

BEAZER HOMES USA INC  
Form PRE 14A  
December 02, 2010

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**SCHEDULE 14A**

**Proxy Statement Pursuant to Section 14(a) of the**  
**Securities Exchange Act of 1934**

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

Preliminary Proxy Statement

**Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**

Definitive Proxy Statement

Definitive Additional Materials

Soliciting Material under 14a-12

**BEAZER HOMES USA, INC.**

(Name of registrant as specified in its charter)

(Name of person(s) filing proxy statement, if other than the registrant)

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(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

**Beazer Homes USA, Inc.**

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

**NOTICE OF ANNUAL MEETING OF STOCKHOLDERS**

TO THE STOCKHOLDERS OF BEAZER HOMES USA, INC.:

Notice is hereby given that the annual meeting of stockholders of Beazer Homes USA, Inc. will be held at 11:00 a.m. on Tuesday, February 2, 2011 at our principal executive office at 1000 Abernathy Road, Suite 260, Atlanta, Georgia 30328. At this meeting, stockholders will vote on:

- 1) The election of the seven nominees to our Board of Directors named in the accompanying Proxy Statement;
- 2) The ratification of the selection of Deloitte & Touche LLP by the Audit Committee of our Board of Directors as our independent registered public accounting firm for the fiscal year ending September 30, 2011;
- 3) A non-binding advisory vote regarding the Company's executive compensation programs, commonly referred to as a Say on Pay proposal;
- 4) A non-binding advisory vote to establish the frequency of submission to stockholders of such advisory Say on Pay proposals;
- 5) A proposal to adopt a protective amendment to the Company's Certificate of Incorporation to help preserve certain tax benefits primarily associated with our net operating losses;
- 6) A proposal to approve a Section 382 Rights Agreement, as amended, to help protect the tax benefits primarily associated with our net operating losses; and
- 7) Any other such business as may properly come before the meeting or any adjournments or postponements thereof.

Our Board of Directors has fixed the close of business on December 6, 2010 as the record date for the determination of stockholders entitled to notice of and to vote at the meeting. A copy of our annual report to stockholders is being mailed to you together with this notice.

We encourage you to take part in our affairs by voting either in person by written ballot at the meeting or by telephone, Internet or written proxy.

By Order of the Board of Directors,  
BRIAN C. BEAZER  
*Non-Executive Chairman of the Board of Directors*

Dated: December \_\_, 2010

**YOUR VOTE IS IMPORTANT.**

**WHETHER OR NOT YOU PLAN TO ATTEND THIS MEETING, PLEASE PROMPTLY MARK, DATE, SIGN AND MAIL THE ENCLOSED PROXY. A RETURN ENVELOPE, WHICH REQUIRES NO ADDITIONAL POSTAGE IF MAILED IN THE UNITED STATES, IS ENCLOSED FOR THAT PURPOSE. YOU MAY ALSO VOTE BY INTERNET OR TELEPHONE BY FOLLOWING INSTRUCTIONS ON THE ENCLOSED PROXY.**

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**IMPORTANT NOTICE REGARDING THE AVAILABILITY OF PROXY MATERIALS FOR OUR**

**ANNUAL MEETING OF STOCKHOLDERS TO BE HELD ON FEBRUARY 2, 2011.**

Our Proxy Statement for the 2011 annual meeting of stockholders and our annual report to stockholders for the fiscal year ended September 30, 2010 is available at [www.proxyvote.com](http://www.proxyvote.com).

You will need the 12-digit Control Number included on your proxy card or voting instruction form to access these materials.

**HOW TO VOTE**

You can vote your shares in person by attending the meeting, by completing and returning a proxy by mail or by using the telephone or the Internet. Please refer to the proxy card or voting instruction form included with these proxy materials for information on the voting methods available to you. If you vote by telephone or on the Internet, you do not need to return your proxy card. Please see page 1 of the accompanying Proxy Statement for more information.

**ANNUAL MEETING ADMISSION**

Please note that attendance at the meeting is limited to our stockholders or their named representatives. Proof of ownership of our common stock as of the record date and photo identification will be required for admittance to the annual meeting. If you are a registered stockholder, the top portion of your proxy card may serve as proof of ownership. If you are attending on behalf of an entity that is a stockholder, evidence of your employment or association with that entity also will be required.

To obtain directions to attend the annual meeting and vote in person, please contact our Investor Relations Department at (770) 829-3700.

**ELECTRONIC DELIVERY OF PROXY MATERIALS**

Instead of receiving copies of our Proxy Statement in the mail, stockholders may elect to receive only an email with a link to future proxy statements, proxy cards and annual reports on the Internet. Receiving your proxy materials online saves us the cost of producing and mailing documents to you and significantly reduces the environmental impact. Stockholders may enroll to receive proxy materials online as follows:

*Stockholders of Record.* If you are a registered stockholder, you may request electronic delivery when voting for this meeting on the Internet at [www.proxyvote.com](http://www.proxyvote.com).

*Beneficial Holders.* If your shares are not registered in your name, check the information provided to you by your bank or broker, or contact your bank or broker for information on electronic delivery service.

*401(k) Plan Participants.* If you are a participant in our 401(k) plan, you may request electronic delivery when voting for this meeting on the Internet at [www.proxyvote.com](http://www.proxyvote.com).

**BEAZER HOMES USA, INC.**

**1000 Abernathy Road**

**Suite 1200**

**Atlanta, Georgia 30328**

**PROXY STATEMENT**

**Purpose**

This Proxy Statement is being furnished to you in connection with the solicitation of proxies by the Board of Directors (the **Board**) of Beazer Homes USA, Inc., a Delaware corporation (the **Company**), for use at our annual meeting of stockholders to be held on February 2, 2011 and at any adjournments or postponements thereof. Stockholders of record at the close of business on December 6, 2010 are entitled to notice of and to vote at the annual meeting. On December \_\_, 2010, we had outstanding \_\_\_\_\_ shares of common stock. Each share of common stock entitles the holder to one vote with respect to each matter to be considered. The common stock is our only outstanding class of voting securities. This Proxy Statement and the enclosed form of proxy are being mailed to stockholders, together with our Annual Report to stockholders (which includes our Annual Report on Form 10-K for our fiscal year ended September 30, 2010), commencing on or about December \_\_, 2010.

**Voting Instructions**

**General**

Shares represented by a proxy will be voted in the manner directed by the stockholder. If no direction is made, except as discussed below regarding broker non-votes, the completed proxy will be voted:

1. **FOR** the election of the seven nominees to our Board of Directors named in this Proxy Statement;
2. **FOR** the ratification of the selection of Deloitte & Touche LLP as our independent registered public accounting firm for fiscal year 2011;
3. **FOR** the approval of the Company's executive compensation programs (the **Say on Pay** proposal);
4. **FOR** the recommendation of the Board of Directors that a stockholder advisory vote on **Say on Pay** proposals be held every year;
5. **FOR** the adoption of an amendment to our Certificate of Incorporation to help preserve certain tax benefits primarily associated with our net operating losses;
6. **FOR** the approval of a Section 382 Rights Agreement, as amended, to help protect the tax benefits primarily associated with our net operating losses; and
7. In accordance with the judgment of the persons named in the proxy as to such other matters as may properly come before the annual meeting.

If you are a stockholder of record as of the close of business on December 6, 2010, you can give a proxy to be voted at the meeting either:

1. By mailing in the enclosed proxy card;

2. By written ballot at the meeting;

3. Over the telephone by calling a toll-free number; or

4. Electronically, using the Internet.

The telephone and Internet voting procedures have been set up for your convenience and have been designed to authenticate your identity, to allow you to give voting instructions and to confirm that those instructions have been recorded properly. If you are a stockholder of record and you would like to vote by telephone or by using the Internet, please refer to the instructions on the enclosed proxy card.

If you hold your shares in street name, you must vote your shares in the manner prescribed by your broker or nominee. Your broker or nominee has enclosed or provided a voting instruction form for you to use in directing the broker or nominee on how to vote your shares.

#### ***Signature Requirements***

If shares are registered in the name of more than one person, each named person should sign the proxy. If the stockholder is a corporation, the proxy should be signed in the corporation's name by a duly authorized officer. If a proxy is signed as a trustee, guardian, executor, administrator, under a power of attorney or in any other representative capacity, the signer's full title should be given.

#### ***Revocation***

A stockholder giving the enclosed proxy may revoke it at any time before the vote is cast at the annual meeting by executing and returning to our Secretary (Kenneth F. Khoury) at our principal executive office or to the official tabulator (Broadridge Financial Solutions, Inc., 51 Mercedes Way, Edgewood, NY 11717) either a written revocation or a proxy bearing a later date, prior to the annual meeting. Any stockholder who attends the annual meeting in person will not be considered to have revoked his or her proxy unless such stockholder affirmatively indicates at the annual meeting his or her intention to vote in person the shares represented by such proxy. In addition, a stockholder may revoke a proxy by submitting a subsequent proxy by Internet or telephone by following the instructions on the enclosed proxy.

#### ***Quorum; Vote Requirements***

The presence, in person or by proxy, of the holders of a majority of the outstanding shares of common stock entitled to vote at the meeting is required to constitute a quorum. Shares represented by proxies which indicate that the stockholders abstain as to the election of directors or to other proposals will be treated as being present for the purpose of determining the presence of a quorum. Holders of common stock will be entitled to one vote for each share they hold.

**Broker Non-Votes.** If a broker does not receive instructions from the beneficial owner of shares held in street name for certain types of proposals it must indicate on the proxy that it does not have authority to vote such shares (a broker non-vote) as to such proposals. Please note that the rules of the New York Stock Exchange (the NYSE) that guide how brokers vote your stock have changed. As a result, if your broker does not receive instructions from you, your broker will **not** be able to vote your shares in the election of directors. In addition and as further described below, without instructions from you, we expect your broker will **not** be able to vote your shares with respect to Proposal 3 (the advisory Say on Pay proposal), Proposal 4 (the advisory proposal regarding the frequency of submission to stockholders of such Say on Pay proposals) and Proposal 6 (the proposal to approve a Section 382 Rights Agreement, as amended, to help protect the tax benefits associated with our net operating losses).

Accordingly, if your shares are held in street name, we strongly encourage you to provide your broker with voting instructions and exercise your right to vote for these important proposals.

*Election of Directors (Proposal 1).* In uncontested elections of directors, such as this election, each director will be elected if the votes cast for such director exceed the votes cast against such director. See the Corporate Governance section on page 11 of this Proxy Statement for a more detailed description of the majority voting procedures in our by-laws and Corporate Governance Guidelines. Abstentions and broker non-votes will not affect the election outcome.

*Ratification of Auditor Appointment (Proposal 2).* The affirmative vote, in person or by proxy, of a majority of the shares present or represented at the annual meeting and entitled to vote on the matter is required to ratify the selection of Deloitte & Touche LLP as our independent registered public accounting firm for fiscal year 2011 by the Audit Committee of our Board of Directors. Abstentions will have the same effect as an against vote for this proposal.

*Non-Binding Advisory Vote on Executive Compensation Programs (Proposal 3).* The affirmative vote, in person or by proxy, of a majority of the shares present or represented at the annual meeting and entitled to vote on the matter will constitute stockholders non-binding approval with respect to our executive compensation programs. Abstentions will have the same effect as an against vote, but broker non-votes will have no effect.

*Non-Binding Advisory Vote on Frequency of Say on Pay (Proposal 4).* The affirmative vote, in person or by proxy, of a plurality of the shares present or represented at the annual meeting and entitled to vote on the matter will constitute stockholders non-binding approval with respect to the frequency of submission to stockholders of Say on Pay proposals. Abstentions and broker non-votes will not affect the outcome of this proposal.

