loan Agreement dated as of March 14, 2008 (the "Loan Agreement"); and

WHEREAS, Guarantor executed and delivered to Agent and the Lenders that certain Unconditional Guaranty of Payment and Performance dated as of March 14, 2008 (the "Guaranty"); and

WHEREAS, Borrowers are presently in default under the Loan Agreement due to the failure to make the mandatory prepayments required under Section 3.3 of the Loan Agreement, the failure of Station View to timely pay real estate taxes on the Station View Project due for the second half of calendar year 2008 and the first half of calendar year 2009, and the failure of Potomac to timely pay the condominium association dues payable on or before their due date in connection with the ownership of Potomac Project (as defined in the Loan Agreement) (collectively, the "Existing Defaults");

WHEREAS, the Loan Parties have requested that the Agent and KeyBank waive the Existing Defaults and make certain amendments to the Loan Agreement, and the Agent and KeyBank are willing to do so, on and subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the sum of TEN and NO/100 DOLLARS ($10.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby covenant and agree as follows:

1. Definitions. All the terms used herein which are not otherwise defined herein shall have the meanings set forth in the Loan Agreement.

2. Waivers of Existing Defaults.

(a) KeyBank and the Loan Parties have agreed that, in consideration of the representations, covenants and agreements of Loan Parties contained in this Agreement, KeyBank hereby waives the Existing Defaults.

(b) Loan Parties specifically agree and acknowledge that, except as expressly set forth in Section 2(a) with respect to the Existing Defaults, neither this Agreement nor any continued making of Loans or extensions of credit to Borrowers in accordance with the Loan Documents, shall be deemed a waiver of or consent by the Lenders to any other Default or Event of Default under the Loan Documents.

3. Modification of the Loan Agreement. Loan Parties, KeyBank and Agent do hereby modify and amend the Loan Agreement as follows:

(a) By deleting the definition of "Salable Inventory" from §1.1 of the Loan Agreement.

(b) By inserting the following new definitions in §1.1 of the Loan Agreement:

"Association. The Unit Owners Association of The Eclipse on Center Park Condominium.

Bank of America Line of Credit. The Indebtedness of Guarantor in the principal amount of $3,120,000, which Indebtedness is evidenced by that certain Revolving Line Credit Note dates as of February 22, 2006, by and between Guarantor and Bank of America, N.A., as modified by that certain Loan Modification Agreement dated August 22, 2006, by that certain Second Loan Modification Agreement dated as of November 22, 2006, that certain Third Modification Agreement dated June 28, 2007, that certain Fourth Modification Agreement dated December 27, 2007, that certain Fifth Modification Agreement dated as of February 27, 2008 and that certain Sixth Loan Modification Agreement dated November 26, 2008.

Cascades. Comstock Cascades, L.C., a Virginia limited liability company.

Cascades Debt. The loan in the original aggregate amount of up to $9,200,000, which loan is evidenced by, among other things, that certain Disbursement and Development Loan Agreement dated July 14, 2004 by and between Cascades and M&T, as modified by that certain Forbearance Agreement (Comstock Cascades, L.C.) dated as of September 28, 2009.

Cascades Property. That certain real property owned by Cascades and located in Loudon County, Virginia, which real property is subject to the Cascades Debt as of the First Amendment Date.

Cash Equivalents. As of any date, (i) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality thereof having maturities of not more than one year from such date, (ii) time deposits and certificates of deposits having maturities of not more than one year from such date and issued by any domestic commercial bank having, (A) senior long term unsecured debt

rated at least A or the equivalent thereof by S&P or A2 or the equivalent thereof by Moody's and (B) capital and surplus in excess of $100,000,000.00, (iii) commercial paper rated at least A-1 or the equivalent thereof by S&P or P-1 or the equivalent thereof by Moody's and in either case maturing within one hundred twenty (120) days from such date, and (iv) shares of any money market mutual fund rated at least AAA or the equivalent thereof by S&P or at least Aaa or the equivalent thereof by Moody's.

Cash Collateral Agreement. Cash Collateral Account and Control Agreement dated as of the First Amendment Date by the Borrowers in favor of Agent for the benefit of the Lenders, as the same may be hereafter modified or amended.

Comstock Facilities. Collectively, the credit or loan facilities described on Schedule A attached hereto.

Condo Assessment Settlement Agreement. Collectively, (i) the letter from Potomac to the Association dated October 8, 2008 regarding the payment of delinquent assessments due under the Condominium Declaration, and (ii) the Consent of the Board of Directors of the The Eclipse on Center Park Condominium Unit Owners Association to Action Without a Meeting made effective as of November 20, 2008.

Deficiency Notes. The promissory notes evidencing the Deficiency Note Subordinate Debt.

Deficiency Note Subordinate Debt. All amounts representing the deficiency claims of Wachovia Bank, National Association, Cornerstone Bank and M&T against Guarantor more particularly described and set forth in the Deficiency Notes, but excluding the amounts due to Bank of America, N.A. pursuant to the Bank of America Line of Credit.

Distribution Certificate. A written certificate from Borrowers and Guarantor to Agent and the Lenders on the First Amendment Date, and on the 15th day of each calendar month thereafter, that (i) no Default or Event of Default has occurred or is continuing, or would arise as a result of the Sales Distributions, (ii) all other amounts due and payable under the Loan Documents have been paid to Agent, (iii) all amounts payable with respect to the development, ownership, sale and operation of the Station View Project, except for Station View Project real estate taxes due for the second half of calendar year 2008 and the first half of calendar year 2009, and the Potomac Project have been paid for the month covered by the applicable Distribution Certificate, or are reserved for in the Escrow Account, (iv) Potomac has paid to the Association all such amounts required pursuant to the Condo Assessment Settlement Agreement as of such date, and (v) the exact amount of Net Sales Proceeds paid into the Unrestricted Collateral Account and Collateral Account to date.

Distribution Conditions. The following conditions: (i) the Post-Closing Conditions are satisfied prior to November 30, 2009, (ii) no Default or Event of Default has occurred or is continuing, or would arise as a result of the Sales Distribution, (iii) the delivery to Agent of the Unrestricted Cash Certificate, (iv) Agent shall have received and approved all of the reporting information required to be delivered by Borrowers pursuant to §7.4(k) and (v) Agent shall have received and approved prior month's Distribution Certificate. Agent shall be deemed to have approved the Distribution Certificate in the event that Agent does not respond within five (5) Business Days of confirmed receipt of the Distribution Certificate.

Eligible Account. As defined in §5.5(c).

Escrow Account. As defined in §5.5(c).

Escrow Funds. As defined in §5.5(d).

Existing Sales Holdback. As defined in §2.8(a).

First Amendment. The First Amendment to Loan Agreement dated as of the First Amendment Date, by and between Borrowers, Guarantor, KeyBank and Agent.

First Amendment Date. October 30, 2009.

First Amendment Distribution. As defined in §2.8(a).

Guggenheim Cash Collateral Agreement. The Cash Collateral Agreement to be entered into after the First Amendment Date by Penderbrook in favor of Guggenheim Corporate Funding, LLC.

Guggenheim Debt. The loan in the original aggregate principal amount of $28,000,000, which loan is evidenced by, among other things, that certain Loan Agreement dated February 22, 2007 by and between Penderbrook, Guarantor, Guggenheim Corporate Funding, LLC and certain other lenders a party thereto, as modified and amended by that certain First Amendment of Loan Agreement dated April 10, 2007, that certain Forbearance Agreement and Second Amendment of Loan Agreement dated January 27, 2009 and that certain First Amendment to Forbearance Agreement and Third Amendment of Loan Agreement dated as of September 16, 2009.

Individual Post-Closing Sales Amount. During the period of time between the First Amendment Date and the earlier of (i) November 30, 2009, or (ii) the date Agent confirms in writing to Borrowers that the Post-Closing Conditions have been satisfied, an amount equal to the lesser of (a) fifteen percent (15%) of the Net Sales Proceeds from sales of such Potomac Unit, or the sale of the entire Station View Project, or (b) the

amount of Net Sales Proceeds remaining following the sale of such Potomac Unit, or the sale of the entire Station View Project after payment to Agent of the minimum release price for such Potomac Unit set forth on Schedule 8.8 hereto, or $2,150,000 for the Station View Project.

Insurance Premiums. The premiums for the insurance Borrowers are required to provide pursuant to §7.7 of Agreement.

JP Morgan Subordinate Debt. All amounts loaned to Guarantor and evidenced by the CHCI Subordinate Notes, and which are subject to the JP Morgan Subordination and Standstill Agreement.

JP Morgan Subordination and Standstill Agreement. The Subordination and Standstill Agreement, by and among Agent, Guarantor and the holder of the JP Morgan Subordinate Debt, as the same may be modified or amended.

Land. Real property, together with all of the tenements, hereditaments, easements, rights-of-way, rights, privileges and appurtenances thereunto belonging or in any way pertaining thereto, all reversions, remainders, and all of the estate, right, title, interest, claim and demand whatsoever of any Person therein and in the streets, alleys, vaults and ways adjacent thereto, all rights to the use of common drive entries, all rights pursuant to any reciprocal easement agreement or trackage agreement, all strips and gores within or adjoining such property, the air space and right to use the air space above such property, all transferable development rights arising therefrom or transferred thereto, and the drainage, mineral, water, oil and gas rights with respect to such property, either at law or in equity, if any, in possession or expectancy, now or hereafter acquired.

M&T. Manufacturers and Traders Trust Company, a New York banking corporation.

M&T Deficiency Note. The Subordinated Deficiency Note dated September 28, 2009 made by Guarantor in favor of M&T in the principal face amount of $496,000.

Net Sales Proceeds. With respect to the sale of any portion of the Mortgaged Property in accordance with the provisions of §5.2, all gross proceeds of such sale plus all other consideration received in conjunction with such sale less all reasonable, ordinary and customary costs, expenses and commissions incurred as a direct result of such sale and paid to any Person; provided that if such commissions are to a Person related to the Borrowers, Guarantor or any of their respective partners, members, managers, officers or directors or any Person affiliated with the Borrowers, Guarantor or any their respective partners, members, managers, officers or directors, then such commissions shall not exceed 1.5% of the gross sales price. Amounts Potomac pays to the Association

at the closing of a Unit as required under the Condo Assessment Settlement Agreement shall constitute expenses included in Net Sales Proceeds. Net Sales Proceeds shall under no circumstances be less than ninety percent (90%) of the sales price set forth in the Purchase Contract without the prior written consent of Agent.

Note Purchaser. As defined in the definition of CHCI Subordinate Notes in the First Amendment.

Penderbrook. Comstock Penderbrook, L.C., a Virginia limited liability company.

Penderbrook Unit. Each of the residential condominium units defined as a "Unit" under the loan documents evidencing the Guggenheim Debt.

Post-Closing Conditions. The following conditions have been satisfied by Borrowers and Guarantor in all respects satisfactory to Agent in its sole discretion prior to November 30, 2009:

(i) The JP Morgan Subordination and Standstill Agreement shall have been executed and delivered to Agent in form and substance satisfactory to Agent in its sole discretion; and

(ii) The CHCI Subordinate Notes shall have been purchased by the Note Purchaser and amended and restated in form and substance satisfactory to Agent in its sole discretion.

(iii) The Guggenheim Cash Collateral Agreement shall have been executed and delivered in form and substance satisfactory to Agent in its sole discretion.

Project Completion Reserve Account. As defined in the Cash Collateral Agreement.

PY Net Operating Income. For the Potomac Project and for a given period, an amount equal to PY Rental Revenues less PY Operating Expenses. PY Net Operating Income shall be determined on a cash basis and consistent with prior periods as disclosed to Agent.

PY Operating Expenses. For a given period, the following expenses paid and relating solely to the ownership or maintenance of the Potomac Project: (i) salary, benefits and taxes for the maintenance personnel and rental agents (it being acknowledged and agreed by Borrowers that both the number of such personnel and salary, benefits and taxes shall not exceed the amounts existing as of the First Amendment Date without the prior written consent of Agent, which consent may withheld in Agent's sole and absolute discretion), (ii) rental business license fees (annual fee of $.28/$100 of gross revenue subject to

adjustment by local jurisdictional authorities), (iii) credit reports and other miscellaneous costs directly attributable to leasing of Potomac Units, (iv) telephones and beepers for maintenance personnel and rental agents, (v) electrical, water and natural gas costs for the rented Potomac Units, (vi) office supplies for rental of the Potomac Units, (vii) rental furniture for the rental office of the Potomac Project, (viii) advertising costs for rental of the Potomac Units, (ix) legal costs incurred solely in connection with the collection of rent or dispossession of tenants of the rented Potomac Units, (x) maintenance and repair with respect to the rented Potomac Units to the extent not provided by the condominium homeowner's association, (xi) banking fees for the rental operating account and (xii) commercial general liability insurance for the Potomac Units. Notwithstanding the foregoing, PY Operating Expenses shall specifically exclude general overhead expenses of the Borrowers, Guarantor or their respective Subsidiaries.

PY Rental Revenues. For a given period, the sum of the rents and other revenues for the Potomac Project for such period received in the ordinary course of business (excluding security deposits except to the extent applied in satisfaction of tenants' obligations for rent or any amounts resulting from any sale, financing or refinancing of, or casualty to or condemnation of, any of the Potomac Project).

Remaining Sales Holdback. The Existing Sales Holdback less the First Amendment Distribution.

Restricted Collateral Account. As defined in the Cash Collateral Agreement.

Sales Distributions. As defined in §8.6.

Station View Sales Contract. The purchase contract between Station View and M/I Homes of DC, LLC for the purchase and sale of the Station View Project for a gross sales price of not less than $2,840,000, in form and substance satisfactory to Agent.

Station View Sales Costs. Collectively, (i) all amounts payable to the Association that absent the Condo Assessment Settlement Agreement would be delinquent, (ii) any taxes on the Mortgaged Properties that are either (a) delinquent, or (b) payable for second half of calendar year 2009, (iii) reasonable costs incurred by Station View to execute and deliver certain easements and permits to the purchaser of Station View, which costs shall not exceed $27,500 and (iv) an amount up to $216,200 that is payable to the State of Delaware, or agency or department thereof, to cause the Guarantor to be in good standing in its jurisdiction of incorporation or formation. Upon request, Borrowers shall submit any documentation reasonably required by Agent to evidence such Station View Sales Costs.

Subordinate Debt. Collectively, the JP Morgan Subordinate Debt and the Deficiency Note Subordinate Debt.

Subordinate Note(s). The promissory notes evidencing the Subordinate Debt.

Taxes. All real estate taxes, government assessments or impositions, lienable water charges, lienable sewer rents, and assessments, fees or other charges due under owner association or condominium association documents (including, without limitation, the Condominium Declaration) now or hereafter levied or assessed against the Mortgaged Properties.

Total Post-Closing Sales Amount. During the period of time between the First Amendment Date and the earlier of (i) November 30, 2009, or (ii) the date Agent confirms in writing to Borrowers that the Post-Closing Conditions have been satisfied, the aggregate total of all of the Individual Post-Closing Sales Amounts.

Unrestricted Cash and Cash Equivalents. As of any date of determination, the sum of (a) the aggregate amount of Unrestricted cash and (b) the aggregate amount of Unrestricted Cash Equivalents (valued at fair market value). As used in this definition, "Unrestricted" means the specified asset is not subject to any escrow, reserves or Liens or claims of any kind in favor of any Person.

Unrestricted Cash Certificate. A certification to Agent of the amount of Unrestricted Cash and Cash Equivalents of Guarantor and its Subsidiaries after the sale that day of any of the Mortgaged Property, or any Penderbrook Unit and any requested Sales Distributions, Restricted Account Distributions or similar distributions under the documents relating to the Guggenheim Debt.

Unrestricted Collateral Account. As defined in the Cash Collateral Agreement.

(c) By deleting in its entirety the definition of "Authorized Officer" in §1.1 of the Loan Agreement, appearing on page 3 thereof, and inserting in lieu thereof the following:

"Authorized Officer. Christopher Clemente as to Station View and Potomac."

(d) By deleting in its entirety the definition of "Base Rate" in §1.1 of the Loan Agreement, appearing on page 3 thereof, and inserting in lieu thereof the following:

"Base Rate. For any day, a fluctuating interest rate per annum as shall be in effect from time to time which rate per annum shall at all times be equal to the greatest of (i) the rate of interest established by Agent, from time to time, as its "prime rate," whether or not publicly announced, which

interest rate may or may not be the lowest rate charged by it for commercial loans or other extensions of credit; or (ii) the Federal Funds Effective Rate in effect from time to time, determined one Business Day in arrears, plus 1/2 of 1% per annum. Any change in the rate of interest payable hereunder resulting from a change in the Base Rate shall become effective as of the opening of business on the day on which such change in the Base Rate becomes effective, without notice or demand of any kind."

(e) By deleting in its entirety the definition of "CHCI Subordinate Notes" in §1.1 of the Loan Agreement, appearing on page 4 thereof, and inserting in lieu thereof the following:

"CHCI Subordinate Notes. The promissory notes issued pursuant to that certain Indenture dated March 15, 2007, by and between Guarantor and Wells Fargo Bank, N.A. ("Trustee"), or its assigns, as amended and restated pursuant to that certain Amended and Restated Indenture dated March 14, 2008, by and between Guarantor and Trustee. These promissory notes have been or will be acquired by an entity controlled or sponsored by Christopher Clemente ("Note Purchaser") pursuant to a Note Purchase Agreement by and among Trustee and Note Purchaser, and as thereafter amended and restated by Note Purchaser and Guarantor."

(f) By deleting in its entirety the definition of "Indebtedness" in §1.1 of the Loan Agreement, appearing on pages 7 and 8 thereof, and inserting in lieu thereof the following new definition:

"Indebtedness. With respect to a Person, at the time of computation thereof, all of the following (without duplication): (a) all obligations of such Person in respect of money borrowed (other than trade debt incurred in the ordinary course of business which is not more than thirty (30) days past due); (b) all obligations of such Person, whether or not for money borrowed (i) represented by notes payable, or drafts accepted, in each case representing extensions of credit, (ii) evidenced by bonds, debentures, notes or similar instruments, or (iii) constituting purchase money indebtedness, conditional sales contracts, title retention debt instruments or other similar instruments, upon which interest charges are customarily paid or that are issued or assumed as full or partial payment for property or services rendered; (c) obligation of such Person as a lessee or obligor under a Capitalized Lease; (d) all reimbursement obligations of such Person under any letters of credit or acceptances (whether or not the same have been presented for payment); (e) all obligations of such Person in respect of any purchase obligation, repurchase obligation, takeout commitment or forward equity commitment, in each case evidenced by a binding agreement; (f) obligations under any Derivatives Contract; (g) all Indebtedness of other Persons which such Person has guaranteed or is otherwise recourse to such Person, including liability of a general partner in respect of liabilities of a partnership in which it is a general partner which would constitute "Indebtedness" hereunder, any obligation to supply funds to or in any manner to invest directly or indirectly in a

Person, to maintain working capital or equity capital of a Person or otherwise to maintain net worth, solvency or other financial condition of a Person, to purchase indebtedness, or to assure the owner of indebtedness against loss, including, without limitation, through an agreement to purchase property, securities, goods, supplies or services for the purpose of enabling the debtor to make payment of the indebtedness held by such owner or otherwise; and (h) all Indebtedness of another Person secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property or assets owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness or other payment obligation. For the avoidance of doubt, Indebtedness shall also include obligations made pursuant to the Subordinate Notes."

(g) By deleting in its entirety the definition of "LIBOR" in §1.1 of the Loan Agreement, appearing on page 9 thereof, and inserting in lieu thereof the following new definition:

"LIBOR. For any LIBOR Rate Loan for any Interest Period, the average rate (rounded upwards to the nearest 1/16th) as shown in Reuters Screen LIBOR01 Page at which deposits in U.S. dollars are offered by first class banks in the London Interbank Market at approximately 11:00 a.m. (London time) on the day that is two (2) LIBOR Business Days prior to the first day of such Interest Period with a maturity approximately equal to such Interest Period and in an amount approximately equal to the amount to which such Interest Period relates, adjusted for reserves and taxes if required by future regulations. If Reuters no longer reports such rate, then the rate shall be determined by reference to such other comparable publicly available service displaying such rate as selected by Agent in its sole discretion. If Agent determines in good faith that the rate so reported no longer accurately reflects the rate available to Agent in the London Interbank Market, Loans shall accrue interest based upon the Base Rate. For any period during which a Reserve Percentage shall apply, LIBOR with respect to LIBOR Rate Loans shall be equal to the amount determined above divided by an amount equal to 1 minus the Reserve Percentage; provided, however, in no event shall LIBOR be less than two percent (2.00%)."

(h) By deleting §2.2(a) of the Loan Agreement, appearing on page 16 thereof, in its entirety, and inserting in lieu thereof the following new §2.2(a):

"(a) Each Base Rate Loan shall bear interest for the period commencing with the Drawdown Date thereof and ending on the date on which such Base Rate Loan is converted to a LIBOR Rate Loan from a Base Rate Loan at a rate per annum equal to the greater of (i) the sum of the Base Rate plus two percent (2.00%) and (ii) the sum of the LIBOR Rate determined for a thirty (30) day Interest Period plus five percent (5.00%)."

(i) By deleting §2.6 of the Loan Agreement, appearing on pages 17 and 18 thereof, in its entirety, and inserting in lieu thereof the following new §2.6:

"§2.6 Remargining. Beginning on September 1, 2010 and continuing thereafter, Borrowers will not at any time permit the ratio of (a) the Outstanding Loans as of such date to (b) the aggregate Appraised Value as of such date (such ratio, the "Loan to Value Ratio") to exceed seventy percent (70%). Borrowers acknowledge that in the event that following the receipt of a new Appraisal Agent determines that the Outstanding Loans is greater than seventy percent (70%) of the aggregate Appraised Value, the Outstanding Loans shall be reduced such that the Outstanding Loans does not exceed seventy percent (70%) of the aggregate Appraised Value, and Borrowers shall within thirty (30) days of notice from Agent pay to Agent as a prepayment of the Loans (to be applied pro rata among the Potomac Loan and the Station View Loan) such amount as is necessary so that the sum of the Outstanding Loans does not exceed seventy percent (70%) of the aggregate Appraised Value. If the Borrowers fail to remargin the Loan within such thirty (30) day period, then Borrowers shall have an additional sixty (60) days to make the required prepayment hereunder so long as Borrowers are diligently and continuously attempting to cure such Default. The Agent on behalf of the Banks shall have the right to obtain from time to time, at the Borrowers' cost and expense, updated Appraisals of the Project which will be ordered by the Agent, provided that so long as no Default or Event of Default shall have occurred and be continuing, the Borrowers shall only be obligated to pay for the costs and expenses associated with one such Appraisal during any twelve (12) month period prior to the occurrence of the Maturity Date. The reasonable actual out-of-pocket costs and expenses incurred by the Agent in obtaining such Appraisals shall be paid by the Borrowers forthwith upon billing or request by the Agent for reimbursement therefor."

(j) By deleting §2.7 of the Loan Agreement, appearing on page 18 thereof, in its entirety, and inserting in lieu thereof the following new §2.7:

"§2.7 Reborrowing for Purposes of Paying Interest. Notwithstanding anything herein to the contrary, Borrowers may reborrow (and repay and reborrow) from time to time between the Closing Date and the Maturity Date funds not to exceed the amount in the Interest Holdback from the Interest Holdback in accordance with §9 hereof. Borrowers may only reborrow such amounts for the purpose of paying interest on the Loans."

(k) By deleting §2.8 of the Loan Agreement, appearing on page 18 thereof, in its entirety, and inserting in lieu thereof the following new §2.8:

"§2.8 Unit Closing Funds During Post-Closing Period.

(a) In anticipation of entering into the First Amendment, Agent did not apply $691,314.07 to the outstanding principal balance of the Loans from

the sale by Potomac of the following Potomac Units: 147, 243, 246, 262, 532, 538, 558, 568, 570, 619, 669, 945, 1014 and 1016 (the "Existing Sales Holdback"). In connection with the execution and delivery of the First Amendment, $250,000 of the Existing Sales Holdback (the "First Amendment Distribution") shall be available to Borrower to pay costs and expenses related to the First Amendment with the remainder ("Remaining First Distribution") to be paid into the Unrestricted Collateral Account; provided, however, the Remaining First Distribution shall not be paid into Unrestricted Collateral Account unless and until Agent receives an estoppel certificate from the Unit Owners Association of the Eclipse on Center Park Condominium in the form and substance satisfactory to Agent in its sole discretion; provided further, however, in the event that such estoppel certificate is not delivered to Agent prior to November 30, 2009, then the Remaining First Distribution shall be applied to the Outstanding Loans. The Remaining Sales Holdback shall be applied to the Outstanding Loans. Upon satisfaction of the Post-Closing Conditions prior to November 30, 2009 and if no Default or Event of Default then exists, the Lenders shall, at the election of Borrowers, advance a Loan in accordance with the terms and conditions for Loans set forth in the Loan Agreement in the amount of the Remaining Sales Holdback into the Unrestricted Collateral Account. Upon the advance of such Loan upon the request of Borrowers, such amount deposited into the Unrestricted Account or the Restricted Account, as the case may be, shall be deemed a "Sales Distribution" under this Agreement. In the event that a Default or Event of Default shall occur and be continuing prior to the satisfaction of the Post-Closing Conditions, or the Post-Closing Conditions are not satisfied prior to November 30, 2009, then the Lenders shall have no obligation to advance such Loan.

(b) Each Individual Post-Closing Sales Amount shall be applied to the Outstanding Loans whether or not then due as permitted in accordance with §5.2(d) and §5.3. In the event that the Post-Closing Conditions are satisfied prior to November 30, 2009 and if no Default Event of Default then exists, then the Lenders shall, at the election of Borrowers, advance a Loan in accordance with the terms and conditions for Loans set forth in the Loan Agreement up to the amount of the Total Post-Closing Sales Amount into the Unrestricted Collateral Account or the Restricted Collateral Account pursuant to §8.6. Upon the advance of such Loan upon the request of Borrowers, such amount deposited into the Unrestricted Account or the Restricted Account, as the case may be, shall be deemed a "Sales Distribution" under this Agreement. In the event that a Default or Event of Default shall occur and be continuing prior to the satisfaction of the Post-Closing Conditions, or the Post-Closing Conditions are not satisfied by November 30, 2009, then the Lenders shall have no obligation to advance such Loan."