*Approval of Amendment to Certificate of Incorporation (Proposal 5).* The affirmative vote, in person or by proxy, of a majority of the outstanding shares of our common stock is required to approve the proposed amendments to our Certificate of Incorporation to help protect certain tax benefits primarily associated with our net operating losses. Abstentions and broker non-votes will have the same effect as our against vote on this proposal.

*Approval of Section 382 Rights Agreement, as amended (Proposal 6).* The affirmative vote, in person or by proxy, of a majority of the shares present or represented at the annual meeting and entitled to vote on the matter is required to approve the proposed Section 382 Rights Agreement, as amended by the First Amendment thereto, to help protect the tax benefits primarily associated with our net operating losses. Abstentions will have the same effect as our against vote, but broker non-votes will have no effect.

#### **Expenses of Solicitation**

Expenses incurred in connection with the solicitation of proxies will be paid by the Company. Proxies are being solicited primarily by mail, but, in addition, our officers and other employees may solicit proxies by telephone, in person or by other means of communication but will receive no extra compensation for such services. In addition, we have engaged Morrow & Co., LLC to assist in the solicitation of proxies. We anticipate that the costs associated with this engagement will be approximately \$25,000 plus costs and expenses incurred by Morrow & Co. We will reimburse banks, brokerage firms and other custodians, nominees and fiduciaries for costs incurred in connection with this solicitation.

**Principal Stockholders**

The following table sets forth information as of \_\_\_\_\_ with respect to the beneficial ownership of our common stock by all persons known by us to beneficially own more than 5% of our common stock.

Name and Address of Beneficial Owner	Amount and Nature of Beneficial Ownership	Percent of Class (1)
FMR LLC	11,377,004(2)	14.9%
82 Devonshire Street Boston, Massachusetts 02109		

- (1) Based upon 76,398,646 shares of outstanding common stock as of \_\_\_\_\_. Beneficial ownership is determined in accordance with the rules of the Securities and Exchange Commission under which shares are beneficially owned by the person or entity that holds investment and/or voting power.
- (2) Based on Schedule 13G filed by FMR LLC dated October 11, 2010. FMR LLC disclaims sole voting power with respect to 7,226,384 of these shares which are beneficially owned by Fidelity Management & Research Company ( FMRC ) as a result of FMRC acting as an investment adviser to various mutual funds registered as investment companies under the Investment Company Act of 1940.

**CORPORATE GOVERNANCE AND BOARD MATTERS****Board of Directors Committees and Meetings**

During fiscal year 2010, our Board of Directors had four standing committees: the Audit Committee, the Nominating/Corporate Governance Committee, the Compensation Committee and the Finance Committee. Our Audit Committee meets the definition of an audit committee as set forth in Section 3(a)(58)(A) of the Securities Exchange Act of 1934 (the Exchange Act ). In fiscal year 2010, our Board of Directors had seven Board of Directors meetings and each meeting was attended in full with the exception of Peter G. Leemputte who was absent from one meeting. In addition, directors are encouraged to attend the annual meeting of stockholders, but are not required to do so. At the last annual meeting of stockholders, held on April 13, 2010, all members of our Board of Directors were in attendance with the exception of Mr. Leemputte.

**COMMITTEE MEMBERSHIP**

Audit Committee	Compensation Committee	Nominating/Corporate Governance Committee	Finance Committee
Peter G. Leemputte (1)(2)	Larry T. Solari (1)	Laurent Alpert (1)	Stephen P. Zelnak, Jr. (1)
Laurent Alpert	Stephen P. Zelnak, Jr.	Larry T. Solari	Peter G. Leemputte
Norma A. Provencio (2)(3)	Norma Provencio (4)	Stephen P. Zelnak, Jr.	Brian C. Beazer
Larry T. Solari			

- (1) Committee Chair.
- (2) Audit Committee Financial Expert as defined by Securities and Exchange Commission regulations.
- (3) Ms. Provencio became a member of the Audit Committee after becoming a member of our Board of Directors in November 2009. Prior to November 2009, the Audit Committee was comprised of Messrs. Leemputte, Alpert and Solari.

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- (4) Ms. Provencio became a member of the Compensation Committee on April 29, 2010. Prior to her appointment, the Compensation Committee was comprised of Messrs. Solari and Zelnak.  
Committee composition is subject to review by our Board of Directors from time to time.

## **Committee Responsibilities**

Our Audit Committee provides assistance to our Board of Directors in fulfilling its responsibilities related to corporate accounting, auditing and reporting practices of the Company, the quality and integrity of our financial reports and our internal controls regarding finance, accounting, legal compliance, risk management and ethics established by management and our Board of Directors. In fulfilling these functions, our Audit Committee reviews and makes recommendations to our Board of Directors with respect to certain financial and accounting matters. Our Audit Committee also engages and sets compensation for our independent auditors. This Committee met five times during fiscal year 2010, and each meeting was attended by all Committee members.

Our Nominating/Corporate Governance Committee makes recommendations concerning the appropriate size and needs of our Board of Directors, including the annual nomination and review of directors and nominees for new directors. Our Nominating/Corporate Governance Committee also reviews and makes recommendations concerning corporate governance and other policies related to our Board of Directors as well as evaluating the performance of our Board of Directors and its committees. This Committee met five times during fiscal year 2010, and each meeting was attended by all Committee members.

Our Compensation Committee discharges our Board of Directors' responsibilities relating to the compensation of our executives and directors. More specifically, this Committee administers cash-based and equity-based incentive compensation programs for executive management, which includes all of the executive officers named in the Summary Compensation Table (the Named Executive Officers). This Committee also reviews and recommends to our Board of Directors the inclusion of the Compensation Discussion and Analysis that begins on page 30 of this Proxy Statement. This Committee met eight times during fiscal year 2010, and each meeting was attended by all Committee members.

Our Finance Committee provides assistance to our Board of Directors by reviewing and recommending to the Board of Directors matters concerning corporate finance, including, without limitation, equity and debt financings, acquisitions and divestitures, share repurchases and dividend policy. During fiscal year 2010, there were five Finance Committee meetings. Each meeting was attended by all Committee members.

## ***Board Leadership Structure***

Our Board of Directors believes that separate individuals should hold the positions of Chairman of the Board and Chief Executive Officer. Since the initial public offering of our common stock (the IPO), our Board of Directors has been led by our Non-Executive Chairman, Brian C. Beazer, and our President and Chief Executive Officer, Ian J. McCarthy, has led the management of the Company. We believe this structure provides for more direct independent oversight of management and more clearly delineates the respective roles of the Board of Directors at the strategic level, and of management at the operational level.

In addition, as described under *Director Independence* below, while the Board of Directors believes Mr. Beazer would be deemed to be independent under applicable regulatory standards, the Board of Directors in 2006 determined that it would be an additional governance best practice to establish a lead independent director position, currently held by Larry T. Solari. Among other functions, our lead independent director chairs the executive sessions of the independent directors. As further described below, our Nominating/Corporate Governance Committee nominates our lead independent director for election by the independent directors.

## **Corporate Governance**

Our Board of Directors has adopted a number of measures designed to comply with the requirements of the Sarbanes-Oxley Act of 2002 (the Sarbanes-Oxley Act), rules and regulations of the Securities and Exchange

Commission (the SEC) interpreting and implementing the Sarbanes-Oxley Act and the listing standards of the NYSE relating to corporate governance matters (the NYSE Standards), as well as other measures that our Board of Directors believes are corporate governance best practices. Among the significant measures implemented by our Board of Directors are the following:

***Majority Vote Standard and Director Resignation Policy***

Our by-laws and Corporate Governance Guidelines, which are posted and available for viewing in the Investors section of our web site at [www.beazer.com](http://www.beazer.com), provide a majority voting standard for the election of directors in uncontested elections. Director nominees will be elected if the votes cast for such nominee exceed the number of votes cast against such nominee. In the event that (i) a stockholder proposes a nominee to compete with nominees selected by our Board of Directors, and the stockholder does not withdraw the nomination prior to our mailing the notice of the stockholders meeting, or (ii) one or more directors are nominated by a stockholder pursuant to a solicitation of written consents, then directors will be elected by a plurality vote.

Our Corporate Governance Guidelines provide that our Board of Directors will only nominate candidates who, prior to an annual meeting, tender their irrevocable resignations, which are effective only upon (i) the candidate not receiving the required vote at the next annual meeting at which they face re-election and (ii) our Board of Directors accepting the candidate's resignation. In the event that a director who has tendered his or her resignation does not receive a majority vote, then our Corporate Governance Guidelines provide that our Nominating/Corporate Governance Committee will act on an expedited basis to determine whether to accept the director's resignation and will submit its recommendation to our Board of Directors. In deciding whether to accept a director's resignation, our Board of Directors and our Nominating/Corporate Governance Committee may consider any factors that they deem relevant. Our Corporate Governance Guidelines also provide that our Board of Directors expects that the director whose resignation is under consideration will abstain from the deliberation process. All candidates standing for re-election at this annual meeting have tendered such irrevocable resignations.

***Matters Relating to Risk Management***

***Board and Committee Oversight of Risk***

Both the full Board of Directors and its committees oversee the various risks faced by the Company. Management is responsible for the day-to-day management of the Company's risks and provides periodic reports to the Board of Directors and its committees relating to those risks and risk-mitigation efforts. On a regular basis, all committees report on the risk categories they oversee to the full Board of Directors.

The Audit Committee oversees the Company's risk identification and mitigation processes and specifically oversees management of the Company's financial, legal and regulatory risks. Members of the Company's management, including our Chief Financial Officer, General Counsel, Compliance Officer and Head of Internal Audit, report to the Audit Committee on a quarterly basis regarding the on-going risk management process and on the specific risks overseen by the Audit Committee, including the Company's internal controls over financial reporting.

The Compensation Committee oversees the Company's risks relating to its compensation programs and philosophy. The Compensation Committee ensures that our compensation programs, including those applicable to our executives, do not encourage excessive risk taking. The Compensation Committee works periodically with compensation consultants to ensure that our executive compensation plans are appropriately balanced and incentivize management to act in the best interest of the Company's stakeholders.

The Finance Committee oversees the Company's risks relating to liquidity, investments and land acquisition and development. The Finance Committee, as well as the Board of Directors as a whole, reviews the annual

budget pursuant to which the Company's land acquisition strategy is developed. As with other risks, management is responsible for the day-to-day management of the risks relating to land acquisition and development, while the Board of Directors takes an oversight role with respect to those risks.

The Nominating/Corporate Governance Committee oversees the Company's risks relating to governance matters and board and committee composition. The Nominating/Corporate Governance Committee oversees the Company's compliance and ethics program, including implementation of revisions to our Code of Business Conduct and Ethics, and compliance by directors and management with the corporate governance and ethics standards of the Company.

#### *Impact of Compensation Philosophy and Objectives on Risk*

In consultation with one of our compensation consultants, MarksonHRC, we have reviewed the compensation policies and practices for our employees, including our executive officers, and have concluded that they do not create risks that are reasonably likely to have a material adverse effect on the Company. We analyzed the compensation plans of employees in positions that could be considered to have the potential to create such risks, including our executive and senior corporate officers, senior management in our divisions and Regional Accounting Centers, and our divisional sales management and sales force. We then reviewed the compensation plans of these groups against risk factors established by widely recognized sources. Our analysis shows that our plans reflect sound risk management practices and do not encourage excessive or inappropriate risk taking.

#### *Director Independence*

Listing standards relating to corporate governance promulgated by the NYSE require that our Board of Directors be comprised of a majority of independent directors. The Sarbanes-Oxley Act and rules of the SEC require that the Audit Committee be comprised solely of independent directors. The NYSE Standards further require that the Compensation and Nominating/Corporate Governance Committees also be comprised solely of independent directors. On the basis of information solicited from each director, and upon the advice and recommendation of our Nominating/Corporate Governance Committee, our Board of Directors determined that Laurent Alpert, Peter G. Leemputte, Norma A. Provencio, Larry T. Solari and Stephen P. Zelnak had no material relationship with the Company other than their relationship as members of our Board of Directors and were independent within the meaning of the Sarbanes-Oxley Act and the NYSE Standards (the Independence Standards). While the Board of Directors believes that Mr. Beazer would be deemed to be independent under the Independence Standards, in light of his role as Chairman of the Board since the IPO and his relationship with the Company prior to the IPO, the Board of Directors has elected to treat him as not independent for these purposes.

In making these determinations, our Nominating/Corporate Governance Committee, with assistance from our General Counsel, evaluated responses to an independence and qualification questionnaire completed annually by each director and follow-up inquiries made to certain directors. In the case of Mr. Solari, the responses to the questionnaire indicated that the Company has purchased an immaterial amount of goods from companies of which Mr. Solari is a director. Our Board of Directors affirmatively determined that the relationship was not material either to us or to the other companies. Based on the foregoing, our Board of Directors had a majority of independent directors and each of the Audit, Nominating/Corporate Governance and Compensation committees of our Board of Directors during fiscal year 2010 were comprised entirely of independent directors. It is expected that the majority of directors and all committee members in fiscal year 2011, other than one member of our Finance Committee, as to which independence is not required for membership, will be independent as well. Accordingly, we were in fiscal year 2010, and continue to be, in compliance with the requirements of the NYSE and the SEC for director independence.

### ***Regularly Scheduled Executive Sessions of Non-Management Directors***

In accordance with the NYSE Standards, our Board of Directors typically holds an executive session of non-management directors as a part of every regularly scheduled meeting of our Board of Directors. These executive sessions are chaired by Mr. Beazer as Non-Executive Chairman of our Board of Directors. In addition, our Board of Directors holds at least one meeting annually at which the independent directors meet in executive session, chaired by our lead independent director, Mr. Solari. The lead independent director is nominated by our Nominating/Corporate Governance Committee for election by the independent directors. These provisions are included in our Corporate Governance Guidelines adopted by our Board of Directors. It is the expectation of both our Nominating/Corporate Governance Committee and our independent directors that the position of lead director will rotate among the independent directors, as appropriate.

### ***Communications with Board Members***

Security holders and interested parties wishing to communicate directly with our Non-Executive Chairman or our non-management directors as a group may do so by directing their communications to the ethics hotline and specifically asking the operator to direct their concerns to our Non-Executive Chairman or non-management directors, as desired.

### ***Ethics Hotline***

We maintain an ethics hotline which interested parties may contact by calling 1-866-457-9346 and report any concerns to a representative of Global Compliance, a third party service provider that administers our ethics hotline. Alternatively, interested parties can report any such concern via an on-line form by visiting the following web site: [www.integrity-helpline.com/Beazer.jsp](http://www.integrity-helpline.com/Beazer.jsp). The link provides an on-line form that, upon completion, will be submitted directly to Global Compliance. Interested parties may report their concerns anonymously, should they wish to do so. All concerns, whether reported through the toll-free number or the on-line form, will be directed to certain of our officers, including our Chief Compliance Officer, and will be reviewed and investigated as appropriate. Where warranted after investigation, messages will be summarized and referred to the Audit Committee of our Board of Directors for appropriate action.

### ***Committee Charters***

Our Board of Directors has adopted charters for our Audit, Compensation and Nominating/Corporate Governance Committees designed to comply with the requirements of the NYSE Standards and applicable provisions of the Sarbanes-Oxley Act and SEC rules. The current version of each of these charters, as well as the charter for our Finance Committee, has been posted and is available for public viewing in the Investors section of the our web site at [www.beazer.com](http://www.beazer.com). In addition, committee charters are available in print to any stockholder upon request to our Investor Relations Department, Beazer Homes USA, Inc., 1000 Abernathy Road, Suite 1200, Atlanta, Georgia 30328.

### ***Corporate Governance Guidelines***

Upon the advice and recommendation of our Nominating/Corporate Governance Committee, our Board of Directors has adopted a set of Corporate Governance Guidelines. The Corporate Governance Guidelines address an array of governance issues and principles including director qualifications and responsibilities, access to management personnel and independent advisors, director compensation, director orientation and continuing education, management succession, annual performance evaluations of our Board of Directors and meetings of independent directors.

We maintain a Code of Business Conduct and Ethics applicable to all directors, officers and employees that complies with the NYSE Standards. Our employees are also subject to additional specific policies, guidelines and

Company rules adopted from time to time governing particular types of conduct or situations. Such additional policies, guidelines or rules are supplemental to our posted Code of Business Conduct and Ethics, and in the case of any inconsistency between the two, employees are expected to comply with the Code of Business Conduct and Ethics.

The most recent version of our Corporate Governance Guidelines and of our Code of Business Conduct and Ethics is posted and available for public viewing in the Investors section of our web site at [www.beazer.com](http://www.beazer.com). In addition, they are available in print to any stockholder upon request to our Investor Relations Department, Beazer Homes USA, Inc., 1000 Abernathy Road, Suite 1200, Atlanta, Georgia 30328.

#### **Procedures Regarding Director Candidates Recommended by Stockholders**

Our Nominating/Corporate Governance Committee will consider candidates recommended to our Board of Directors by our stockholders only if the recommending stockholder or stockholders follow the procedures set forth in our by-laws. In order to recommend a nominee for a director position, a stockholder must be a stockholder of record at the time it gives its notice of recommendation and must be entitled to vote for the election of directors at the meeting at which such nominee will be considered. Stockholder recommendations must be made pursuant to notice delivered to or mailed and received at our principal executive office (i) in the case of a nomination for election at an annual meeting, not less than 120 days nor more than 150 days prior to the first anniversary of the date of our notice of annual meeting for the preceding year's annual meeting; and (ii) in the case of a special meeting at which directors are to be elected, not later than the close of business on the tenth day following the earlier of the day on which notice of the date of the meeting was mailed or public disclosure of the date of the meeting was made. In the event that the date of the annual meeting is changed by more than 30 days from the anniversary date of the preceding year's annual meeting, the stockholder notice described above will be deemed timely if it is received not later than the close of business on the tenth day following the earlier of the date on which notice of the date of the meeting was mailed or public disclosure was made of the date of the meeting.

The stockholder notice must set forth the following:

As to each person the stockholder proposes to nominate for election as a director, (i) all information relating to such person that is required to be disclosed or is otherwise required pursuant to Regulation 14A under the Exchange Act which must include the written consent of the nominee to serve as a director if elected, and (ii) a statement whether such person, if elected, intends to tender, promptly following such person's election or re-election, an irrevocable resignation which is effective only upon such person not receiving the required vote at the next annual meeting at which the person faces re-election and our Board of Directors accepting such person's resignation;

As to the nominating stockholder, such stockholder's name and address as they appear on our stockholder list and the number of shares of our common stock which are beneficially owned by such stockholder and which are owned of record by such stockholder; and

As to any other beneficial owner of the stock on whose behalf the nomination is made, the name and address of such person and the number of shares of our common stock they beneficially own.

In addition to complying with the foregoing procedures, any stockholder nominating a director must also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder.

Pursuant to our Corporate Governance Guidelines, our Nominating/Corporate Governance Committee is directed to work with our Board of Directors on an annual basis to determine the appropriate characteristics, skills and experience for each Committee member and for our Board of Directors. In evaluating these issues, our Nominating/Corporate Governance Committee takes into account many factors, including the individual

director's general understanding of marketing, finance and other elements relevant to the success of a large publicly traded company in today's business environment, understanding of our business on an operational level, education or professional background and willingness to devote time to Board of Director duties. While the Board of Directors does not have a specific diversity policy, it considers diversity of race, ethnicity, gender, age and professional accomplishments in evaluating director candidates. Each individual is evaluated in the context of our Board of Directors as a whole, with the objective of recommending a group of nominees that can best promote the success of the business and represent stockholder interests through the exercise of sound judgment based on diversity of experience and background.

If a director candidate were to be recommended by a stockholder, our Nominating/Corporate Governance Committee expects that it would evaluate such candidate in the same manner it evaluates director candidates identified by the Nominating/Corporate Governance Committee.

#### **Executive Officers**

Set forth below is information as of December \_\_, 2010 regarding our executive officers who are not serving or nominated as directors:

*ALLAN P. MERRILL.* Mr. Merrill, 44, joined us in May 2007 as Executive Vice President and Chief Financial Officer. Mr. Merrill was previously with Move, Inc. where he served as Executive Vice President of Corporate Development and Strategy beginning in October 2001. From April 2000 to October 2001, Mr. Merrill was president of Homebuilder.com, a division of Move, Inc. Mr. Merrill joined Move, Inc. following a 13-year tenure with the investment banking firm UBS (and its predecessor Dillon, Read & Co.), where he was a managing director and served most recently as co-head of the Global Resources Group, overseeing the construction and building materials, chemicals, forest products, mining and energy industry groups. Mr. Merrill is a member of the Policy Advisory Board of the Joint Center for Housing Studies at Harvard University and the Homebuilding Community Foundation. He is a graduate of the University of Pennsylvania, Wharton School with a Bachelor of Science degree in Economics.

*KENNETH F. KHOURY.* Mr. Khoury, 59, joined us in January 2009 as Executive Vice President and General Counsel. Mr. Khoury was previously Executive Vice President and General Counsel of Delta Air Lines from September 2006 to November 2008. Practicing law for over 30 years, Mr. Khoury's career has included both private practice and extensive in-house counsel experience. Prior to Delta Air Lines, Mr. Khoury was Senior Vice President and General Counsel of Weyerhaeuser Corporation and spent 15 years with Georgia-Pacific Corporation, where he served most recently as Vice President and Deputy General Counsel. He also spent five years at the law firm White & Case in New York. He received a Bachelor of Arts degree from Rutgers College and a Juris Doctor from Fordham University School of Law.

*ROBERT L. SALOMON.* Mr. Salomon, 50, joined us in February 2008 as Senior Vice President and Chief Accounting Officer and Controller. Mr. Salomon was previously with the homebuilding company Ashton Woods Homes where he served as Chief Financial Officer and Treasurer since 1998. Previously, he served with homebuilder MDC Holdings, Inc. in financial management roles of increasing responsibility over a six year period. A Certified Public Accountant, Mr. Salomon has 26 years of financial management experience, 18 of which have been in the homebuilding industry. Mr. Salomon is a member of the American Institute of Certified Public Accountants and a graduate of the University of Iowa with a Bachelor of Business Administration.

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**PROPOSAL 1 ELECTION OF DIRECTORS**

**General**

Each of the nominees listed below has been nominated as a director for the fiscal year ending September 30, 2011 and until his or her respective successor has been qualified and elected. Each of the following nominees is presently serving as a director. Our Board of Directors periodically evaluates the appropriate size for our Board of Directors and will set the number of directors in accordance with our by-laws and based on recommendations of the Nominating/Corporate Governance Committee of our Board of Directors.