(l) By deleting §3.3 of the Loan Agreement, appearing on page 19 thereof, in its entirety, and inserting in lieu thereof "[Intentionally Omitted.]".

(m) By deleting §5.2(d) of the Loan Agreement, appearing on page 26 thereof, in its entirety, and inserting in lieu thereof the following new §5.2(d):

"(d) unless otherwise agreed to in writing by Agent in its sole and absolute discretion, with respect to the Potomac Units, Potomac shall cause the settlement agent to contemporaneously with each sale of a Unit pay to the Agent for the account of the Lenders an amount equal to the greater of (i) one hundred percent (100.0%) of the Net Sales Proceeds for such Potomac Unit, or (ii) the minimum release price for such Potomac Unit as set forth on Schedule 8.8 hereto, which payment shall be applied by Agent in its sole and absolute discretion to increase the Interest Holdback, fund the Escrow Account or reduce the Outstanding Loans whether or not then due; provided, however, that once Agent has confirmed to Borrowers in writing that the Post-Closing Conditions have been satisfied prior to November 30, 2009, then the amount set forth in sub-part (i) above in this §5.2(d) shall be decreased from one hundred percent (100.0%) of the Net Sales Proceeds for such Potomac Unit to eighty-five percent (85%) of the Net Sales Proceeds for such Potomac Unit;"

(n) By deleting §5.2(e) of the Loan Agreement, appearing on page 26 thereof, in its entirety, and inserting in lieu thereof the following new §5.2(e):

"(e) Potomac shall be required to pay to the Association all such amounts required pursuant to the Condo Assessment Settlement Agreement;"

(o) By deleting §5.3 of the Loan Agreement, appearing on page 23 thereof, in its entirety and inserting in lieu thereof the following new §5.3:

"§5.3 Release of Collateral.

(a) Upon the refinancing or repayment of the Obligations in full, then the Agent shall release the Collateral from the lien and security interest of the Security Documents.

(b) Notwithstanding anything herein to the contrary, provided no Default or Event of Default shall have occurred hereunder and be continuing (or would exist immediately after giving effect to the transactions contemplated by this §5.3), upon the bulk sale of the Station View Project, unless otherwise agreed to in writing by Agent in its sole and absolute discretion, Agent shall release the Station View Project from the lien and security interest of the Security Documents provided Station View shall cause the settlement agent to contemporaneously with a bulk sale of the Station View Project pay (i) the Station View Sales Costs and provide evidence to Agent of the payment thereof and (ii) to the Agent for the account of the Lenders an amount equal to the greater of (A) one hundred percent (100.0%) of the Net Sales Proceeds for the sale of the entire Station View Project after the payment of the Station View Sales

Costs, or (B) a minimum release price of $2,150,000, which payment shall be applied by Agent in its sole and absolute discretion to increase the Interest Holdback, fund the Escrow Account or reduce the Outstanding Loans whether or not then due; provided, however, in the event the Potomac Loans have been paid in full, Borrowers shall be required to repay the Obligations in full to obtain a release of the Station View Project; provided further, however, that once Agent has confirmed to Borrowers in writing that the Post-Closing Conditions have been satisfied prior to November 30, 2009, then the amount set forth in sub-part (ii)(A) above in this §5.3(b) shall be decreased from one hundred percent (100.0%) of the Net Sales Proceeds for the sale of the entire Station View Project to eighty-five percent (85%) of the Net Sales Proceeds for the sale of the entire Station View Project."

(p) By inserting the following new §5.5 in the Loan Agreement:

"§5.5 Escrow Account.

(a) Escrow. Borrowers shall establish and maintain an escrow of funds with Agent pursuant to the terms of this §5.5 for the payment of Taxes and Insurance Premiums with respect to the Mortgaged Properties, which are payable in accordance with terms and conditions of the Mortgages and other Loan Documents.

(b) Deposit of Escrow Funds. All amounts held by Agent at any time in escrow pursuant to this §5.5 are the "Escrow Funds". On or before the First Amendment Date, Borrowers shall deposit $10,000.00 with Agent, to be held in escrow by Agent according to the terms of this §5.5. On the 15th day of each calendar month, Borrowers shall deliver any and all PY Net Operating Income to Agent for deposit into the Escrow Account (subject to Agent's rights in §5.5(e)(vi)).

(c) Escrow Account. Agent agrees to hold all Escrow Funds in an Eligible Account (hereinafter defined) selected by Agent from time to time in the exercise of its sole discretion (the "Escrow Account"). No earnings or interest on the Escrow Funds shall be payable to Borrowers. The Escrow Account shall be held in the name of Agent and shall be within its sole and exclusive control, and all funds deposited in the Escrow Account shall be for the account of Agent on behalf of the Lenders. The Escrow Account has been established, and shall be maintained, by Agent (i) as a "deposit account" as such term is defined in §9-102(a)(29) of the UCC and (ii) in such a manner that Agent shall have "control" (within the meaning of §9-104(a) of the UCC) over the Escrow Account, and this Agreement shall be deemed to be a control agreement for all purposes of §9-104 of the UCC. Agent and Borrowers agree that this Agreement is an authenticated record for the purposes of §9-104(a) of the UCC. Notwithstanding any provision to the contrary in any other agreement between Borrowers and Agent, Borrowers and Agent agree that the "bank's jurisdiction" as said term is used in §9-304 of the UCC is and

shall be the Commonwealth of Virginia and the laws of such state shall govern the perfection or nonperfection and the priority of the security interest of Agent in the Escrow Account. Except as provided herein, Borrowers shall have no right to or interest in the Escrow Funds or Escrow Account and shall have no authority to withdraw Escrow Funds from the Escrow Account. An "Eligible Account" shall mean a segregated account held by and at Agent. The title of any Eligible Account shall be in the name of Agent as secured party for the benefit of the Lenders and shall indicate the funds held therein are held in trust for the benefit of Agent for the uses and purposes set forth in this §5.5. If an Event of Default shall have occurred and to be continuing, Agent, in its sole discretion, may, but shall not be required to, pay interest on funds in the Escrow Account as provided above.

(d) Pledge and Security Interest. As additional security for the payment and performance by Borrowers of all duties, responsibilities and obligations hereunder and under the Loan Documents, Borrowers hereby unconditionally and irrevocably assign, convey, pledge, mortgage, transfer, deliver, deposit, set over and confirm unto Agent, and hereby grant to Agent a security interest and a valid and perfected first lien in (i) the Escrow Funds, (ii) the Escrow Account, (iii) all insurance of the Escrow Account, (iv) all accounts, contract rights and general intangibles or other rights and interests pertaining thereto, (v) all sums now or hereafter therein or represented thereby, (vi) all replacements, substitutions or proceeds thereof, (vii) all instruments and documents now or hereafter evidencing the Escrow Funds or the Escrow Account, (viii) all powers, options, rights, privileges and immunities pertaining to the Escrow Funds or the Escrow Account (including the right to make withdrawal therefrom), and (ix) all proceeds of the foregoing. Agent shall have possession of all passbooks or other evidences of such Escrow Account. Borrowers hereby assume all risk of loss with respect to amounts on deposit in the Escrow Account, except to the extent caused by the gross negligence or intentional misconduct of Agent and the Lenders. Borrowers hereby agree that the advancement of Escrow Funds from the Escrow Account as set forth herein is at Borrowers' direction and is not the exercise by Agent of any right of set-off or other remedy upon an Event of Default (as defined in the Loan Documents). Borrowers hereby waive all right to withdraw Escrow Funds from the Escrow Account, except upon full satisfaction of all amounts owing under the Loan. Borrowers agree to execute and deliver on demand any and all documentation requested by Agent to further evidence or perfect such assignment, including, without limitation, Uniform Commercial Code financing statements. Borrowers hereby irrevocably constitute and appoint Agent as its attorney-in-fact, with full power of substitution and transfer, to execute and deliver any and all such documentation. The power of attorney hereby granted shall be irrevocable and coupled with an interest. This Agreement shall constitute a Security Agreement under the Uniform Commercial Code as enacted in the Commonwealth of Virginia

and upon an Event of Default, Agent may exercise any or all of the remedies available at law or in equity including, without limitation, the remedies specified in this Agreement and the remedies available to a secured party following default as specified in such Uniform Commercial Code. Agent and Borrowers hereby acknowledge and agree that Agent has a valid and perfected first priority lien on, and security interest in, any Escrow Funds now or hereafter held in the Escrow Account.

(e) Disbursement of Escrow Funds to Borrowers. Agent shall disburse all or part of the Escrow Funds to Borrowers as provided herein upon satisfaction of the following terms and conditions:

(i) Provided (1) amounts in the Escrow Account are sufficient to pay the Taxes then due, (2) Borrowers have delivered to Agent the assessments or bills therefore, and (3) no Default or Event of Default exists, Agent shall pay the Taxes as they become due on their respective due dates on behalf of Borrowers by applying the funds held in the Escrow Account to the payments of Taxes then due. In making any payment of Taxes, Agent may do so according to any bill, statement or estimate obtained from the appropriate public office with respect to Taxes without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. Notwithstanding anything herein to the contrary, Borrowers acknowledge and agree that Agent shall have the right to pay any assessments, fees or other charges due under owner association or condominium association documents (including, without limitation, the Condominium Declaration) now or hereafter levied or assessed the Mortgaged Properties at any time Agent elects in its sole and absolute discretion.

(ii) Provided (1) amounts in the Escrow Account are sufficient to pay the Insurance Premiums then due, (2) Borrowers have delivered to Agent the assessments or bills therefore, and (3) no Default or Event of Default exists, Agent shall pay the Insurance Premiums as they become due on their respective due dates on behalf of Borrowers by applying funds held in the Escrow Account to the payments of Insurance Premiums then due. In making any payment relating to Insurance Premiums, Agent may do so according to any bill, statement or estimate procured from the insurer without inquiry into the accuracy of such bill, statement or estimate.

(iii) No Default or Event of Default exists as of the date of Borrowers' request for a disbursement or the actual date of such a disbursement.

(iv) Within 15 days after Borrowers submit to Agent a request for a disbursement and the related supporting documentation, Agent shall either (1) advise Borrowers of any additional information needed to satisfy the requirements hereof for the requested disbursement; or (2) shall disburse the requested disbursement amount to Borrowers. Agent shall have no obligation to disburse Escrow Funds to or on behalf of the Borrowers until all disbursement requirements herein have been satisfied.

(v) Notwithstanding anything to the contrary herein, Agent shall have the right to make the disbursement jointly payable to Borrowers and the person or entity being paid. In the event of such a joint disbursement, Borrowers shall not be required to have paid for the Taxes or Insurance Premiums prior to requesting the reimbursement, but Borrowers shall be required to have satisfied all the other conditions of this Agreement for such disbursement.

(vi) Upon determination by Agent that the amounts contained in the Escrow Account are sufficient to pay Taxes and Insurance Premiums payable or accruing during the next six (6) months as reasonably estimated by Agent on the basis of assessments and bills and estimates thereof, then Agent shall have the right in its sole and absolute discretion to apply any excess amounts to increase the Interest Holdback or reduce the Outstanding Loans whether or not then due.

(f) Default by Borrowers. Any failure of Borrowers to comply with the terms of this §5.5 shall be an Event of Default, and shall entitle Agent to pursue any and all remedies available to it pursuant to this Agreement, any other Loan Document, at law or in equity. Without limiting the foregoing, upon the occurrence and during the continuation of an Event of Default, Agent shall have the right, but not the obligation, without notice or demand on Borrowers: (i) to withdraw any or all of the Escrow Funds and to disburse and apply the same, after deducting all costs and expenses of safekeeping, collection and delivery (including, but not limited to, attorney fees, costs and expenses) to the Obligations hereunder or under any Loan Document in accordance with §12.5; (ii) to complete any such acts, in the Borrowers' stead, in such manner and to the extent Agent deems necessary to fulfill the purpose of this Agreement or the other Loan Documents; (iii) to exercise any and all rights and remedies of a secured party under any applicable Uniform Commercial Code; and (iv) to exercise any other remedies available at law or in equity. No such use or application of the Escrow Funds shall be deemed to cure any Event of Default. Any disbursement made by Agent shall continue to be part of the Loan and secured by the Loan Documents. No further direction or authorization from Borrowers shall be necessary to warrant such direct disbursement by Agent and all such disbursements shall satisfy the obligation of Agent hereunder and shall be secured by the Loan Documents as fully as if made directly to Borrowers.

(g) Borrowers' Responsibility for Sufficient Funds. Notwithstanding anything to the contrary herein, Borrowers acknowledge that (i) Borrowers are responsible for monitoring the sufficiency of Escrow Funds in the Escrow Account and that Borrowers are liable for any deficiency in available Escrow Funds, irrespective of whether Borrowers have received any account statement, notice or demand from Agent or Lenders and (ii) Agent's maintenance and operation of the Escrow Account is not a commitment by Agent or Lenders, and imposes no obligation on Agent or Lenders, to advance funds on any Borrower's behalf to make the payments identified in §5.5(e) or otherwise required under the Loan Documents. If the amount in the Escrow Account is insufficient to make all of the payments described in §5.5(e), Borrowers shall deposit into the Escrow Account, without the need for any notice or demand from Agent or Lenders, the amount of such deficiency in immediately available funds.

(h) Limitation of Liability of Agent.

(i) Agent shall have no liability to any person based upon its errors in judgment, its performance of its duties under this §5.5, any claimed failure to perform its duties hereunder, any action taken or omitted in good faith or any mistake of fact or law; provided that Agent shall be liable for damages arising out of its gross negligence or intentional misconduct. Agent shall be automatically released from all obligation and liability hereunder upon its disbursement, delivery or deposit of the Escrow Funds in accordance with the provisions of this Agreement.

(ii) The duties of Agent in its capacity as escrow agent hereunder are purely ministerial. In such capacity, Agent is acting as a stakeholder for the accommodation of Borrowers and is not responsible or liable in any manner whatsoever related to any signature, notice, request, waiver, consent, receipt or other document or instrument pursuant to which Agent may act, including, without limitation, terms and conditions, sufficiency, correctness, genuineness, validity, form of execution, or the identity, authority or right of any person executing or depositing the same.

(iii) Agent shall not be responsible for the validity or sufficiency of any cash, instruments, wire transfer or any other property delivered to it hereunder, for the value or collectability of any check or other instrument so delivered or for any representation made or obligations assumed by Borrowers or any other party to the Loan Documents. Nothing herein contained shall be deemed to obligate Agent to deliver any cash or any other funds or property referred to herein, unless the same shall have first been received by Agent pursuant to this Agreement.

(iv) In no event whatsoever shall Agent be liable for any losses related to the Escrow Funds resulting from an investment of Escrow Funds made in accordance with the terms hereof.

(v) Upon the assignment of the Loan and the Loan Documents by Agent, any Escrow Funds then held by Agent shall be turned over to the assignee and all responsibility of Agent with respect thereto shall be terminated."

(q) By deleting §7.4(k) of the Loan Agreement, appearing on page 37 thereof, in its entirety, and inserting in lieu thereof the following new §7.4(k):

"(k) not later than the fifteenth (15th) day of each calendar month, (i) a Rent Roll for the Potomac Project and a summary thereof in form satisfactory to Agent as of the end of each calendar month, together with a listing of each tenant that has taken occupancy of the Potomac Project during each such calendar month, (ii) an operating statement for the Potomac Project for each such calendar month and year to date (such statements and reports to be in form reasonably satisfactory to Agent and include a statement of aging of receivables and payables and include a calculation of PY Net Operating Income), and (iii) a copy of each Lease or amendment to any Lease entered into with respect to the Potomac Project during such calendar quarter; and"

(r) By deleting in §7.12 of the Loan Agreement, appearing on page 43 thereof, in its entirety, and inserting in lieu thereof the following new §7.12:

"§7.12 Leases. The Borrowers shall not enter into any lease, license or other occupancy agreement for any of the Mortgaged Property without the prior written consent of Agent other than those agreements consistent with the leasing parameters for the Potomac Project set forth on Schedule 7.12 attached hereto. Any PY Net Operating Income received during the term of the Loan by or on behalf of Potomac Yard in connection with such agreements shall be applied by Agent to fund the Escrow Account, or in the event that Agent determines that the amounts in the Escrow Account are sufficient to pay Taxes and Insurance Premiums as required in §5.5(e)(vi), then Agent shall have the right in its sole and absolute discretion to use such amounts to increase the Interest Holdback or reduce the Outstanding Loans whether or not then due; it being acknowledged and agreed by Borrowers that no such amounts may be distributed by any Borrower."

(s) By inserting the following new §7.16 in the Loan Agreement:

"§7.16 General Contractor Dispute. Upon request from time to time by Agent, Potomac and Guarantor shall provide Agent and the Lenders updates with respect to the current status of the General Contractor Dispute and the likelihood for an outcome in favor of Potomac and Guarantor. Borrowers and Guarantor acknowledge and agree that any recovery by Potomac, Guarantor, or any of their respective Affiliates, after repayment and reimbursement to Potomac, Guarantor or any of their respective Affiliates up to the amount set forth in (a) below of all reasonable fees and costs associated with the prosecution of the General Contractor Dispute, including, all Potomac's (i) reasonable attorneys fees (excluding any costs for in-house counsel), (ii) consulting and expert fees and (iii) courts costs (provided that all such reasonable costs are documented in writing and approved by Agent in its discretion), in connection with the General Contractor Dispute shall, until such time as the Obligations are repaid in full and Lenders have no further obligations to make Loans under the Loan Agreement, be paid as follows:

(a) first, the initial $1,000,000 shall be paid to Potomac, Guarantor or any of their respective Affiliates to be applied to fees and costs as provided above;

(b) second, the next $1,000,000 shall be paid into the Project Completion Reserve Account, which amounts shall be disbursed to Potomac, upon prior written request to the Agent for a request of payment for unfinished or warranty related items in accordance with the terms and conditions of the Cash Collateral Agreement;

(c) third, seventy-five percent (75%) to Agent to be applied in Agent's sole discretion to increase the Interest Holdback, fund the Escrow Account or reduce the Outstanding Loans whether or not then due, and twenty-five percent (25%) to Potomac or Guarantor, until such time as the loan amount on the remaining unsold Potomac Units equals $125.00 per gross saleable square foot of such Potomac Units; and

(d) fourth, twenty-five percent (25%) to Agent to be applied in Agent's sole discretion to increase the Interest Holdback, fund the Escrow Account or reduce the Outstanding Loans whether or not then due, and seventy-five percent (75%) to Potomac or Guarantor.

Notwithstanding the foregoing, in the event that an Event of Default shall occur and be continuing, then one hundred percent (100%) of any recovery received by Potomac, Guarantor, or any of their respective Affiliates, in connection with General Contractor Dispute shall be paid to Agent to be applied in Agent's sole discretion to increase the Interest Holdback, fund the Escrow Account or reduce the Outstanding Loans whether or not then due."

(t) By inserting the following new §7.17 in the Loan Agreement:

"§7.17 Cash Collateral Agreement. Borrowers shall enter into the Cash Collateral Agreement establishing the Restricted Collateral Account, the Unrestricted Collateral Account and the Project Completion Reserve Account. For the avoidance of doubt, Borrowers and Guarantor acknowledges and agrees that the Cash Collateral Agreement shall constitute a Loan Document for the purposes of this Agreement and shall not be modified or amended without the prior written consent of Agent. Borrowers hereby agree that they may only withdraw funds from the Unrestricted Collateral Account for (a) expenses of Guarantor or Borrowers incurred in the ordinary operation of business directly attributable to the operation of Guarantor or the operation, repair and/or maintenance of the Mortgaged Properties, or (b) the payment of debt service on the Loans, provided that in no event shall Guarantor use any funds in the Unrestricted Collateral Account for (i) Distributions, whether permitted under the Loan Documents or not, (ii) acquiring by purchase or lease any improved or unimproved Land without the prior written consent of Agent, (iii) or payments on any of the Deficiency Note Subordinate Debt or the Guggenheim Debt."

(u) By inserting the following new §7.18 in the Loan Agreement:

"§7.18 Potomac Performance Requirement. Beginning with the calendar quarter commencing July 1, 2009 and ending September 30, 2009, and continuing each calendar quarter thereafter, Potomac shall during each and every calendar quarter during the term of the Loan either (i) close the sale of nine (9) Potomac Units at not less than the minimum release price set forth on Schedule 8.8 hereto, or such other price agreed to in writing by Agent in its sole and absolute discretion, or (ii) pay to the Agent for the account of the Lenders pursuant to §5.3 an amount equal to $3,300,000 from Net Sales Proceeds from the sale of Potomac Units, prior to the last Business Day of such calendar quarter (the "Potomac Performance Requirement"), or thereafter the amount payable to Agent for release of a Potomac Unit under §5.2(d) shall automatically be adjusted to the greater of (x) one hundred percent (100%) of Net Sales Proceeds for such Potomac Unit, or (y) the minimum release price for such Potomac Unit as set forth on Schedule 8.8 hereto; provided, however, in the event that the Potomac Performance Requirement is met in a subsequent calendar quarter, then the amount payable to Agent for release of a Potomac Unit under §5.2(d) shall automatically be adjusted to eighty-five percent (85%), of Net Sales Proceeds for such Potomac Unit provided that the Post-Closing Conditions have been satisfied prior to November 30, 2009, or (y) the minimum release price for such Potomac Unit as set forth on Schedule 8.8 hereto. For purposes of satisfying the Potomac Performance Requirement, Potomac Units settled in excess of any quarterly Potomac Performance Requirement shall be included in determining compliance of any subsequent quarterly Potomac Performance Requirement on a cumulative basis to meet the next quarterly Potomac Performance Requirement.

Notwithstanding anything to the contrary contained in the Loan Document, the failure by Potomac to meet the Potomac Performance Requirement shall not be a Default or Event of Default under any of the Loan Documents."

(v) By inserting the following new §7.19 in the Loan Agreement:

"§7.19 Payment of PY Operating Expenses. Potomac will duly pay and discharge, or cause to be paid and discharged, before the same shall become delinquent, all of the PY Operating Expenses. Any PY Rental Revenues shall only be used to pay PY Operating Expenses, to fund the Escrow Account, or pay amounts due and payable under the Loan Documents."

(w) By deleting §8.4 of the Loan Agreement, appearing on page 49 thereof, in its entirety, and inserting in lieu thereof the following new §8.4:

"§8.4 Sale and Leaseback. Neither Borrower will enter into any arrangement whereby such Borrower shall sell or transfer any of the Mortgaged Property owned by it in order that then or thereafter such Borrower shall lease back such Mortgaged Property."

(x) By deleting §8.6 of the Loan Agreement, appearing on page 49 thereof, in its entirety, and inserting in lieu thereof the following new §8.6:

"§8.6 Sales Distributions.

(a) Provided the Distribution Conditions are satisfied and subject to §8.6(b), each Borrower shall be permitted on a Unit by Unit basis (or at the bulk sale of the Station View Project) at the settlement of and release of such Mortgaged Property pursuant to §5.2 or §5.3 to pay into the Unrestricted Collateral Account an amount up to the portion of Net Sales Proceeds not required to be paid to Agent as required under §5.2 or §5.3 as a condition of release (the "Sales Distributions"); provided, however, during any period of time when the Potomac Performance Requirement shall not be met, no Sales Distributions with respect to Potomac Units shall be permitted.

(b) In the event that Unrestricted Cash and Cash Equivalents of Guarantors and its Subsidiaries after the sale that day of any of the Mortgaged Property, any Penderbrook Unit and any requested Sales Distribution, or similar distribution under the documents relating to the Guggenheim Debt, is greater than $2,000,000, then no Sales Distributions shall be permitted at such time; provided, however, in the event that the Distribution Conditions are satisfied and as of the date of the requested release of Mortgaged Property the Restricted Collateral Account has a balance of less than $250,000 after the sale that day of any of the Mortgaged Property, any Penderbrook Unit and any requested Sales Distribution, or similar distribution under the documents relating to the

Guggenheim Debt, the applicable Borrower shall be permitted at the settlement of and release of a Mortgaged Property pursuant to §5.2 or §5.3 to direct Net Sales Proceeds into the Restricted Collateral Account the lesser of (i) the Net Sales Proceeds from such sale that would cause the balance of the Restricted Collateral Account to be $250,000, (ii) the portion of Net Sales Proceeds not required to be paid to Agent pursuant to §5.2 or §5.3 as a condition of release ("Restricted Account Distributions"); provided further, however, during any period of time when the Potomac Performance Requirement shall not be met, no Restricted Account Distributions with respect to Potomac Units shall be permitted.

(c) Notwithstanding anything herein to the contrary, Borrowers shall not pay, or cause to be paid, any Sales Distributions or Restricted Account Distributions unless and until Potomac and Station View causes the settlement agent to contemporaneously with each sale of a Unit (or at the bulk sale of the Station View Project) pay the amounts required in §5.2 or §5.3 to be paid to Agent on behalf of the Lenders.

(d) Notwithstanding any right herein of Borrowers to the Sales Distributions and Restricted Account Distributions, Borrowers may elect to use Net Sales Proceeds that would otherwise be available for a Sales Distribution or a Restricted Account Distribution to reduce the Outstanding Loans.

(e) Except as set forth in §2.8, §7.16, §7.17 and §8.6, no Distributions shall be permitted by Borrowers under the Loan Documents."

(y) By inserting the following new §8.10 in the Loan Agreement:

"§8.10 Subordinate Debt. Guarantor shall be not be permitted to pay any principal or interest on the Subordinate Debt, while the Loans remain Outstanding. Without the prior written consent of the Majority Lenders, which consent may be withheld by the Majority Lenders in their sole and absolute discretion, the Guarantor shall not (i) modify or amend the Subordinate Debt, (ii) prepay, amortize, purchase, retire, redeem or otherwise acquire the Subordinate Debt, or (iii) make any payments on the Subordinate Debt except as permitted in this §8.10. Notwithstanding the foregoing, in the event the Cascades Property is sold, transferred or otherwise conveyed, then the M&T Deficiency Note may be prepaid solely with the proceeds from such sale, transfer or conveyance."