In the event any nominee is not available as a candidate for director, votes will be cast pursuant to authority granted by the enclosed proxy for such other candidate or candidates as may be nominated by the Nominating/Corporate Governance Committee of our Board of Directors. Our Board of Directors has no reason to believe that any nominee will be unable or unwilling to serve as a director, if elected.

**Vote Required**

Each director will be elected if the votes cast for such director exceed the votes cast against such director.

**Recommendation**

We recommend a vote ***FOR*** the election of each of the following nominees.

**Nominees**

The biographical information appearing below with respect to each nominee has been furnished to us by the nominee:

*LAURENT ALPERT.* Mr. Alpert, 64, has served as a director of the Company since February 2002. Mr. Alpert is a partner in the international law firm of Cleary, Gottlieb, Steen & Hamilton. He joined Cleary, Gottlieb in 1972 and became a partner in 1980. He received his undergraduate degree from Harvard College and a law degree from Harvard Law School. Mr. Alpert is also a member of the Board of Directors of the International Rescue Committee, a non-profit organization providing relief and resettlement services to refugees, and Co-Chair of its Nominating and Governance Committee.

Mr. Alpert brings to the Board of Directors nearly 40 years of experience practicing law with one of the world's pre-eminent law firms and almost ten years experience on the Board of Directors. He has substantial experience representing companies in a broad range of industries. In light of the regulatory environment in which the Company operates and the continued emphasis on corporate governance, ethics and compliance for public companies, Mr. Alpert's experience, training and judgment are deemed to be of significant benefit to the Company.

*BRIAN C. BEAZER.* Mr. Beazer, 75, is our Non-Executive Chairman and has served in that role and as a director of the Company since its IPO in 1994. From 1968 to 1983, Mr. Beazer was Chief Executive Officer of Beazer PLC, a United Kingdom company, and then was Chairman and Chief Executive Officer of that company from 1983 to the date of its acquisition by Hanson PLC in 1991. During that time, Beazer PLC expanded its activities internationally to include homebuilding, quarrying, contracting and real estate and became an international group with annual revenue of approximately \$3.4 billion. Mr. Beazer was educated at the Cathedral School, Wells, Somerset, England. He is a director of Beazer Japan, Ltd., Aeromet Inc., Seal Mint, Ltd., and Numerex Corp. and is a private investor.

Mr. Beazer has been in the homebuilding and construction industry worldwide for over 50 years. His experience and vision have been driving forces at the Company since prior to its IPO. His extraordinary

experience and stature as a highly respected international businessman provide the Company with unique insight into national and international economic policy that impact the homebuilding industry, as well as an in depth understanding of the domestic homebuilding industry.

*PETER G. LEEMPUTTE.* Mr. Leemputte, 53, has been a director of the Company since August 2005. Mr. Leemputte joined Mead Johnson Nutrition Company, a global leader in infant and children's nutrition as Senior Vice President and Chief Financial Officer in September 2008. Previously, Mr. Leemputte was Senior Vice President and Chief Financial Officer for Brunswick Corporation, a global manufacturer and marketer of recreation products. He joined Brunswick in 2001 as Vice President and Controller. Prior to joining Brunswick Corporation, Mr. Leemputte held various management positions at Chicago Title Corporation, Mercer Management Consulting, Armco Inc., FMC Corporation and BP. Mr. Leemputte holds a Bachelor of Science degree in Chemical Engineering from Washington University, St. Louis and a Master of Business Administration in Finance and Marketing from the University of Chicago Graduate School of Business. Mr. Leemputte currently serves as the Co-Chairman of Washington University's School of Engineering Scholarship Initiative.

Mr. Leemputte's experience, particularly his increasingly important financial responsibilities for several of the nation's leading corporations, provides significant financial and accounting expertise that has been invaluable to the Company in many respects, including compliance with our obligations under various regulatory requirements for financial expertise on the Board of Directors and Audit Committee.

*IAN J. MCCARTHY.* Mr. McCarthy, 57, is our President and Chief Executive Officer and has served as a director of the Company since the IPO. Mr. McCarthy has served as President of predecessors of the Company since January 1991 and was responsible for all United States residential homebuilding operations in that capacity. During the period May 1981 to January 1991, Mr. McCarthy was employed in Hong Kong and Thailand, becoming a director of Beazer Far East, and from January 1980 to May 1981 was employed by Kier, Ltd., a company engaged in the United Kingdom construction industry which became a subsidiary of Beazer PLC. Mr. McCarthy is a Chartered Civil Engineer with a Bachelor of Science degree from The City University, London. Mr. McCarthy currently serves as a member of the Board of Directors of HomeAid America and of Builder Homesite, Inc. He was inducted into the California Building Industry Hall of Fame in 2004, the first non-California resident to receive this honor.

Mr. McCarthy has been in the homebuilding and construction industry for over 30 years. He is one of the nation's most respected homebuilding executives and has frequently served on industry-wide organizations. Mr. McCarthy has served on the Executive Committee of the Policy Advisory Board of the Joint Center for Housing Studies at Harvard University. His breadth of experience in the industry in which the Company operates and his 20 years as President of the Company and its predecessors provide irreplaceable experience and knowledge of the Company's business and the homebuilding industry.

*NORMA A. PROVENCIO.* Ms. Provencio, 52, has been a director of the Company since November 2009. Ms. Provencio is President and owner of Provencio Advisory Services Inc., a healthcare financial and operational consulting firm. Prior to forming Provencio Advisory Services in October 2003, she was the Partner-in-Charge of KPMG's Pacific Southwest Healthcare Practice since May 2002. From 1979 to 2002, she was with Arthur Andersen, serving as that firm's Partner-in-Charge of the Pharmaceutical, Biomedical and Healthcare Practice for the Pacific Southwest from November 1995 to May 2002. Ms. Provencio is currently a member of the Board of Directors of Valeant Pharmaceutical International. She received her Bachelor of Science in Accounting from Loyola Marymount University. She is a Certified Public Accountant and also a member of the Board of Regents of Loyola Marymount University.

Ms. Provencio has over 30 years experience in the public accounting field. We believe her in depth understanding of accounting rules and financial reporting regulations to be extremely valuable to the Company's commitment and efforts to comply with regulatory requirements, including those related to Audit Committee functions.

*LARRY T. SOLARI.* Mr. Solari, 68, has served as a director of the Company since the IPO and has been our lead independent director since February 5, 2009. He is a partner in Kenner & Company, Inc., a private equity investment firm in New York, a position he has held since 2002. Mr. Solari is the past Chairman and Chief Executive Officer of BSI Holdings, Inc., a position he held from 1998 to 2001. Prior to starting BSI, Mr. Solari was the Chairman and Chief Executive Officer of Sequentia, Inc. and President of the Building Materials Group of Domtar, Inc. Mr. Solari was President of the Construction Products Group of Owens-Corning from 1986 to 1994 and held various other positions with Owens-Corning since 1966. Mr. Solari earned a Bachelor of Science degree in Industrial Management and a Master of Business Administration degree from San Jose State University and is a graduate of Stanford University's Management Program. Mr. Solari is a director of Pacific Coast Building Products, Inc., Atrium Companies, Inc., TruStile Doors, LLC, Performance Contracting Group, Pace Industries and Cascade Windows. Mr. Solari is a past director of the Policy Advisory Board of the Harvard Joint Center for Housing Studies and the National Home Builders Advisory Board.

Mr. Solari provides over 40 years experience in a wide range of industries directly related to the homebuilding industry and over 15 years as member of the Board of Directors. In addition, he has served on several industry-wide organizations. His experience and knowledge of our industry provides valuable insight into several vendor markets that are important to the Company and integral to our operations.

*STEPHEN P. ZELNAK, JR.* Mr. Zelnak, 65, has served as a director of the Company since February 2003. He is currently non-executive Chairman of Martin Marietta Materials, Inc., a producer of aggregates for the construction industry where he has also served as Chief Executive Officer from 1993 until December 31, 2009 and Chairman of the Board of Directors since 1997. Mr. Zelnak joined Martin Marietta Corporation in 1981 where he first served as the President of Martin Marietta's Materials Group and of Martin Marietta's Aggregates Division. Mr. Zelnak received a Bachelor's degree from Georgia Institute of Technology and Masters degrees in Administrative Science and Business Administration from the University of Alabama System. Mr. Zelnak is a director of Pace Industries. He has served as Chairman of the North Carolina Chamber and is the past Chairman of the North Carolina Community College Foundation. He serves on the Advisory Boards of North Carolina State University and Georgia Institute of Technology.

Mr. Zelnak brings over 30 years experience as a senior executive in the building materials industry, as well an educational background that includes business administration, organizational behavior and finance. He has provided outstanding leadership as Chairman of the Finance Committee as the Company has navigated successfully through the extremely challenging conditions of the last several years.

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**PROPOSAL 2 RATIFICATION OF APPOINTMENT OF  
INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

The Audit Committee of our Board of Directors has selected the firm of Deloitte & Touche LLP, the member firms of Deloitte & Touche Tohmatsu, and their respective affiliates (collectively, "Deloitte & Touche"), to serve as our independent registered public accounting firm for the fiscal year ending September 30, 2011. Deloitte & Touche has served as our accounting firm since our fiscal year ended September 30, 1996. The services provided to the Company by Deloitte & Touche for the last fiscal year are described under the caption "Principal Accountant Fees and Services" below. Stockholder approval of the appointment is not required. Our Board of Directors believes that obtaining stockholder ratification of the appointment is a sound governance practice.

Representatives of Deloitte & Touche will be present at the annual meeting, will have an opportunity to make a statement if they desire to do so and will be available to respond to appropriate questions from stockholders.

**Recommendation**

**We recommend a vote FOR ratification of the appointment of Deloitte & Touche as our independent registered public accounting firm for the fiscal year ending September 30, 2011.**

**REPORT OF OUR AUDIT COMMITTEE**

Our Audit Committee meets the definition of an audit committee as set forth in Section 3(a)(58)(A) of the Exchange Act and operates under a written charter adopted by our Board of Directors. Each member of our Audit Committee is independent and financially literate in the judgment of our Board of Directors and as required by the Sarbanes-Oxley Act and applicable SEC and NYSE rules. Our Board of Directors has also determined that Mr. Leemputte and Ms. Provencio qualify as "audit committee financial experts," as defined under SEC regulations.

Management is responsible for our internal controls and the financial reporting process. Deloitte & Touche our independent registered public accounting firm is responsible for performing an independent audit of our consolidated financial statements in accordance with standards of the Public Company Accounting Oversight Board (United States) (the "PCAOB") and for issuing a report thereon. Our Audit Committee's responsibility is generally to monitor and oversee these processes, as described in our Audit Committee Charter.

Our Audit Committee reviewed and discussed with management our audited financial statements as of and for the fiscal year ended September 30, 2010. Our Audit Committee has discussed with Deloitte & Touche the matters required to be discussed by Statement of Auditing Standards No. 61, as amended (AICPA, *Professional Standards*, Vol. 1. AU section 380), as adopted by the PCAOB in Rule 3200T.

Our Audit Committee has also received the written communications from Deloitte & Touche required by the PCAOB regarding Deloitte & Touche's communications with our Audit Committee concerning independence and has discussed with Deloitte & Touche their independence. Our Audit Committee has considered whether the provision of the non-audit services described below by Deloitte & Touche is compatible with maintaining their independence and has concluded that the provision of these services does not compromise such independence.

Based on the review and discussions described above, our Audit Committee recommended to our Board of Directors that the audited financial statements referred to above be included in our Annual Report on Form 10-K for the fiscal year ended September 30, 2010 filed with the SEC.

Peter G. Leemputte  
Laurent Alpert  
Norma Provencio

Larry T. Solari

*The Members of the Audit Committee November 4, 2010*

**PRINCIPAL ACCOUNTANT FEES AND SERVICES**

For the fiscal years ended September 30, 2010 and 2009, the following professional services were performed by Deloitte & Touche.

*Audit Fees:* The aggregate fees billed for the audit of our annual financial statements for the fiscal years ended September 30, 2010 and 2009 and for reviews of the financial statements included in our Quarterly Reports on Form 10-Q were \$1,106,500 and \$1,220,000, respectively, and included fees for Sarbanes-Oxley Section 404 attestation procedures.

*Audit-Related Fees:* The aggregate fees billed for audit-related services for the fiscal years ended September 30, 2010 and 2009 were \$40,000 and \$35,000, respectively. These fees related to assurance and related services performed by Deloitte & Touche that are reasonably related to the performance of the audit or review of our financial statements. These services included: employee benefit and compensation plan audits, audits of certain subsidiaries and consulting on financial accounting/reporting standards.

*Tax Fees:* The aggregate fees billed for tax services for the fiscal years ended September 30, 2010 and 2009 were \$488,923 and \$990,543, respectively. These fees related to professional services performed by Deloitte & Touche with respect to tax compliance, tax advice and tax planning. These services included preparation of original and amended tax returns for various fiscal years for the Company and its consolidated subsidiaries, refund claims, payment planning, tax audit assistance and tax work stemming from Audit-Related items.

*All Other Fees:* No other fees were paid to Deloitte & Touche in either fiscal year 2010 or fiscal year 2009.

Our Audit Committee annually approves each year's engagement for audit services in advance. Our Audit Committee has also established complementary procedures to require pre-approval of all permitted non-audit services provided by our independent auditors. All non-audit services described above were pre-approved by our Audit Committee.

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**PROPOSAL 3 ADVISORY VOTE ON THE COMPANY'S EXECUTIVE COMPENSATION PROGRAMS**

**Background**

As required under the newly enacted Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the Dodd-Frank Act), our Board of Directors is submitting a Say on Pay proposal for stockholder consideration. While the vote on executive compensation is non-binding and solely advisory in nature, our Board of Directors and the Compensation Committee will review the voting results and seek to determine the causes of any significant negative voting result to better understand issues and concerns not previously presented. Stockholders who want to communicate with the Board of Directors or management should refer to Communications with Board Members on page 8 of this Proxy Statement for additional information.

The Company's core compensation philosophy is to utilize a mixture of base salary and annual and longer-term incentives to align executive compensation with our annual and long-term performance. This includes establishing performance targets based on our strategic and operating plans and providing a significant portion of total compensation based on appreciation of our stock price.

The effectiveness of our compensation policies is demonstrated by the accomplishments of management over the last fiscal year in response to the strategic targets established by the Board of Directors and the Compensation Committee under the annual incentive plan described below. The Board of Directors and the Compensation Committee recognized the importance of stabilizing our financial situation, increasing enterprise value and restructuring our indebtedness in the wake of the worst home building environment in generations. As described in the discussion of the 2010 Bonus Plan under Executive Compensation on page 26 of this Proxy Statement, management took actions that increased both the Company's tangible net worth and stockholders equity by over \$200 million, restructured approximately \$585 million of its debt, raised approximately \$300 million in new equity and exceeded the target of approximately \$58 million under our Economic Profit Account Plan.

In addition, over the last several years the Compensation Committee has faced several unique challenges as it balanced the need to recruit and retain several key management positions, including three of our NEOs (the Chief Financial Officer, the Chief Accounting Officer and the General Counsel), against the reality of the severe downturn in the housing industry and the resulting extraordinary reduction in the value of the Company's stock. The Company also dealt with issues specific to its situation involving several governmental investigations which impacted its reputation and its stock price.

Accordingly, the Compensation Committee adopted a responsible approach to executive compensation that allowed it to maintain a degree of flexibility to deal with our unique situation while remaining committed to our core philosophy of paying for performance and aligning executive compensation with stockholder interests. The Compensation Committee has taken several actions to align executive compensation with stockholder interests in this challenging environment. For example:

our Chief Executive Officer has not had a base salary increase since January 1, 2005, while the base salaries of our Chief Financial Officer, General Counsel and Chief Accounting Officer have been frozen since they joined the Company in 2007, 2009 and 2008, respectively;

no equity awards were made to NEOs for approximately 24 months prior to August 2009;

prior to fiscal year 2010, our Chief Executive Officer had not had an equity grant since 2006;

in fiscal year 2008, in recognition of the challenges facing the residential housing markets, the Committee reduced management's bonuses from the 1.875 times base salary actually earned to half of base salary; and

over the last few years several key executives received no equity awards upon joining the Company.

Despite these severe but necessary actions, the Compensation Committee has been able to recruit and retain key executives who believe in the long-term prospects of the Company and are willing to tie their compensation to achieving the aggressive performance goals established by the Compensation Committee.

The Board of Directors believes the Company's compensation programs are well tailored to recruit and retain key executives while recognizing and sharing the sacrifices our stockholders have made. The Board of Directors urges you to review carefully the Compensation Discussion and Analysis section of this Proxy Statement which describes our compensation philosophy and programs in greater detail and to consider the following proposal:

Do you approve of the Company's executive compensation programs as described in this Proxy Statement?

**Recommendation**

**The Board of Directors recommends that you vote in favor of the Company's executive compensation programs as described in this Proxy Statement by voting FOR this proposal.**

**PROPOSAL 4 ADVISORY VOTE ON FREQUENCY OF STOCKHOLDER SAY ON PAY VOTES**

Under the Dodd-Frank Act, the Company also is required to seek a non-binding advisory stockholder vote regarding the frequency of submission to stockholders of a Say on Pay advisory vote such as Proposal 3. The Dodd-Frank Act specifies that stockholders be given the opportunity to vote on our executive compensation programs either annually, every two years or every three years. Although this vote is advisory and non-binding, our Board of Directors will review voting results and give serious consideration to the outcome of such voting.

Our Board of Directors recognizes the importance of receiving regular input from our stockholders on important issues such as our compensation programs. Our Board of Directors also believes that a well-structured compensation program should include plans that drive creation of stockholder value over the long-term and do not simply focus on short-term gains. While we believe that many of our stockholders think that the effectiveness of such plans cannot be adequately evaluated on an annual basis, especially in a cyclical industry such as ours, the Board of Directors believes that at present it should receive advisory input from our stockholders each year. Accordingly, as indicated below, the Board of Directors recommends that you vote in favor of an annual advisory vote on our compensation programs.

The Board of Directors asks you to consider the following proposal:

Stockholders should vote on the Company's executive compensation programs:

- A) Every year?
- B) Every two years? or
- C) Every three years?

**Recommendation**

**The Board of Directors recommends that you cast your vote FOR alternative (A); voting on Say on Pay resolutions every year.**

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## PROPOSALS 5 AND 6 BACKGROUND

Like virtually every national homebuilder, we have generated significant net operating losses and unrealized tax losses (collectively, NOLs) and may generate additional NOLs in future years. Under federal tax laws, we generally can use NOLs and certain related tax credits to offset ordinary income tax paid in our prior two tax years or on our future taxable income for up to 20 years when they will expire for such purposes. Until they expire, we can carry forward NOLs and certain related tax credits that we do not use in any particular year to offset income tax in future years.

As of September 30, 2010, we estimate that the Company had deferred tax assets generated by NOLs of approximately \$411.6 million (net of \$57.2 million of deferred tax liability) with a \$403.8 million valuation allowance. However, because the amount and timing of the Company's future taxable income, if any, cannot be accurately predicted, we currently anticipate that between \$228 million and \$350 million of these assets would be available to reduce the Company's income tax liability. Clearly, our NOLs are a very valuable asset.

The benefits of our NOLs would be reduced, and our use of the NOLs would be substantially delayed, if we experience an ownership change, as determined under Section 382 of the Internal Revenue Code, as amended, and applicable Treasury Regulations (Section 382). Under Section 382, an ownership change occurs if a stockholder or a group of stockholders who is deemed to own at least 5% of our common stock increases its ownership by more than 50 percentage points over their lowest ownership percentage within a rolling three year period. If an ownership change occurs, Section 382 would impose an annual limit on the amount of our NOLs that we can use to offset income taxes equal to the product of the total value of our outstanding equity immediately prior to the ownership change (reduced by certain items specified in Section 382) and the federal long-term tax-exempt interest rate in effect for the month of the ownership change. A number of complex rules apply to calculating this annual limit. In January 2010, an ownership change occurred that, to a certain extent, already limits the availability of our NOLs to offset taxable income.

If an ownership change were to occur, the limitations imposed by Section 382 could result in a material amount of our NOLs expiring unused and, therefore, significantly impair the value of our NOLs. While the complexity of Section 382's provisions and the limited knowledge any public company has about the ownership of its publicly traded stock make it difficult to determine whether an ownership change has occurred, we currently believe that an ownership change has not occurred since January 2010. However, if no action is taken, we believe it is possible that we could experience another ownership change. The purpose of Proposals 5 and 6 is to provide some protection against a future ownership change that would further limit our use of NOLs.

After careful consideration, our Board of Directors believes the most effective way to preserve the benefits of our NOLs for long-term stockholder value is to adopt **both** the Protective Amendment to the Beazer Homes USA, Inc. Certificate of Incorporation (the Protective Amendment) and the Beazer Homes USA, Inc. Section 382 Rights Agreement, as amended by the First Amendment thereto (the Rights Agreement). The Protective Amendment, which is designed to block transfers of our common stock that could result in an ownership change, is described below under Proposal 5, and its full terms can be found in the accompanying Appendix I. The Rights Agreement, pursuant to which we have issued certain stock purchase rights with terms designed to deter transfers of our common stock that could result in an ownership change, is described below under Proposal 6, and its full terms can be found in the accompanying Appendix II.

The Board of Directors urges stockholders to read carefully each proposal, the items discussed below under the heading Certain Considerations Related to the Protective Amendment and the Rights Agreement and the full terms of both the Protective Amendment and the Rights Agreement. While the Board of Directors unanimously supports both measures, the Protective Amendment requires stockholder adoption to be put into effect, and the Rights Agreement requires stockholder approval to remain effective. Failure to obtain stockholder approval will result in expiration of the Rights Agreement.

It is important to note that neither measure offers a complete solution, and an ownership change may occur even if the Protective Amendment is adopted and the Rights Agreement is approved. There are limitations on the enforceability of the Protective Amendment against stockholders who do not vote to adopt it that may allow an ownership change to occur, and the Rights Agreement may deter, but ultimately cannot block, all transfers of our common stock that might result in an ownership change. The limitations of these measures are described in more detail below. Because of their individual limitations, the Board of Directors believes that both measures are needed and that they will serve as important tools to help prevent an ownership change that could substantially reduce or eliminate the significant long-term potential benefits of our NOLs. Further, the Board of Directors notes that due to the severe downturn in the homebuilding industry over the past several years and the NOLs incurred by homebuilders as a result, a number of the Company's competitors have recently adopted similar NOL measures to help protect these valuable assets. **Accordingly, the Board of Directors strongly recommends that stockholders adopt the Protective Amendment and approve the Rights Agreement.**

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## PROPOSAL 5 ADOPTION OF THE PROTECTIVE AMENDMENT

For the reasons discussed above under Proposals 5 and 6 Background, the Board of Directors recommends that stockholders adopt the Protective Amendment to the Beazer Homes USA, Inc. Certificate of Incorporation. The Protective Amendment is designed to prevent certain transfers of our common stock that could result in an ownership change under Section 382 and, therefore, materially inhibit our ability to use our NOLs to reduce our future income tax liability. The Board of Directors believes it is in our stockholders' best interests to adopt the Protective Amendment to help avoid this result.