(z) By inserting the following new §8.11 in the Loan Agreement:

"§8.11 Guarantor Indebtedness. Guarantor shall not create, incur, assume, guarantee or be or remain liable, contingently or otherwise or, with respect to any Indebtedness other than as shown on Schedule A attached to the First Amendment.

(aa) By inserting the following new §8.12 in the Loan Agreement:

"8.12. Cascades Debt. Guarantor shall be not be permitted to pay any principal or other amounts due with respect to the Cascades Debt while the Loans remain Outstanding except for interest payments which shall be paid current on a monthly basis. Without the prior written consent of the Majority Lenders, which consent may be withheld by the Majority Lenders in their sole and absolute discretion, Cascades shall not (i) modify or amend the Cascades Debt, or (ii) prepay, amortize, purchase, retire, redeem or otherwise acquire the Cascades Debt except in connection with the sale, transfer or conveyance of the Cascades Property solely with the proceeds from such sale, transfer or conveyance."

(bb) By deleting §9.1(a) of the Loan Agreement, appearing on page 51 thereof, in its entirety, and inserting in lieu thereof the following:

"(a) The Loan includes an initial interest holdback of $1,000,000, which initial holdback may be increased as the result of the application of release proceeds or other income of the Borrowers as set forth in §5.2(d), §5.3, §7.15 and §7.16 to an amount not greater than seven and one-half percent (7.5%) of the total amount of Potomac Loans which may be borrowed by Potomac including the Interest Holdback (the "Interest Holdback"). In the event release proceeds or other income are applied to the Interest Holdback as set forth in §5.2(d), §5.3, §7.15 or §7.16, then such application shall be deemed to be a repayment of the Potomac Loan and the Commitment shall be reinstated for such amounts actually received by Agent; provided, however, that in no event shall the Commitment ever exceed $25,100,000. In the event that the amount of the Interest Holdback exceeds seven and one-half percent (7.5%) of the total amount of Potomac Loans which may be borrowed by Potomac including the Interest Holdback, then such excess shall no longer be part of the Interest Holdback and the Commitment shall be accordingly permanently reduced. Borrowers may request a disbursement from the Interest Holdback pursuant to §2.3 to be applied against the interest due on the Outstanding Loans. By execution hereof, each Borrower irrevocably authorizes the Agent, without the necessity of any further authorization, to cause the Lenders to disburse directly to itself for the account of the Lenders rather than to a Borrower out of the Interest Holdback such sums as are necessary to pay, on a monthly basis, accrued interest on the Loans (and any amount so advanced by the Lenders without the submission by a Borrower of a Loan Request shall be Base Rate Loans). Upon disbursement, the amount that is disbursed shall be disbursed pro rata by the Lenders and shall be added to the then outstanding principal sum of the Loans and shall bear interest at the rate provided for in this Agreement. Upon the occurrence of an Event of Default under this Agreement or any other Loan Document, the Agent shall have the right but not the obligation to continue to cause disbursements of monthly interest installments from the Interest

Holdback. Establishment of the Interest Holdback shall in no way relieve the Borrowers of their obligation to make interest payments. Upon the occurrence of a Default or an Event of Default under any Loan Document, the Agent may, at its option, cease making any further disbursement from the Interest Holdback."

(cc) By deleting in §12.1(d) of the Loan Agreement, appearing on page 54 thereof, in its entirety, and inserting in lieu thereof the following:

"(d) Except with respect to the Indebtedness of Guarantor set forth in Schedule 12.1(d), the Borrower or any Guarantor shall fail to pay at maturity, or within any applicable period of grace, any obligation for borrowed money or credit received or other Indebtedness including, without limitation, the Comstock Facilities, or fail to observe or perform any material term, covenant or agreement contained in any agreement by which it is bound, evidencing or securing any such borrowed money or credit received or other Indebtedness including, without limitation, the Comstock Facilities, for such period of time as would permit (assuming the giving of appropriate notice if required) the holder or holders thereof or of any obligations issued thereunder to accelerate the maturity thereof or require the prepayment or purchase thereof, or any claim shall be made against Guarantor under the Comstock Facilities;"

(dd) By inserting the following new §12.1(s), §12.1(t) and §12.1(u) in the Loan Agreement:

"(s) Any default, material misrepresentation or breach of warranty by the Guarantor or subordinate lender that is the holder of a Deficiency Note, or a party to the JP Morgan Subordination and Standstill Agreement;

(t) Penderbrook (i) shall fail to pay when due (including, without limitation, at maturity) any principal, interest or other amount on account any obligation for borrowed money or credit received or other Indebtedness, or (ii) shall fail to observe or perform any term, covenant or agreement contained in any agreement by which it is bound, evidencing or securing any obligation for borrowed money or credit received or other Indebtedness for such period of time as would permit (assuming the giving of appropriate notice if required) the holder or holders thereof or of any obligations issued thereunder to accelerate the maturity thereof; or

(u) the dissolution, administrative or otherwise, of Guarantor for its failure to preserve and keep in full force and effect its legal existence in the State of Delaware, or any subsequent jurisdiction of incorporation of the Guarantor;"

(ee) By deleting Schedule 3.3 of the Loan Agreement in its entirety.

(ff) By deleting Schedule 7.12 of the Loan Agreement in its entirety, and inserting in lieu thereof Schedule 7.12 attached hereto and made a part hereof.

(gg) By deleting Schedule 8.8 of the Loan Agreement in its entirety, and inserting in lieu thereof Schedule 8.8 attached hereto and made a part hereof.

4. Bankruptcy.

(a) Material Inducement. Loan Parties acknowledge and agree that the representations, warranties, covenants, and agreements contained in this Section 4 constitute a material inducement to Lenders to enter into this Agreement, the other, and the transactions contemplated hereby and thereby and that without the inclusion of this Section 4, KeyBank and Agent would not have entered into this Agreement.

(b) No Fraudulent Intent. Loan Parties acknowledge and agree that neither the execution and delivery of this Agreement nor the performance of any actions required hereunder or thereunder are being consummated by Loan Parties with or as a result of any actual intent by Loan Parties, or any of them, to hinder, delay, or defraud any entity to which Loan Parties, or any of them, are now or will hereafter become indebted.

(c) No Bankruptcy Intent. Loan Parties acknowledge, warrant, represent and agree that no Loan Party has any present intent (i) to file any voluntary petition under any Chapter of the Bankruptcy Code, Title 11, U.S.C.A. (hereinafter referred to as the "Bankruptcy Code"), or in any manner to seek relief, protection, reorganization, liquidation, dissolution or similar relief for debtors under any local, state, federal or other insolvency laws or laws providing for relief of debtors, or in equity, or directly or indirectly to cause any of the other Loan Parties to file any such petition or to seek any such relief, or (ii) directly or indirectly to cause any involuntary petition under any Chapter of the Bankruptcy Code to be filed against any Loan Party, or directly or indirectly to cause any Loan Party to become the subject of any proceedings pursuant to any local, state, federal or other insolvency laws or laws providing for the relief of debtors, or in equity, either at the present time, or at any time hereafter, or (iii) directly or indirectly to cause the Collateral or any portion thereof to become the property of any bankrupt estate or the subject of any local, state, federal or other bankruptcy, dissolution, liquidation or insolvency proceedings, either at the present time or at any time hereafter; and that the filing of any such petition or the seeking of any such relief by any Loan Party, whether directly or indirectly, would be in bad faith and solely for purposes of delaying, inhibiting or otherwise impeding the exercise by Lenders of its negotiated rights and benefits pursuant to this Agreement or the Loan Documents, or at law or in equity. The foregoing acknowledgments, representations and warranties are not and cannot be binding on any creditors of the Loan Parties and/or any third-party representatives that may be appointed to oversee the affairs and property of the Loan Parties.

(d) Settlement in Best Interests of Loan Parties; Consideration. Loan Parties (i) acknowledge and agree that the settlement evidenced by this Agreement is in the best interests of Loan Parties and the creditors of Loan Parties in that, among other things, it will resolve Lenders' respective claims against Loan Parties in a manner which is fair and reasonable in all respects and will permit Loan Parties to avoid the costs, expenses, and burdens of litigation with Lenders and (ii) acknowledge and agree that the benefits to inure to Loan Parties pursuant to this Agreement, including, without limitation, the agreements of Lenders, constitute more

than "reasonably equivalent value" (as such term is used in Section 548 of the Bankruptcy Code) in exchange for the benefits to be provided by Loan Parties to Lenders pursuant to this Agreement. Each Loan Party further covenants and agrees that in any subsequent bankruptcy proceeding involving any Loan Party or the Collateral, Loan Parties shall not make any claim or assertion that is contrary to the foregoing statements contained in this Section 4(d).

(e) Entitlement to Lift of Stay. Loan Parties acknowledge and agree that the market value of the Collateral as of the date of this Agreement is such that all factual circumstances exist which would be required to be proven with respect to the Collateral and the Loan as to valuation and otherwise to entitle Lenders to an order granting relief from the stay which would be imposed under Section 362 of the Bankruptcy Code to exercise any and all of its rights and remedies under the Loan Documents. In furtherance of, and not in limitation of the foregoing, each of the Loan Parties covenants and agrees that the execution and delivery of this Agreement by Agent and Lenders is made at the request of all the Loan Parties to prevent a bankruptcy proceeding involving any Loan Party or the Collateral and, as a result, shall constitute "cause" for relief from the automatic stay pursuant to the provisions of Section 362 of the Bankruptcy Code. Each Loan Party further covenants and agrees (x) not to directly or indirectly make any claim or assertion that the occurrence or existence of any such event of bankruptcy of any Loan Party shall not, in and of itself, constitute "cause" for relief from the automatic stay pursuant to the provisions of Section 362 of the Bankruptcy Code, (y) not to, directly or indirectly, oppose, interfere with or otherwise defend against Lenders' efforts to obtain relief from the stay, and covenants that Lenders shall be entitled to the lifting of the stay, without the necessity of an evidentiary hearing and without the necessity or requirement that Lenders establishes or proves the value of the Collateral, the lack of adequate protection of Lenders' interest in the Collateral, or the lack of any reasonable prospect of reorganization with respect either to any Loan Party or the Collateral, and (z) in the event of the filing of any voluntary or involuntary petition in bankruptcy by or against any Loan Party, to waive the provisions of Sections 1121(b) and 1121(c) of the Bankruptcy Code relating to the exclusive right of a debtor to file a plan of reorganization under Chapter 11 of the Bankruptcy Code.

(f) Bankruptcy of Loan Parties. Loan Parties covenant and agree that in the event of the bankruptcy, whether voluntary or involuntary, of any Loan Party, Lenders shall be entitled to obtain, upon ex parte application therefor and without further notice or action of any kind or nature whatsoever, (i) an order from the Bankruptcy Court prohibiting the use of Lenders' "cash collateral" (as such term is defined in Section 363 of the Bankruptcy Code) in connection with the Loan and (ii) an order from the Bankruptcy Court granting immediate relief from the automatic stay pursuant to Section 362 of the Bankruptcy Code so as to permit Lenders to exercise all rights and remedies pursuant to this Agreement, any of the Loan Documents, and at law and in equity.

(g) Cash Collateral. Each Loan Party hereby acknowledges and agrees that the Loan Documents grant Agent on behalf of the Lenders fully perfected, choate, and complete first-priority liens on and security interests in, inter alia, all cash, leases, income, rents, issues, and profits of the remaining security for the Loans, whether existing before or after the commencement of any proceeding under the Bankruptcy Code involving any Loan Parties or the remaining security for the Loans and that such cash, income, rents, issues, and profits of the Mortgaged Properties and the other security for the Loans shall constitute cash collateral of Lenders within the meaning of Bankruptcy Code Section 363(a) without the necessity of Lenders' taking any further action of any kind or nature whatsoever.

(h) Waiver of Supplemental Stay. Each Loan Party covenants and agrees, in the event of the filing of any voluntary or involuntary petition in bankruptcy by or against any Loan Party, not to assert or request any other party to assert that the automatic stay provided by Section 362 of the Bankruptcy Code shall operate or be interpreted to stay, interdict, condition, reduce, or inhibit the ability of Lenders to enforce any rights Lenders have by virtue of this Agreement, or the Loan Documents, or any other rights Lenders have, whether now or hereafter acquired, against any Loan Party or against any collateral for the Loans; and further, in the event of the filing of any voluntary or involuntary petition in bankruptcy by or against any Loan Party, not to seek a supplemental stay or any other relief, whether injunctive or otherwise, pursuant to Section 105 of the Bankruptcy Code or any other provision of the Bankruptcy Code, to stay, interdict, condition, reduce, or inhibit the ability of Lenders to enforce any rights any Lenders have by virtue of this Agreement or the Loan Documents, or at law or in equity.