The purpose of the Protective Amendment is to assist us in protecting long-term value to the Company of its accumulated NOLs by limiting direct or indirect transfers of our common stock that could affect the percentage of stock that is treated as being owned by a holder of 4.95% of our stock. In addition, the Protective Amendment includes a mechanism to block the impact of such transfers while allowing purchasers to receive their money back from prohibited purchases. In order to implement these transfer restrictions, the Protective Amendment must be adopted. The Board of Directors has adopted resolutions approving and declaring the advisability of amending our Certificate of Incorporation as described below and as provided in the accompanying Appendix I, subject to stockholder adoption. In addition, the Board of Directors will have the discretion to approve a transfer of our common stock that would otherwise violate the transfer restrictions if it determines that the transfer is in our stockholders' best interests.

### Description of the Protective Amendment

The following description of the Protective Amendment is qualified in its entirety by reference to the full text of the Protective Amendment, which is contained in a proposed new Article Eight of our Certificate of Incorporation and can be found in the accompanying Appendix I. **Please read the Protective Amendment in its entirety as the discussion below is only a summary.**

*Prohibited Transfers.* The Protective Amendment generally will restrict any direct or indirect transfer (such as transfers of our stock that result from the transfer of interests in other entities that own our stock) if the effect would be to:

increase the direct or indirect ownership of our stock by any Person (as defined below) from less than 4.95% to 4.95% or more; or

increase the percentage of our common stock owned directly or indirectly by a Person owning or deemed to own 4.95% or more of our common stock.

Person means any individual, firm, corporation or other legal entity, including persons treated as an entity pursuant to Treasury Regulation § 1.382-3(a)(1)(i), and includes any successor (by merger or otherwise) of such entity.

Restricted transfers include sales to Persons whose resulting percentage ownership (direct or indirect) of our common stock would exceed the 4.95% thresholds discussed above or to Persons whose direct or indirect ownership of our common stock would by attribution cause another Person to exceed such threshold. Complicated common stock ownership rules prescribed by the Code (and regulations issued thereunder) will apply in determining whether a Person is a 4.95% stockholder under the Protective Amendment. A transfer from one member of a public group (as that term is defined under Section 382) to another member of the same public group does not increase the percentage of our common stock owned directly or indirectly by the public group, and, therefore, such transfers are not restricted. For purposes of determining the existence and identity of, and the amount of our common stock owned by, any stockholder, we will be entitled to rely on the existence or absence of certain public securities filings as of any date, subject to our actual knowledge of the ownership of our common stock. The Protective Amendment includes the right to require a proposed transferee, as a condition to registration of a transfer of our common stock, to provide all information reasonably requested regarding such person's direct and indirect ownership of our common stock.

These transfer restrictions may result in the delay or refusal of certain requested transfers of our common stock or may prohibit ownership (thus requiring dispositions) of our common stock due to a change in the relationship between two or more persons or entities or to a transfer of an interest in an entity other than us that, directly or indirectly, owns our common stock. The transfer restrictions will also apply to proscribe the creation or transfer of certain options (which are broadly defined by Section 382) with respect to our common stock to the extent that, in certain circumstances, the creation, transfer or exercise of the option would result in a proscribed level of ownership.

*Consequences of Prohibited Transfers.* Upon adoption of the Protective Amendment, any direct or indirect transfer attempted in violation of the Protective Amendment would be void as of the date of the prohibited transfer as to the purported transferee (or, in the case of an indirect transfer, the ownership of the direct owner of our common stock would terminate simultaneously with the transfer), and the purported transferee (or in the case of any indirect transfer, the direct owner) would not be recognized as the owner of the shares owned in violation of the Protective Amendment for any purpose, including for purposes of voting and receiving dividends or other distributions in respect of such common stock, or in the case of options, receiving our common stock in respect of their exercise. In this Proxy Statement, our common stock purportedly acquired in violation of the Protective Amendment is referred to as excess stock.

In addition to a prohibited transfer being void as of the date it is attempted, upon demand, the purported transferee must transfer the excess stock to our agent along with any dividends or other distributions paid with respect to such excess stock. Our agent is required to sell such excess stock in an arm's-length transaction (or series of transactions) that would not constitute a violation under the Protective Amendment. The net proceeds of the sale, together with any other distributions with respect to such excess stock received by our agent, after deduction of all costs incurred by the agent, will be distributed first to the purported transferee in an amount, if any, up to the cost (or in the case of gift, inheritance or similar transfer, the fair market value of the excess stock on the date of the prohibited transfer) incurred by the purported transferee to acquire such excess stock, and the balance of the proceeds, if any, will be distributed to a charitable beneficiary. If the excess stock is sold by the purported transferee, such person will be treated as having sold the excess stock on behalf of the agent and will be required to remit all proceeds to our agent (except to the extent we grant written permission to the purported transferee to retain an amount not to exceed the amount such person otherwise would have been entitled to retain had our agent sold such shares).

To the extent permitted by law, any stockholder who knowingly violates the Protective Amendment will be liable for any and all damages we suffer as a result of such violation, including damages resulting from any limitation in our ability to use our NOLs and any professional fees incurred in connection with addressing such violation.

With respect to any transfer of common stock that does not involve a transfer of our securities within the meaning of the Delaware General Corporation Law but that would cause any stockholder of 4.95% or more of our stock to violate the Protective Amendment, the following procedure will apply in lieu of those described above: in such case, such stockholder and/or any person whose ownership of our securities is attributed to such stockholder will be deemed to have disposed of (and will be required to dispose of) sufficient securities, simultaneously with the transfer, to cause such holder not to be in violation of the Protective Amendment, and such securities will be treated as excess stock to be disposed of through the agent under the provisions summarized above, with the maximum amount payable to such stockholder or such other person that was the direct holder of such excess stock from the proceeds of sale by the agent being the fair market value of such excess stock at the time of the prohibited transfer.

*Public Groups; Modification and Waiver of Transfer Restrictions.* In order to facilitate sales by stockholders into the market, the Protective Amendment permits otherwise prohibited transfers of our common stock where the transferee is a public group. These permitted transfers include transfers to new public groups that would be created by the transfer and would be treated as a 4.95% stockholder.

In addition, the Board of Directors will have the discretion to approve a transfer of our common stock that would otherwise violate the transfer restrictions if it determines that the transfer is in our stockholders' best interests. If the Board of Directors decides to permit such a transfer, that transfer or later transfers may result in an ownership change that could limit our use of our NOLs. In deciding whether to grant a waiver, the Board of Directors may seek the advice of counsel and tax experts with respect to the preservation of our federal tax attributes pursuant to Section 382. In addition, the Board of Directors may request relevant information from the acquirer and/or selling party in order to determine compliance with the Protective Amendment or the status of our federal income tax benefits, including an opinion of counsel selected by the Board of Directors (the cost of which will be borne by the transferor and/or the transferee) that the transfer will not result in a limitation on the use of the NOLs under Section 382. If the Board of Directors decides to grant a waiver, it may impose conditions on the acquirer or selling party.

In the event of a change in law, the Board of Directors will be authorized to modify the applicable allowable percentage ownership interest (currently 4.95%), to modify any of the definitions, terms and conditions of the transfer restrictions or to eliminate the transfer restrictions, provided that the Board of Directors determines, by adopting a written resolution, that such action is reasonably necessary or advisable to preserve the NOLs or that the continuation of these restrictions is no longer reasonably necessary for such purpose, as applicable. Our stockholders will be notified of any such determination through a filing with the SEC or such other method of notice as the Secretary of the Company shall deem appropriate.

The Board of Directors may establish, modify, amend or rescind by-laws, policies and any procedures for purposes of determining whether any transfer of common stock would jeopardize our ability to use our NOLs.

#### **Implementation and Expiration of the Protective Amendment**

If our stockholders adopt the Protective Amendment, we intend to file promptly the Protective Amendment with the Secretary of State of the State of Delaware, whereupon the Protective Amendment will become effective. We intend to enforce immediately thereafter the restrictions in the Protective Amendment to preserve the future use of our NOLs. We also intend to include a legend reflecting the transfer restrictions included in the Protective Amendment on certificates representing newly issued or transferred shares, to disclose such restrictions to persons holding our common stock in uncertificated form and to disclose such restrictions to the public generally.

The Protective Amendment would expire on the earliest of (i) the Board of Directors' determination that the Protective Amendment is no longer necessary for the preservation of our NOLs because of the amendment or repeal of Section 382 or any successor statute, (ii) the beginning of a taxable year to which the Board of Directors determines that none of our NOLs may be carried forward (iii) such date as the Board of Directors otherwise determines that the Protective Amendment is no longer necessary for the preservation of our NOLs and (iv) November 12, 2013.

#### **Effectiveness and Enforceability**

Although the Protective Amendment is intended to reduce the likelihood of an ownership change, we cannot eliminate the possibility that an ownership change will occur even if the Protective Amendment is adopted given that:

The Board of Directors can permit a transfer to an acquirer that results or contributes to an ownership change if it determines that such transfer is in our stockholders' best interests.

A court could find that part or all of the Protective Amendment is not enforceable, either in general or as to a particular fact situation. Under the laws of the State of Delaware, our jurisdiction of incorporation, a corporation is conclusively presumed to have acted for a reasonable purpose when

restricting the transfer of its securities in its certificate of incorporation for the purpose of maintaining or preserving any tax attribute (including NOLs). Delaware law provides that transfer restrictions with respect to shares of our common stock issued prior to the effectiveness of the restrictions will be effective against (i) stockholders with respect to shares that were voted in favor of this proposal and (ii) purported transferees of shares that were voted for this proposal if (A) the transfer restriction is conspicuously noted on the certificate(s) representing such shares or (B) the transferee had actual knowledge of the transfer restrictions (even absent such conspicuous notation). We intend to cause shares of our common stock issued after the effectiveness of the Protective Amendment to be issued with the relevant transfer restriction conspicuously noted on the certificate(s) representing such shares, and, therefore, under Delaware law, such newly issued shares will be subject to the transfer restriction. We also intend to disclose such restrictions to persons holding our common stock in uncertificated form. For the purpose of determining whether a stockholder is subject to the Protective Amendment, we intend to take the position that all shares issued prior to the effectiveness of the Protective Amendment that are proposed to be transferred were voted in favor of the Protective Amendment, unless the contrary is established. We may also assert that stockholders have waived the right to challenge or otherwise cannot challenge the enforceability of the Protective Amendment, unless a stockholder establishes that it did not vote in favor of the Protective Amendment. Nonetheless, a court could find that the Protective Amendment is unenforceable, either in general or as applied to a particular stockholder or fact situation.

Despite the adoption of the Protective Amendment, there is still a risk that certain changes in relationships among stockholders or other events could cause an ownership change under Section 382. Accordingly, we cannot assure you that an ownership change will not occur even if the Protective Amendment is made effective. However, the Board of Directors has adopted the Rights Agreement, which is intended to act as a deterrent to any person acquiring more than 4.95% of our stock and endangering our ability to use our NOLs.

As a result of these and other factors, the Protective Amendment serves to reduce, but does not eliminate, the risk that we will undergo an ownership change.

#### **Required Vote**

Adoption of the Protective Amendment requires the affirmative vote of a majority of our outstanding shares of common stock. The Protective Amendment, if adopted, would become effective upon the filing of a Certificate of Amendment to our Certificate of Incorporation with the Secretary of State of the State of Delaware, which we would expect to do as soon as practicable after the Protective Amendment is adopted.

#### **Recommendation**

**The Board of Directors recommends that stockholders vote *FOR* the adoption of the Protective Amendment.**

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**PROPOSAL 6 APPROVAL OF THE RIGHTS AGREEMENT**

The Board of Directors is asking stockholders to approve the Rights Agreement, which was originally adopted by the Board of Directors on November 12, 2010 and amended December [ ], 2010. As explained above, the Rights Agreement was adopted by the Board of Directors in an effort to protect stockholder value by preserving the Company's ability to use its NOLs, not to protect against the possibility of a hostile takeover. Failure to obtain stockholder approval will result in the expiration of the Rights Agreement.

**Description of the Rights Agreement**

The following description of the Rights Agreement is qualified in its entirety by reference to the text of the Rights Agreement, which is attached to this Proxy Statement as Appendix II. **We urge you to read carefully the Rights Agreement in its entirety as the discussion below is only a summary.**

The Rights Agreement is intended to act as a deterrent to any person acquiring (together with all affiliates and associates of such person) beneficial ownership of 4.95% or more of our outstanding common shares within the meaning of Section 382 (an Acquiring Person), other than pursuant to a Qualified Offer or with the approval of the Board of Directors. Stockholders who beneficially owned 4.95% or more of the Company's outstanding common shares as of the close of business on its effective date are not an Acquiring Person so long as they do not acquire any additional common shares at a time when they still beneficially own 4.95% or more of the outstanding common shares.

A Qualified Offer generally means (i) a tender offer or exchange offer for all of our outstanding common shares at the same per-share consideration, (ii) an offer that has commenced under applicable law, (iii) an offer that includes a non-waivable condition requiring at least a majority of our outstanding common shares to be tendered and not withdrawn, (iv) an offer pursuant to which the offeror has announced that it intends to promptly consummate a second step transaction whereby all common shares not tendered into the offer will be acquired using the same form and amount of consideration per share actually paid pursuant to the offer, (v) an offer that remains open for not less than 60 days and (vi) an offer at a per-share consideration, and on such other terms and conditions, that in each case are adequate and fair as determined by the Board of Directors.

*The Rights.* On November 12, 2010, the Board of Directors authorized the issuance of one right per outstanding common share payable to the Company's stockholders of record as of November 22, 2010. Subject to the terms, provisions and conditions of the Rights Agreement, if the rights become exercisable, each right would initially represent the right to purchase from us one one-thousandth of a share of the Company's Series A Junior Participating Preferred Shares, par value \$0.01 per share (the Series A Preferred Shares), for a purchase price of \$50.00 per right (the Purchase Price). If issued, each fractional Series A Preferred Share would give the stockholder approximately the same dividend, voting and liquidation rights as does one common share. However, prior to exercise, a right does not give its holder any rights as a stockholder of the Company, including any dividend, voting or liquidation rights.

*Initial Exercisability.* The rights are not exercisable until the earlier of (i) ten days after a public announcement that a person has become an Acquiring Person and (ii) ten business days (or such later date as may be determined by the Board of Directors) after the commencement of a tender or exchange offer by or on behalf of a person that, if completed, would result in such person becoming an Acquiring Person. We refer to the date that the rights become exercisable as the Distribution Date.

Until the Distribution Date, the Company's common share certificates or the ownership statements issued with respect to uncertificated common shares will evidence the rights and will contain a notation to that effect. Any transfer of common shares prior to the Distribution Date will constitute a transfer of the associated rights. After the Distribution Date, separate rights certificates will be issued, and the rights may be transferred apart from the transfer of the underlying common shares, unless and until the Board of Directors has determined to effect an exchange pursuant to the Rights Agreement (as described below).

*Flip-In Event.* In the event that a person becomes an Acquiring Person, each holder of a right, other than rights that are or, under certain circumstances, were beneficially owned by the Acquiring Person (which will thereupon become void), will from and after the Distribution Date, have the right to receive, upon exercise of a right and payment of the Purchase Price, a number of common shares having a market value of two times the Purchase Price. However, rights are not exercisable following the occurrence of a person becoming an Acquiring Person until such time as the rights are no longer redeemable by the Company (as described below).

*Exempted Persons and Exempted Transactions.* The Board of Directors recognizes that there may be instances when an acquisition of the Company's common shares that would cause a stockholder to become an Acquiring Person may not jeopardize or endanger in any material respect the availability of the NOLs to the Company. Accordingly, the Rights Agreement grants discretion to the Board of Directors to designate a person as an Exempted Person or to designate a transaction involving the Company's common shares as an Exempted Transaction. An Exempted Person cannot become an Acquiring Person and an Exempted Transaction cannot result in a person becoming an Acquiring Person. The Board of Directors can revoke an Exempted Person designation if it subsequently makes a contrary determination regarding whether a person jeopardizes or endangers in any material respect the availability of the NOLs to the Company.

*Redemption.* At any time until ten calendar days following the first date of public announcement that a person has become an Acquiring Person, the Company may redeem the rights in whole, but not in part, at a price of \$0.001 per right (the Redemption Price). The redemption of the rights may be made effective at such time, on such basis and with such conditions as the Board of Directors in its sole discretion may establish. Immediately upon any redemption of the rights, the right to exercise the rights will terminate, and the only right of the holders of rights will be to receive the Redemption Price.

*Exchange.* At any time after a person becomes an Acquiring Person and prior to the acquisition by the Acquiring Person of 50% or more of the outstanding common shares, the Board of Directors may exchange the rights (other than rights that have become void), in whole or in part, at an exchange ratio of one common share, or a fractional Series A Preferred Share (or of a share of a similar class or series of our preferred shares having similar rights, preferences and privileges) of equivalent value, per right (subject to adjustment). Immediately upon an exchange of any rights, the right to exercise such rights will terminate and the only right of the holders of rights will be to receive the number of common shares (or fractional Series A Preferred Share or of a share of a similar class or series of our preferred shares having similar rights, preferences and privileges) equal to the number of such rights held by such holder multiplied by the exchange ratio.

*Expiration.* The rights and the Rights Agreement will expire on the earliest of the following:

if stockholders vote on and do not approve of the Rights Agreement, on the date of such vote;

if stockholder approval of the Rights Agreement is not received on or prior to November 12, 2011;

the close of business on November 12, 2013;

the redemption of the rights;

the exchange of the rights;

the close of business on the effective date of the repeal of Section 382 or any successor statute if the Board of Directors determines that the Rights Agreement is no longer necessary or desirable for the preservation of certain tax benefits; and

the close of business on the first day of a taxable year to which the Board of Directors determines that no tax benefits may be carried forward.

*Anti-Dilution Provisions.* The Board of Directors may adjust the Purchase Price of the Series A Preferred Shares, the number of Series A Preferred Shares issuable and the number of outstanding rights to prevent dilution that may occur as a result of certain events, including among others, a share dividend, a share split or a reclassification of the Series A Preferred Shares or of the Company's common shares. With certain exceptions, no adjustments to the Purchase Price will be required until cumulative adjustments amount to at least 1% of the Purchase Price.

*Amendments.* Prior to the Distribution Date, the Board of Directors may supplement or amend any provision of the Rights Agreement in any respect without the approval of the holders of the rights. From and after the Distribution Date, no amendment can adversely affect the interests of the holders of the rights.

**Recommendation**

**The Board of Directors recommends that stockholders vote FOR the approval of the Rights Agreement.**

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**CERTAIN CONSIDERATIONS RELATED TO THE  
PROTECTIVE AMENDMENT AND THE RIGHTS AGREEMENT**

The Board of Directors believes that attempting to protect the tax benefits of our NOLs as described above under Proposals 5 and 6 Background is in our stockholders' best interests. However, we cannot eliminate the possibility that an ownership change will occur even if the Protective Amendment is adopted and the Rights Agreement is approved. Please consider the factors discussed below in voting on Proposals 5 and 6.

**The Internal Revenue Service ( IRS ) could challenge the amount of our NOLs or claim we experienced an ownership change, which could reduce the amount of our NOLs that we can use or eliminate our ability to use them altogether.**

The IRS has not audited or otherwise validated the amount of our NOLs. The IRS could challenge the amount of our NOLs, which could limit our ability to use our NOLs to reduce our future income tax liability. In addition, the complexity of Section 382's provisions and the limited knowledge any public company has about the ownership of its publicly traded stock make it difficult to determine whether an ownership change has occurred. Therefore, we cannot assure you that the IRS will not claim that we experienced an ownership change and attempt to reduce or eliminate the benefit of our NOLs even if the Protective Amendment and the Rights Agreement are in place.

***Continued Risk of Ownership Change***

Although the Protective Amendment and the Rights Agreement are intended to reduce the likelihood of an ownership change, we cannot assure you that they would prevent all transfers of our common stock that could result in such an ownership change. In particular, absent a court determination, we cannot assure you that the Protective Amendment's restrictions on acquisition of our common stock will be enforceable against all our stockholders, and they may be subject to challenge on equitable grounds, as discussed above under Proposal 5.

***Potential Effects on Liquidity***

The Protective Amendment will restrict a stockholder's ability to acquire, directly or indirectly, additional shares of our common stock in excess of the specified limitations. Furthermore, a stockholder's ability to dispose of our common stock may be limited by reducing the class of potential acquirers for such common stock. In addition, a stockholder's ownership of our common stock may become subject to the restrictions of the Protective Amendment upon actions taken by persons related to, or affiliated with, them. Stockholders are advised to monitor carefully their ownership of our stock and consult their own legal advisors and/or us to determine whether their ownership of our stock approaches the restricted levels.

***Potential Impact on Value***

If the Protective Amendment is adopted, the Board of Directors intends to include a legend reflecting the transfer restrictions included in the Protective Amendment on certificates representing newly issued or transferred shares, to disclose such restrictions to persons holding our common stock in uncertificated form and to disclose such restrictions to the public generally. Because certain buyers, including persons who wish to acquire more than 4.95% of our common stock and certain institutional holders who may not be comfortable holding our common stock with restrictive legends, may not be able to purchase our common stock, the Protective Amendment could depress the value of our common stock in an amount that could more than offset any value preserved from protecting our NOLs. The Rights Agreement could have a similar effect if investors object to holding our common stock subject to the terms of the Rights Agreement.

***Potential Anti-Takeover Impact***

The reason the Board of Directors adopted the Protective Amendment and the Rights Agreement is to preserve the long-term value of our NOLs. The Protective Amendment, if adopted by our stockholders, could be deemed to

have an anti-takeover effect because, among other things, it will restrict the ability of a person, entity or group to accumulate more than 4.95% of our common stock and the ability of persons, entities or groups now owning more than 4.95% of our common stock to acquire additional shares of our common stock without the approval of the Board of Directors. Similarly, while the Rights Agreement is not intended to prevent a takeover, it does have a potential anti-takeover effect because an Acquiring Person may be diluted upon the occurrence of a triggering event. In addition, the Qualified Offer provisions of the Rights Agreement require, among other things, a majority of the members of the Board of Directors, who are independent of the bidder, to make a determination that the price and terms of the offer are fair and adequate in order to exempt the offer under the Rights Agreement. Accordingly, the overall effects of the Protective Amendment, if adopted by our stockholders, and the Rights Agreement may be to render more difficult, or discourage, a merger, tender offer, proxy contest or assumption of control by a substantial holder of our securities. The Protective Amendment and the Rights Agreement proposals are not part of a plan by us to adopt a series of anti-takeover measures, and we are not presently aware of any potential takeover transaction.