(i) Acquisition of Unsecured and Other Claims. Loan Parties acknowledge and agree that, in the event any Loan Party or the Collateral becomes the subject of a voluntary or involuntary petition in bankruptcy or bankruptcy proceeding, Lenders (a) are and shall be entitled, at Lenders' sole election but with no obligation to do so, to purchase and acquire, or cause any of their affiliates to purchase and acquire, any or all unsecured or other claims against such Loan Parties or otherwise asserted in such bankruptcy proceedings, upon such terms and conditions as Lenders shall elect and (b) shall be fully entitled with respect to any such claims so purchased to take any and all actions in such bankruptcy proceeding as Lenders elect, including, without limitation, with respect to any motion, including any motion by such Lenders to lift the automatic stay, or any proposed reorganization plan, including voting such claims in connection with such plan. Each Loan Party hereby expressly agrees to take no action to object to, or otherwise interfere with, any such purchase of any unsecured or other claims by Lenders or the assertion or exercise by Lenders following any such purchase of the rights relating to such unsecured or other claims in any bankruptcy proceeding. Loan Parties hereby expressly waive any rights, if any, they have under Section 1126(e) of the Bankruptcy Code, Rule 3001 of the Federal Rules of Bankruptcy Procedure or any other applicable provision or rule to object to: (i) the acquisition by Lenders of any such unsecured or other claims; (ii) the exercise by Lenders of any rights Lenders has by virtue of having acquired such claims including casting votes with respect to such claims in connection with any plan of reorganization filed in any such bankruptcy proceeding; or (iii) the acquisition by Lenders of any such claims at a discount off of the face amount of such claims. Loan Parties acknowledge and agree that Lenders shall be entitled to assert the face amount of any claims it acquires even if purchased at a discount. Loan Parties also acknowledge and agree not to object to any claims acquired by Lenders on the grounds that such claims were acquired for any improper purpose, solicitation, or timing or in bad faith.

5. References to Loan Agreement. All references in the Loan Documents to the Loan Agreement shall be deemed a reference to the Loan Agreement, as modified and amended herein.

6. Consent of Guarantor. Guarantor, for all purposes of the Loans, hereby specifically consents to the modification of the Loans and the Loan Documents pursuant to this Agreement, and hereby agrees that all references in the Guaranty and the Indemnity Agreement to the Loan Agreement and the other Loan Documents hereafter shall be deemed to refer to the Loan Agreement and such other Loan Documents as modified by this Agreement.

7. Acknowledgment of Loan Parties. Each Loan Party hereby acknowledges, represents and agrees that the Loan Documents, as modified and amended herein, remain in full force and effect and constitute the valid and legally binding obligation of such Loan Party, as applicable, enforceable against such Loan Party in accordance with their respective terms, and that the execution and delivery of this Agreement and any other documents in connection therewith do not constitute, and shall not be deemed to constitute, a release, waiver or satisfaction of any Loan Party's obligations under the Loan Documents, except as expressly waived in Section 2 above. Each Loan Party acknowledges and agrees that the aggregate outstanding principal balance of the Loans is $22,800,292.89, the availability of the Interest Holdback is $1,813,763.43, and that interest has accrued and shall continue to accrue on the outstanding principal amount of the Loans in accordance with the terms of the Loan Agreement and the Notes.

8. Representations and Warranties. The Loan Parties represent and warrant to Agent and the Lenders as follows:

(a) Authorization. The execution, delivery and performance of this Agreement and the transactions contemplated hereby (i) are within the authority of Borrowers and Guarantor, (ii) have been duly authorized by all necessary proceedings on the part of the Borrowers and Guarantor, (iii) do not and will not conflict with or result in any breach or contravention of any provision of law, statute, rule or regulation to which any of the Borrowers or Guarantor is subject or any judgment, order, writ, injunction, license or permit applicable to any of the Borrowers or Guarantor, (iv) do not and will not conflict with or constitute a default (whether with the passage of time or the giving of notice, or both) under any provision of the partnership agreement or certificate, certificate of formation, operating agreement, articles of incorporation or other charter documents or bylaws of, or any mortgage, indenture, agreement, contract or other instrument binding upon, any of the Borrowers or Guarantor or any of their respective properties or to which any of the Borrowers or Guarantor is subject, and (v) do not and will not result in or require the imposition of any lien or other encumbrance on any of the properties, assets or rights of any of the Borrowers or Guarantor, other than the liens and encumbrances created by the Loan Documents.

(b) Enforceability. The execution and delivery of this Agreement are valid and legally binding obligations of Borrowers and Guarantor enforceable in accordance with the respective terms and provisions hereof, except as enforceability is limited by bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting generally the enforcement of creditors' rights and the effect of general principles of equity.

(c) Approvals. The execution, delivery and performance of this Agreement and the transactions contemplated hereby do not require the approval or consent of any Person or the authorization, consent, approval of or any license or permit issued by, or any filing or registration with, or the giving of any notice to, any court, department, board, commission or other governmental agency or authority other than those already obtained.

(d) Reaffirmation. Borrowers and Guarantor reaffirm and restate as of the date hereof each and every representation and warranty made by the Borrowers, the Guarantor and their respective Subsidiaries in the Loan Documents or otherwise made by or on behalf of such Persons in connection therewith except for representations or warranties that expressly relate to an earlier date.

(e) Offsets, Etc. There are no offsets, claims, counterclaims, cross-claims or defenses with respect to the Loans.

(f) Litigation. Except as stated on Schedule 6.6 attached to this Agreement, there are no actions, suits, proceedings or investigations of any kind pending or to the knowledge of the Borrowers or Guarantor threatened against any Borrower or the Guarantor before any court, tribunal, arbitrator, mediator or administrative agency or board which question the validity of this Agreement or any of the other Loan Documents, any action taken or to be taken pursuant hereto or thereto or any lien, security title or security interest created or intended to be created pursuant hereto or thereto, or which if adversely determined could reasonably be expected to have a Material Adverse Effect or impair the right or ability of such Person to carry on business substantially as now conducted. Except as set forth on Schedule 6.6 attached to this Agreement, there are no judgments, final orders or awards outstanding against or affecting any Borrower, the Guarantor or the Mortgaged Properties.

(g) Deliveries. The documents, certificates or other writings delivered by or on behalf of any of the Loan Parties to the Agent or KeyBank in connection with the transactions contemplated by this Agreement, taken as a whole, do not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein not misleading in light of the circumstances under which they were made; there is no fact known to any of the Loan Parties that could reasonably be expected to have a Material Adverse Effect that has not been set forth herein or in the other documents, certificates and other writings delivered to the Agent or KeyBank by or on behalf of the Loan Parties specifically for use in connection with the transactions contemplated by this Agreement.

(h) Indebtedness. The Indebtedness identified on Schedule A attached hereto consists of all of the Indebtedness of the Guarantor and its respective Affiliates. Guarantor shall not create, incur, assume, guarantee or be or remain liable, contingently or otherwise or, with respect to any Indebtedness other than as shown on Schedule A attached hereto. Guarantor has not assumed, guaranteed or is liable, contingently or otherwise, with respect to any of the Indebtedness identified as Numbers 13, 14 and 15 on Schedule A.

(i) Deficiency Note Subordinate Debt. In connection with the execution and delivery of this Agreement, the Loan Parties and their Affiliates have entered into the agreements set forth on Schedule B attached hereto to accomplish a reorganization of the Guarantor and its Subsidiaries. None of the Loan Parties have any remaining indebtedness, liabilities or obligations under the Deficiency Note Subordinate Debt other than as described and evidenced in those agreements set forth on Schedule B attached hereto without the prior written consent of Agent.

(j) Accounts. The current outstanding amount of cash reserves held by the Borrowers is approximately $105,000.00**.**

9. No Default. By execution hereof, the Borrowers and Guarantor certify that each of the Borrowers and Guarantor will be in compliance with all covenants under the Loan Documents after the execution and delivery of this Agreement, and that no Default or Event of Default has occurred and is continuing except for the Existing Defaults.

10. Conditions to Effectiveness. This Agreement shall become effective and be deemed effective as of the date hereof, upon the occurrence of each of the following, to the satisfaction of the Agent:

(a) the Agent shall have received counterparts of this Agreement, duly executed and delivered by the Borrowers, Guarantor and KeyBank, individually and in its capacity as Agent;

(b) the Borrowers shall pay all fees, costs and expenses due and payable to the Agent as required under Section 13 hereof;

(c) the Cash Collateral Agreement and Deficiency Notes shall have been executed and delivered in form and content acceptable to the Agent;

(d) the Agent shall have received a Distribution Certificate in form and substance satisfactory to Agent;

(e) the Agent shall have received a copy of the Station View Sales Contract signed by the purchaser and seller; and

(f) the Agent shall have received such other information and documents as the Agent may request, in form and substance satisfactory to the Agent.

11. Release and Covenant Not to Sue. The Loan Parties, on behalf of themselves and all of their respective heirs, successors, and assigns, do hereby remise, release, acquit, satisfy, and forever discharge Lenders, Agent and all of their respective past, present, and future officers, directors, employees, agents, attorneys (including, without limitation, McKenna Long & Aldridge LLP), representatives, participants, heirs, successors, and assigns (collectively the "Released Parties"), from any and all manner of debts, accountings, bonds, warranties, representations, covenants, promises, contracts, controversies, agreements, liabilities, obligations, expenses, damages, judgments, executions, actions, claims, demands, and causes of action of any nature whatsoever, whether at law or in equity, whether known or unknown, either now accrued or hereafter maturing, which the Loan Parties now have or hereafter can, shall or may have by reason of any matter, cause, or thing, from the beginning of the world to and including the date of this Agreement arising out of or relating to (a) the Loan, including, but not limited to, the administration or funding thereof, (b) the Loan Documents or the indebtedness evidenced and secured thereby, or (c) the Collateral. Furthermore, the Loan Parties, for themselves and all of their respective heirs, successors, and assigns, hereby covenant and agree never to institute or cause to be instituted or continue prosecution of any suit or other form of action or proceeding of any kind or nature whatsoever against any of the Released Parties, by reason of or in connection with any of the foregoing matters, claims, or causes of action. Lenders and Agent acknowledge and agree that the foregoing release and covenant not to sue do not apply to any of Agent's or Lenders' obligations first arising after the date hereof under this Agreement, the Loan Agreement, or any of the other Loan Documents.

12. Ratification. Except as hereinabove set forth, all terms, covenants and provisions of the Loan Agreement remain unaltered and in full force and effect, and the parties hereto do hereby expressly ratify and confirm the Loan Documents as modified and amended herein. Nothing in this Agreement or any other document delivered in connection herewith shall be deemed or construed to constitute, and there has not otherwise occurred, a novation, cancellation, satisfaction, release, extinguishment or substitution of the indebtedness evidenced by the Notes or the other obligations of Borrowers and Guarantor under the Loan Documents.

13. Reimbursement of Expenses. Commencing on the First Amendment Date, Borrowers shall reimburse Agent and KeyBank for all of their respective out-of-pocket expenses incurred in connection with this Agreement for work done prior to this Agreement, including the reasonable legal fees and expenses of counsel to Agent from the sale of the next four (4) Potomac Units at the amount of $12,500 per sale, or such lesser amount at such time as the outstanding balance of such legal fees and expenses is less than $12,500.00.

14. Effective Date. This Agreement shall be deemed effective and in full force and effect as of the date hereof upon the execution and delivery of this Agreement by Borrowers, Guarantor, Agent and the Majority Lenders.

15. Acknowledgments. Each Loan Party hereby acknowledges and agrees that:

(a) They have been advised by counsel in the negotiation, execution, and delivery of this Agreement;

(b) Neither Agent nor any Lender has any fiduciary relationship with or duty to the Loan Parties arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between Agent and Lenders, on one hand, and the Loan Parties, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) No joint venture, partnership or similar relationship between the Loan Parties and Agent and Lenders is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby or thereby.

16. Agreement as Loan Document. This Agreement shall constitute a Loan Document.

17. Counterparts. This Agreement may be executed in any number of counterparts which shall together constitute but one and the same agreement.

18. Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

19. MISCELLANEOUS. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF VIRGINIA. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted successors, successors-in-title and assigns as provided in

the Loan Agreement. This Agreement represents the entire agreement of the Loan Parties with Agent and Lenders with respect to the subject matter hereof, and there are no promises, undertakings, representations, or warranties by Agent or Lender relative to the subject matter hereof not expressly set forth or referred to herein or in the other documents herein described.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have hereto set their hands and affixed their seals as of the day and year first above written.

BORROWERS:

COMSTOCK STATION VIEW, L.C., a Virginia limited liability company

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

By: _____
Name: Christopher Clemente
Title: Chief Executive Officer

(SEAL)

COMSTOCK POTOMAC YARD, L.C., a Virginia limited liability company

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

By: _____
Name: Christopher Clemente
Title: Chief Executive Officer

(SEAL)

[Signatures Continued on Next Page]

GUARANTOR:

COMSTOCK HOMEBUILDING COMPANIES, INC.,
a Delaware corporation

By: _____
Name: Christopher Clemente
Title: Chief Executive Officer

(SEAL)

[Signatures Continued on Next Page]

KEYBANK:

KEYBANK NATIONAL ASSOCIATION,
individually and as Agent

By: _____
Name: _____
Title: _____

SCHEDULE 6.6

LITIGATION

See attached.

SCHEDULE 7.12

POTOMAC PROJECT LEASING PARAMETERS

In no event shall Potomac, as part of its rental program established for the Potomac Project, enter into leases that would impair the ability of Borrowers to prepay the Loans prior to the Maturity Date. In furtherance of the foregoing, Potomac acknowledges and agrees that no leases may be entered into unless there shall be not less fifteen (15) Potomac Units for sale. Prior to entering into any such lease, Potomac shall give prior written notice to Agent of its intent to enter into such lease.

SCHEDULE 8.8

(See Attached)

SCHEDULE 12.1(D)

SCHEDULE A

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SCHEDULE B

Exhibit 10.76

FORBEARANCE AND CONDITIONAL RELEASE AGREEMENT

THIS FORBEARANCE AND CONDITIONAL RELEASE AGREEMENT (this "**Agreement**") is entered into as of November ____, 2009 (the "**Effective Date**"), is made by and among COMSTOCK HOMES OF RALEIGH, L.L.C., a North Carolina limited liability company (the "Borrower"), COMSTOCK HOMEBUILDING COMPANIES, INC., a Delaware corporation ("CHCI"), and FIFTH THIRD BANK, an Ohio banking corporation, successor by merger with Fifth Third Bank, N.A., successor by merger with First Charter Bank (the "Lender").

RECITALS

Pursuant to a Loan Agreement dated May 31, 2007 by and between the Borrower and First Charter Bank (the "Bank") (as the same may be amended, restated, supplemented, extended, or otherwise modified from time to time, the "Loan Agreement"), the Bank agreed to make available to the Borrower a construction loan in the principal amount of up to $4,500,000 (the "Loan"), the proceeds of which were to be used to acquire and construct up to 31 lots in a subdivision known as Brookfield. The Borrower's obligation to repay the Loan with interest is evidenced by the Borrower's Master Promissory Note dated May 31, 2007 in the original principal amount of $4,500,000 (as the same may be amended, restated, supplemented, extended, or otherwise modified from time to time, the "Note).

The Borrower's obligations in connection with the Loan are secured by, among other things, a Future Advance Deed of Trust dated May 31, 2007 from the Borrower to certain trustees for the benefit of the Bank (as the same may be amended, restated, supplemented, extended, or otherwise modified from time to time, the "Deed of Trust"), which Deed of Trust covers certain real property owned by the Borrower and located in Wake County, North Carolina (the "Property").

As used herein, (a) the term "Loan Documents" means collectively, the Loan Agreement, the Note, the Deed of Trust, the Forbearance Documents (as hereinafter defined) and all other documents previously, simultaneously or hereafter executed and delivered by the Borrower, or any other party or parties to evidence, secure, or guarantee, or in connection with, the Loan, and (b) the term "Obligations" means collectively all obligations of the Borrower under and in connection with any or all of the Loan Documents.

The Borrower is now in default under the Loan Documents by virtue of the Borrower's failure to make interest payments as set forth therein (the "Existing Defaults").

Lender acknowledges that CHCI is not a guarantor and has no liability under the Loan, but is a party to this Agreement solely for inducement of Lender to release Borrower and foreclose on the Property, as further described herein.

The Borrower has requested that Lender agree to modify the Loan Documents to allow for cooperative foreclosure of the Collateral, hereafter defined. Lender, subject to the terms and conditions of this Agreement, has agreed to this request.

NOW, THEREFORE, in consideration of the premises and of the representations and mutual agreements made herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Confirmation of Recitals and Other Matters. As a material inducement for Lender to enter into this Agreement, Borrower agrees with Lender, and represents and warrants to Lender, that (i) the statements set forth in the recitals to this Agreement are true and correct and contain no material omission of fact, (ii) the Loan Documents are in default and all obligations under the Loan Documents are fully matured and immediately due and payable in full without offset, defense, or reduction, (iii) Borrower has received or waived any notices to which it is entitled with respect to the Existing Defaults under the Loan Documents, and (iv) but for this Agreement, Lender, may, at its option and without further notice to or demand upon Borrower or any other person, exercise and enforce any and all rights and remedies under the Loan Documents.

2. Forbearance Covenant. Notwithstanding the Existing Defaults under the Loan Documents, but subject to the terms and conditions stated in this Agreement, Lender agrees that it will not take any action or file any proceedings, at law or in equity, to enforce the rights and remedies of Lender against Borrower or CHCI other than the Foreclosure Proceedings (hereafter defined).

3. Foreclosure of Collateral. Borrower acknowledges that Lender intends to commence proceedings to foreclose its security title, lien, and security interest in and to all Property securing the Loans, as described in the Deed of Trust and Loan Documents (collectively, the "**Collateral**"), in accordance with the provisions of the Loan Documents and applicable law (the "**Foreclosure Proceedings")**. Lender shall use commercially reasonable efforts to complete the foreclosure of the Collateral by February 28, 2010. In consideration of the foregoing, Borrower (i) ratifies and affirms Lender's security title, lien, and security interest in and to the Collateral pursuant to the Loan Documents, (ii) acknowledges and agrees that Borrower has received commercially reasonable, timely, and accurate notice of Lender's intention to foreclose its security title, lien, and security interest in the Collateral and that Lender is satisfied all requirements set forth in the Loan Documents relating to commencement of the Foreclosure Proceedings, and (iii) covenants and agrees to use commercially reasonable efforts to cooperate with Lender in connection with the Foreclosure Proceedings, including but not limited to, executing and returning an original waiver of right to notice and hearing in form and substance attached hereto as Schedule III.

4. Deliveries by Borrower. Borrower covenants to Lender that within fifteen (15) business days after each written request therefor (to the extent that any of such items are in the possession or direct control of Borrower), Borrower will deliver or cause the following items relating to the Collateral to be delivered to Lender whether such request is made prior or subsequent to the date of this Agreement or the foreclosure of any of the Collateral: (i) any certificates of occupancy, licenses, and other governmental permits or notices; (ii) any surveys, plats, drawings, engineering reports, maps, plans and specifications, and other similar matters; (iii) any tax assessments, notices, bills and/or statements; and (iv) any keys necessary to obtain full access to the Collateral.

5. Lender Release. Concurrent with the execution of this Agreement, the Lender will enter into and issue a conditional release (the "**Release**"), pursuant to which Lender will fully and unconditionally release Borrower and CHCI (collectively, the "Obligors") from any and all claims, liabilities, and obligations under the Loan Documents or otherwise with respect to the Loans and the Collateral which will become effective upon the Release Issuance Date. In no event shall the Release act to release CHCI from its obligations pursuant to the Deficiency Note (hereafter defined). The form of Release shall be as set forth on Schedule I attached to this Agreement. The Release shall be executed by the Lender and shall be held in escrow by Borrower's counsel (the "Escrow Agent") until the completion of the foreclosure of the Collateral by Lender (the "**Release Issuance Date**") and shall thereafter be delivered to Borrower and CHCI by the Escrow Agent without further requirement or consent of the Parties. For the purposes of this Agreement, the completion of the foreclosure of the Collateral shall be the date on which title to all of the Collateral has been transferred by a recorded substitute trustee's deed. So long as Lender completes the foreclosure of the Collateral by February 28, 2010, CHCI shall enter into an unsecured promissory note naming Lender as note holder and CHCI as Borrower for the sum of Twenty-Five Thousand and No/100ths Dollars ($25,000) ("**Deficiency Note**"). The Deficiency Note shall be executed concurrent with this Agreement and delivered to Escrow Agent to be held in escrow until Lender successfully completes the foreclosure of the Collateral. The form of the Deficiency Note shall be as set forth on Schedule II attached to this Agreement. If Lender fails to complete the foreclosure of the Collateral by February 28, 2010, the Deficiency Note shall be void and returned to the Obligors by Escrow Agent. Notwithstanding the foregoing, if the foreclosure of the Collateral is not complete by February 28, 2010 due to the imposition of an automatic stay resulting from a bankruptcy filing affecting the Borrower, then the February 28, 2010 deadline set forth in the preceding sentence shall be extended to a date no earlier than ninety (90) days after the date on which an order lifting the automatic stay with respect to the Collateral is entered. Failure to complete foreclosure of the Collateral by February 28, 2010 shall have no effect on the binding nature of the Release.

6. Reaffirmation of Obligations. Except as expressly stated in this Agreement, no action of Lender under this Agreement or otherwise shall act to release Borrower from its obligations to Lender under the Loan Documents, and any and all other indebtedness, obligations, and liabilities of Borrower to Lender (collectively hereinafter referred to as the "**Obligations**"), and all of said Obligations are hereby ratified and affirmed the same as if repeated on this date, and Borrower acknowledges that it has no legal or equitable defenses or offsets with respect to the Obligations until such time as the Release Issuance Date. Borrower ratifies and confirms all terms and conditions of the Obligations and the Loan Documents, and acknowledges that the same are in full force and effect and constitute the legal, valid and binding obligations of Borrower enforceable against Borrower in accordance with their terms.

7. **Borrower Release. In consideration of Lender's entering into this Agreement, Borrower and for itself and its respective heirs, executors, successors and assigns, hereby jointly and severally fully and forever releases, relinquishes, discharges, settles and compromises 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 "Released 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 Loans, the Loan Documents, any act and event relating to Lender's administration of the Loans or the other Obligations, and any act and event relating to any Released Lender Parties. The foregoing does not act as a release of liability for obligations arising out of performance of this Agreement which shall be administered in accordance with the terms hereof and shall be enforceable by all Parties.**

8. Representations and Warranties. In addition to all other representations and warranties set forth herein, Obligors represent, warrant, and covenant to and with Lender, which representations, warranties and covenants shall survive until the Obligations are indefeasibly released or otherwise satisfied in full, that:

(a) Obligors have the full power and authority to enter into this Agreement and to incur the obligations and consummate the transactions described herein and therein, all of which have been authorized by all proper and necessary corporate action where applicable.

(b) This Agreement constitutes the valid and legally binding obligation of Obligors enforceable in accordance with its terms and does not violate, conflict with, or constitute any default under any law, government regulation, organizational documents, or any other agreement or instrument binding upon or applicable to Obligors.

(c) No approval, authorization or other action by, or filing with, any governmental official, board or authority is required in connection with the execution and delivery of this Agreement, except such approvals and authorizations as have been received, such actions as have been taken, and such filings as have been made.

9. **Consent to Relief from Stay. Borrower further agrees that, in the event that Borrower (by its own action or the action of any of its beneficial owners) shall, prior to the completed foreclosure of Collateral (i) file with any bankruptcy court of competent jurisdiction or be the subject of any petition for relief under the United States Bankruptcy Code, as amended, (ii) be the subject of any order for relief issued under the United States Bankruptcy Code, as amended, (iii) file any petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, receivership, or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or other relief for debtors, or (iv) seek, consent to, or acquiesce in the appointment of any trustee, receiver, conservator, or liquidator, Lender will thereupon be entitled to relief from any automatic stay imposed by Section 362 of the United States**

Bankruptcy Code or otherwise, on or against the exercise of the rights and remedies otherwise available to Lender as provided in any of the Loan Documents, and as otherwise provided by law, and Borrower hereby waives the benefits of such automatic stay and consent and agree to raise no objection to such relief.

10. No Waiver by Lender. No course of dealing and no delay or failure of Lender to exercise any right, power, or privilege under any of the Loan Documents will affect any other or future exercise of such right, power, or privilege. Any departure by Lender from the terms and conditions of the Loan Documents prior to the date of this Agreement will not limit or restrict Lender's right to require that Borrower strictly perform and observe the terms and conditions of the Loan Documents until Obligor's receipt of the Release.

11. Entire Agreement. This Agreement is the entire agreement among the parties relating to the specific subject matter of this Agreement and supersedes any prior agreements, commitments and understandings between the parties. The Recitals are incorporated into and made a part of this Agreement as if fully set forth in the body of this Agreement.

12. Full Knowledge. Obligors acknowledge having read this Agreement and consulting with counsel (or having had the opportunity to consult with counsel) before executing this Agreement; that Obligors have relied upon their own judgment and that of their counsel in executing same and have not relied on or been induced by any representation, statement or act by any other party referenced to herein which is not referred to in this Agreement; and that Obligors enter into this Agreement voluntarily, with full knowledge of its significance.

13. Construction. Each party acknowledges that it has participated in the negotiation of this Agreement and no provision of this Agreement shall be construed against or interpreted to the disadvantage of any party hereto by any court or other governmental or judicial authority by reason of such party having or being deemed to have structured, dictated or drafted such provision. All terms of this Agreement were negotiated at arms-length, and this Agreement was prepared and executed without fraud, duress, undue influence or coercion of any kind exerted by any of the parties upon the other. The execution and delivery of this Agreement is the free and voluntary act of the parties.

14. Invalid Provision to Affect No Others. If, from any circumstances whatsoever, fulfillment of any provision of this Agreement shall involve transcending the limit of validity presently prescribed by any applicable law, with regard to obligations of like character and amount, then ipso facto the obligation to be fulfilled shall be reduced to the limit of such validity. Further, if any cause or provision herein contained operates or would prospectively operate to invalidate this Agreement, in whole or in part, then such clause or provision only shall be held for naught, as though not herein contained, and the remainder of this Agreement shall remain operative and in full force and effect.

15. Counterparts; Electronic Delivery. To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single

instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties thereto. Any signature to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature pages. Delivery of an executed counterpart of this Agreement by telecopier or any other form of electronic transmission shall be equally as effective as delivery of an original executed counterpart thereof. Any party delivering an executed counterpart of this Agreement by telecopier or other electronic means also shall deliver an original executed counterpart of such instrument, but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect thereof.

16. Modifications. This Agreement cannot be changed or terminated orally, is for the benefit of the parties hereto and their respective successors and assigns, and is binding upon the parties hereto in accordance with its terms.

17. Successors and Assigns. This Agreement shall bind and inure to the benefit of the parties hereto, including their respective successors and assigns.

18. Time is of the Essence. Time is of the essence in the performance of this Agreement.

19. Governing Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of North Carolina (without regard to the conflict of laws rules in effect from time to time in the State of North Carolina).

20. **WAIVER OF JURY TRIAL. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, OBLIGORS AND LENDER HEREBY EXPRESSLY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN ANY LAWSUIT OR OTHER COURT ACTION RELATED TO THIS AGREEMENT, THE NOTE, THE OBLIGATIONS, AND THE OTHER LOAN DOCUMENTS, OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY, INCLUDING, WITHOUT LIMITATION, IN RESPECT TO ANY CLAIM, COUNTERCLAIM, THIRD-PARTY CLAIM, DEFENSE, OR SET-OFF ASSERTED IN ANY SUCH LAWSUIT OR COURT ACTION. ANY SUCH LAWSUIT OR COURT ACTION SHALL BE TRIED EXCLUSIVELY TO A COURT WITHOUT A JURY. OBLIGORS SPECIFICALLY ACKNOWLEDGE THAT THEIR EXECUTION OF THIS WAIVER OF JURY TRIAL IS A MATERIAL PORTION OF THE CONSIDERATION RECEIVED BY LENDER IN EXCHANGE FOR ITS ENTERING INTO THIS AGREEMENT.**

[Signatures begin on the next page]

IN WITNESS WHEREOF, Obligors have executed this Agreement under seal as of the date first above written.

Borrower:

COMSTOCK HOMES OF RALEIGH, L.L.C.

By: Comstock Homebuilding Companies, Inc.
its Manager

By: _____
Christopher Clemente, CEO

CHCI:

COMSTOCK HOMEBUILDING COMPANIES, INC.

By: _____
Name: _____
Title: _____

[Signatures continue on the next page]

IN WITNESS WHEREOF, Lender has executed this Agreement under seal as of the date first above written.

FIFTH THIRD BANK, successor by merger with Fifth Third Bank, N.A., successor by merger with First Charter Bank

By: _____
Name: Tom Carroll
Title: Vice President

[Signatures continue on the next page]

COMSTOCK HOMES OF RALEIGH, L.L.C.

STATE OF _____
COUNTY OF _____
(Place of Acknowledgment)

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: **Christopher Clemente.**

Date: _____

_____
Notary Public
[Official Seal] Print Name: _____

My commission expires:_____

COMSTOCK HOMEBUILING COMPANIES, INC.

STATE OF _____
COUNTY OF _____
(Place of Acknowledgment)

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: **Christopher Clemente.**

Date: _____

_____
Notary Public
[Official Seal] Print Name: _____

My commission expires:_____

SCHEDULE I

Form of Lender Release

RELEASE AND COVENANT NOT TO SUE

This Release is entered into the ____ day of November ____, 2009 for the benefit of **COMSTOCK HOMES OF RALEIGH, L.L.C.,** a North Carolina limited liability company ("**CHOR**" or "**Borrower**") and **COMSTOCK HOMEBUILDING COMPANIES, INC.**, a Delaware corporation ("**CHCI**", and together with the Borrower, the "**Obligors**") by **FIFTH THIRD BANK**, an Ohio banking corporation, successor by merger with Fifth Third Bank, N.A., successor by merger with First Charter Bank ("**Lender**").

RECITALS:

Lender and Obligors entered into that certain Forbearance and Conditional Release Agreement dated November ____, 2009 (the "Agreement"). In consideration for entry into the Agreement, Lender has agreed to release Borrower from all claims and other matters relating to the Loans, the Loan Documents and the Collateral (as such terms are defined in the Agreement).

Lender has entered into this instrument to evidence the full release of Obligors.

NOW, THEREFORE, in consideration of the foregoing recitals, and other good and valuable consideration contained herein, the sufficiency of which is hereby acknowledged, Lender and Obligors agree as follows:

1. Capitalized terms not defined herein shall have the meanings ascribed to such terms by the Agreement.

2. Effective as of the Release Issuance Date (as defined in the Agreement) Lender, for itself and its respective heirs, personal representatives, administrators, successors, shareholders, predecessors, affiliates, assigns, officers, directors, employees, attorneys, and agents (collectively, the "Releasing Parties") hereby absolutely, fully, and forever release, relinquish, waive, forever discharge, and covenant not to sue Borrower, its shareholders, officers, directors, agents, employees, attorneys, successors, assigns, and any other person or entity representing or acting on its behalf on account of any and all claims arising under the Loan Documents or otherwise with respect to the Loans and the Collateral which the Releasing Parties may have had, may presently have, or in the future may have against the Borrower arising from acts or omissions prior to the date hereof; provided, however, that the release and covenant not to sue granted by Lender in favor of Borrower shall be subject to the conditions subsequent that no Borrower (or any person acting on behalf of Borrower) has taken any action to frustrate Lender's Foreclosure Proceedings up to and including the Release Issuance Date as that term is defined in the Agreement and no Borrower (or any person acting on behalf of Borrower) shall commence, join in, assist, cooperate in, or otherwise participate as an adverse party or as an adverse witness (except pursuant to compulsory legal process which either requires testimony or production of documents pursuant to subpoena powers) in any suit or other proceeding against Lender or any affiliate, officer, director, or employee of Lender, relating to the Loans (the "Condition(s)

Subsequent"). The Releasing Parties hereby absolutely, fully, and forever release, relinquish, waive, forever discharge, and covenant not to sue CHCI, its shareholders, officers, directors, agents, employees, attorneys, successors, assigns, and any other person or entity representing or acting on its behalf on account of any and all claims arising under the Loan Documents, this Agreement, or otherwise with respect to the Loans and the Collateral which the Releasing Parties may have had, may presently have, or in the future may have against CHCI. Provided this Release is timely delivered to CHCI and Borrower, it shall not release CHCI from its liability under the Deficiency Note, which shall remain in full force and effect in accordance with its terms.

3. The Releasing Parties acknowledge that this Release constitutes a legal, valid and binding obligation. Its terms cannot be modified except in writing signed by the party against whom the modification is sought to be enforced. The consideration referred to herein is not to be construed as an admission of liability and admitted to be sufficient to create binding obligations on all parties; provided, however, that upon the occurrence of a Condition Subsequent, this Release shall no longer be binding on the Lender.

4. This Release shall be binding upon the Releasing Parties' respective successors and assigns.

5. This Release shall be governed by the laws of the State of North Carolina.

IN WITNESS WHEREOF, Lender has executed this Agreement under seal with the intention that this Release shall be effective as of the date first above written.

FIFTH THIRD BANK, an Ohio banking corporation, successor by merger with Fifth Third Bank, N.A., successor by merger with First Charter Bank

By: _____
Name: Tom Carroll
Title: Vice President

SCHEDULE II
SUBORDINATED DEFICIENCY NOTE

$ 25,000 **November _____, 2009**

FOR VALUE RECEIVED, the undersigned, **COMSTOCK HOMEBUILDING COMPANIES, INC.**, a Delaware corporation (the "Borrower"), promises to pay to the order of **FIFTH THIRD BANK,** an Ohio banking corporation (the "Noteholder"), the sum of Twenty-Five Thousand Dollars and No/cents ($25,000) (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 Forebearance and Conditional Release 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.

B. 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").

C. 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.

D. 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.

E. 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.

F. 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.

G. 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.

H. 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.

I. Subordination. By acceptance of this Subordinated Deficiency Note, each holder of the Subordinated Indebtedness (as defined below) agrees to each of the following provisions:

1. 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.

"Guggenheim Collateral" means all of the real, personal and other property 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; provided, however, that notwithstanding anything herein to the contrary, "Guggenheim Collateral" shall not include the KeyBank Collateral.

"Guggenheim Obligors" means Comstock Penderbrook, L.C., Borrower and each other obligor or guarantor of or with respect to any part of the Guggenheim Senior Debt.

"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.

"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 $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 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, 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; provided, however, that notwithstanding anything herein to the contrary, "KeyBank Collateral" shall not include the Guggenheim Collateral.

"KeyBank Obligors" means Comstock Station View, L.C., a Virginia limited liability company, Comstock Potomac Yard, L.C., a Virginia limited liability company, Borrower, and each other obligor or guarantor of or with respect to any part of the KeyBank Senior Debt.

"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.

"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.

"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.

"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.

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.

2. 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:

(a) 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

(b) 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.

3. 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.

4. 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, 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.

5. 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.

6. 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.

7. 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, 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 "Majority Lenders" (as defined in the KeyBank Senior Loan Agreement):

(i) Declare a default or event of default under this Subordinated Deficiency Note, 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; or

(iii) Consent to or enter into any amendment or modification of any of this 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.

8. 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, 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 Administrative Agent (as defined in the Guggenheim Senior Loan Agreement):

(i) Declare a default or event of default under this Subordinated Deficiency Note, 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; or

(iii) Consent to or enter into any amendment or modification of any of this 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.

9. 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 either 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.

10. 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.

11. 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 an 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.

12. 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.

13. 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).

14. 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.

15. 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.

16. 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 Lender, 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

SCHEDULE III

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
09-SP-_____

IN THE MATTER OF THE FORECLOSURE of a Future Advance Deed of Trust from Comstock Homes of Raleigh, L.L.C. dated and recorded on May 31, 2007 in Book 12580 at Page 782 as supplemented by a Supplement to Deed of Trust from Comstock Homes of Raleigh, L.L.C. dated July 19, 2007 and recorded on July 20, 2007 in Book 12664 at Page 791 of the Wake County Public Registry by Barry D. Mann (Substitute Trustee)

WAIVER OF THE RIGHT TO NOTICE AND HEARING PURSUANT TO NORTH CAROLINA GENERAL STATUTES § 45-21.16(f)

Pursuant to the provisions of North Carolina General Statutes § 45-21.16(f), the undersigned Comstock Homes of Raleigh, L.L.C. hereby waives the right to notice and hearing in any foreclosure proceeding under that Future Advance Deed of Trust dated May 31, 2007 from Comstock Homes of Raleigh, L.L.C. for the benefit of First Charter Bank (now Fifth Third Bank, an Ohio banking corporation, successor by merger with Fifth Third Bank, N.A., a national association, successor by merger with First Charter Bank, a state banking corporation) and recorded in Book 12580 at Page 782 in the Wake County Public Registry as supplemented by that Supplement to Deed of Trust dated July 19, 2007 and recorded on July 20, 2007 in Book 12664 at Page 791 of the Wake County Public Registry by and between Comstock Homes of Raleigh, L.L.C., as borrower and First Charter Bank First Charter Bank (now Fifth Third Bank, an Ohio banking corporation, successor by merger with Fifth Third Bank, N.A., a national association, successor by merger with First Charter Bank, a state banking corporation), as beneficiary (as supplemented, the "Deed of Trust").

The undersigned further acknowledges and represents that the original principal amount of the indebtedness secured by the Deed of Trust exceeds One Hundred Thousand Dollars ($100,000) as required by statute and that this waiver is made after default under the terms of the Deed of Trust.

Dated this the _____ day of November, 2009.

COMSTOCK HOMES OF RALEIGH, L.L.C.

By: Comstock Homebuilding Companies, Inc.,
its Manager

By: _____
Name: Christopher Clemente
Title: CEO

STATE OF _____
COUNTY OF _____
(Place of Acknowledgment)

I certify that the following person personally appeared before me this day, each acknowledging to me that he signed the foregoing document: **Christopher Clemente.**

Date: November __, 2009

_____
Notary Public
Print Name: _____

[Official Seal]

My commission expires:_____

Exhibit 31.1

CERTIFICATION OF CHAIRMAN AND CHIEF EXECUTIVE OFFICER

I, Christopher Clemente, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Comstock Homebuilding Companies, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations, and cash flows of the registrant as of, and for, the 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, is made known to us by others within that entity, 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 most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) 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: November 13, 2009

/s/ Christopher Clemente

Christopher Clemente
Chairman and Chief Executive Officer
(Principal executive officer)

Exhibit 31.2

CERTIFICATION OF CHIEF FINANCIAL OFFICER

I, Jeffrey R. Dauer, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Comstock Homebuilding Companies, Inc.
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations, and cash flows of the registrant as of, and for, the 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, is made known to us by others within that entity, 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 most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) 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: November 13, 2009

/s/ Jeffrey R. Dauer

Jeffrey R. Dauer
Chief Financial Officer
(Principal financial officer)

Exhibit 32.1

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

In connection with the Quarterly Report on Form 10-Q of Comstock Homebuilding Companies, Inc. (the "Company") for the quarter ended June 30, 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: November 13, 2009

/s/ Christopher Clemente
Christopher Clemente
Chairman and Chief Executive Officer

Date: November 13, 2009

/s/ Jeffrey R. Dauer
Jeffrey R. Dauer
Chief Financial Officer

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.