***Effect of the Protective Amendment If You Vote For It and Already Own More Than 4.95% of our Common Stock***

If you already own more than 4.95% of our common stock, you would be able to transfer shares of our common stock only if the transfer does not increase the percentage of stock ownership of another holder of 4.95% or more of our common stock or create a new holder of 4.95% or more of our common stock. You will also be able to transfer your shares of our common stock through open-market sales to a public group, including a new public group. Shares acquired in any such transaction will be subject to the Protective Amendment's transfer restrictions.

***Effect of the Protective Amendment If You Vote For It and Own Less Than 4.95% of our Common Stock***

The Protective Amendment will apply to you, but, so long as you own less than 4.95% of our common stock you can transfer your shares to a purchaser who, after the sale, also would own less than 4.95% of our common stock.

***Effect of the Protective Amendment If You Vote Against It***

Delaware law provides that the transfer restrictions of the Protective Amendment with respect to shares of our common stock issued prior to its effectiveness will be effective as to (i) stockholders with respect to shares that were voted in favor of adopting the Protective Amendment and (ii) purported transferees of such shares if (A) the transfer restriction is conspicuously noted on the certificate(s) representing such shares or (B) the transferee had actual knowledge of the transfer restrictions (even absent such conspicuous notation). We intend to cause shares of our common stock issued after the effectiveness of the Protective Amendment to be issued with the relevant transfer restriction conspicuously noted on the certificate(s) representing such shares, and, therefore, under Delaware law, such newly issued shares will be subject to the transfer restriction. We also intend to disclose such restrictions to persons holding our common stock in uncertificated form. For the purpose of determining whether a stockholder is subject to the Protective Amendment, we intend to take the position that all shares issued prior to the effectiveness of the Protective Amendment that are proposed to be transferred were voted in favor of the Protective Amendment, unless the contrary is established. We may also assert that stockholders have waived the right to challenge or otherwise cannot challenge the enforceability of the Protective Amendment, unless a stockholder establishes that it did not vote in favor of the Protective Amendment. Nonetheless, a court could find that the Protective Amendment is unenforceable, either in general or as applied to a particular stockholder or fact situation.

### SECURITY OWNERSHIP OF MANAGEMENT

The following table sets forth information as of December \_\_, 2010 with respect to the beneficial ownership of our common stock by each director, each of our Named Executive Officers ( NEOs ), and all directors and executive officers as a group. Except as otherwise indicated, each beneficial owner possesses sole voting and investment power with respect to all shares.

Name of Beneficial Owner	Number of Common Shares Beneficially Owned (1)(2)(3)(4)	Percent of Outstanding (5)
Laurent Alpert	48,000	*
Brian C. Beazer	133,948	*
Kenneth F. Khoury	247,655	*
Peter G. Leemputte	27,567	*
Ian J. McCarthy	1,789,210	2.33%
Allan P. Merrill	642,532	*
Norma A. Provencio	14,000	*
Robert L. Salomon	83,331	
Larry T. Solari	36,439	*
Stephen P. Zelnak, Jr.	56,464	*
Directors and Executive Officers as a Group (10 persons)	3,079,146	3.99%

\* Less than 1%

- (1) Beneficial ownership includes restricted stock as follows: Mr. Alpert 15,000, Mr. Beazer 42,528, Mr. Khoury 214,320, Mr. Leemputte 15,000, Mr. McCarthy 691,359, Mr. Merrill 452,332, Ms. Provencio 14,000, Mr. Salomon 75,331, Mr. Solari 15,000 and Mr. Zelnak 15,000.
- (2) Beneficial ownership includes performance-based restricted stock as follows: Mr. McCarthy 26,255 and Mr. Merrill 35,294. Such shares of restricted stock were awarded under the 1999 Plan and will vest contingent upon the achievement of performance criteria based on the Company's total stockholder return as compared to the total stockholder return of the Performance Stock Peer Group.
- (3) Beneficial ownership includes shares of our common stock held through our 401(k) plan as follows: Mr. McCarthy 5,102.
- (4) Beneficial ownership includes shares underlying stock options/Stock-Settled Stock Appreciation Rights ( SSARs ) and restricted stock units ( RSUs ), respectively, which were fully vested and exercisable at, or will vest within 60 days of, December \_\_, 2010 as follows: Mr. Alpert 21,000, Mr. Beazer 10,521, Mr. Khoury 33,335, Mr. Leemputte 3,000, Mr. McCarthy 393,816, Mr. Merrill 154,906, Mr. Salomon 8,000, Mr. Solari 9,000, and Mr. Zelnak 35,576.
- (5) Based upon 76,422,765 shares of outstanding common stock as of December \_\_, 2010, adjusted as necessary to reflect the shares issuable to such person upon the vesting or exercise of his or her stock options/SSARs listed in footnote 4 above (and assuming no other stock options/SSARs are exercised). Shares of common stock subject to stock options/SSARs that are currently exercisable or vested, or will become exercisable or vested within 60 days of December \_\_, 2010, are deemed outstanding for computing the percentage ownership of the person holding such stock options/SSARs, but are not deemed outstanding for computing the percentage ownership of any other persons.

#### Section 16(a) Beneficial Ownership Reporting Compliance

Section 16(a) of the Exchange Act, as amended, requires our executive officers and directors and persons who own more than ten percent of our stock, as well as certain affiliates of such persons, to file initial reports of ownership and changes of ownership with the SEC and the NYSE.

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These parties are required to furnish us with copies of the reports they file. Based solely on a review of the copies of the Section 16(a) reports and amendments thereto received by us and on written representations that no other reports were required, we believe that all reports required pursuant to Section 16(a) for fiscal year 2010 were timely filed by all persons known by us to be required to file such reports with respect to our securities.

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## EXECUTIVE COMPENSATION

### Compensation Discussion and Analysis

#### *Introduction*

For fiscal year 2010, our NEOs were comprised of our Chief Executive Officer (Ian J. McCarthy), our Chief Financial Officer (Allan P. Merrill) and our two other most-highly compensated executive officers (our General Counsel, Kenneth F. Khoury, and our Chief Accounting Officer, Robert L. Salomon). As explained below, the actions taken by our Compensation Committee during fiscal year 2010 with respect to NEO compensation reflects a focused approach to executive compensation aimed at incentivizing management to achieve certain key goals as part of our annual bonus program while aligning compensation with stockholders' interests over the long-term. In addition, the Compensation Committee believes our compensation program design should retain flexibility to take into account the rapidly changing challenges in the residential housing industry. This flexibility was particularly important in light of the financial issues faced by the Company during a time of distressed financial markets, the worst homebuilding environment in history and the significant litigation and regulatory challenges we confronted and resolved during this time.

#### *Role of the Committee, Management and Advisors*

The fundamental responsibilities of our Compensation Committee include:

establishing, reviewing, overseeing and approving yearly performance objectives for our NEOs;

evaluating the NEOs' performance in light of those performance objectives; and

based on this evaluation, either as a Committee, or together with other independent directors (as directed by our Board of Directors), determine and approve the compensation level and individual compensation elements for our Chief Executive Officer (with input from our Non-Executive Chairman) and, with our Chief Executive Officer's input, for other executive officers.

During fiscal year 2010, our Compensation Committee relied heavily on regular discussions with key members of the management team to stay informed of our operating and financial strategies and changing operational and financial needs as well as suggestions for appropriate compensation plans that would suitably incentivize the management team in light of those strategies and needs. Specifically, during the course of fiscal year 2010, the Compensation Committee received support from our Non-Executive Chairman, Chief Executive Officer, Chief Financial Officer, General Counsel and Senior Vice President for Human Resources. However, our Chief Executive Officer and our Non-Executive Chairman played the largest roles among this group. During fiscal year 2010, our Chief Executive Officer reviewed the performance of each of the NEOs, which included all of our other current NEOs, and made recommendations to our Compensation Committee based on his review. In addition, our Non-Executive Chairman prepared and presented an assessment to our Compensation Committee of the performance of our Chief Executive Officer. Our Chief Executive Officer was present for Compensation Committee deliberations related to the compensation of his direct reports, but not for Compensation Committee discussions related to his own pay.

In addition, our Compensation Committee received executive compensation advice from PricewaterhouseCoopers (PwC) and MarksonHRC. Our Compensation Committee engaged these firms to provide general executive compensation consulting services, compensation plan design services, compensation benchmarking and to provide review and advice regarding our compensation disclosures.

**Role of Compensation Consultant**

In addition to the compensation consulting services provided by PwC directly to our Compensation Committee in fiscal year 2010, PwC provided tax and recapitalization transaction consulting services to the Company. The Chairman of the Compensation Committee consented to management's retention of PwC for these additional consulting services at the time of the engagement.

The fees of PwC for compensation, tax and recapitalization transaction consulting services in fiscal year 2010 were as follows:

Fees for Compensation Consulting Services	\$ 193,385
Fees for Tax and Recapitalization Transaction Consulting Services	\$ 913,764

The Compensation Committee does not believe that PwC's independence was affected by the additional services provided by the firm to the Company.

**Compensation Philosophy and Objectives**

Our core compensation objective continues to be that we will pay for performance—we believe we should pay higher compensation when our management team achieves the predetermined goals and lower compensation when it does not. Accordingly, our compensation programs are premised on the achievement of predetermined financial and non-financial goals and targets that the Compensation Committee and the Board of Directors believe are critical to enhancing stockholder value. In addition, we believe that our pay programs should be structured with a combination of base salary, annual (or longer-term) cash incentives and long-term equity awards:

to align management's interests with those of our stockholders;

to reduce risks that may be associated with compensation that is focused on the achievement of only short-term objectives; and

to attract, retain and motivate our senior management team to position us to weather the current economic downturn and capitalize on a housing market recovery when it occurs.

Our Compensation Committee also believes that base salary and incentive compensation should be set based on a variety of factors, including Company and executive performance, each executive's specific responsibilities and skill sets and the amount we historically have paid for a particular position, as well as our need to attract and retain qualified executives.

**Elements of Executive Compensation Fiscal Year 2010**

The following discussion summarizes each element of our compensation program for our NEOs during fiscal year 2010 and the rationale for compensation decisions made during the fiscal year.

For fiscal year 2010, our Compensation Committee used its judgment when approving the mix and levels of the various compensation components for our NEOs and did not adhere to any set formulas or formal allocations for any one component within the total amount of an NEO's overall compensation. However, the Compensation Committee established target bonuses for Messrs. McCarthy, Merrill and Khoury of 100% of base salary, with a maximum bonus of 150% and for Mr. Salomon a target bonus of 100% of base salary, with a maximum bonus of 125%.

For fiscal year 2010, our Compensation Committee also reviewed and examined publicly available compensation and performance data from a peer group of large homebuilders. The peer group consisted of D.R. Horton, Inc., Hovnanian Enterprises, Inc., KB Home, Lennar Corporation, M.D.C. Holdings, Inc., NVR,

Inc., Pulte Homes, Inc., The Ryland Group, Inc. and Toll Brothers, Inc. These companies were chosen because they constitute the nation's largest publicly traded homebuilders and tend to be among our chief competition in markets where we operate. While our Compensation Committee believes information regarding pay practices at other publicly held homebuilders is useful to establish that our executive compensation practices are reasonable, as described above, it does not establish compensation levels based on benchmarking industry practices alone.

#### *Base Salary*

Base salaries for our NEOs are typically reviewed by our Compensation Committee annually. Due to the difficult conditions in the homebuilding industry and the Company's financial condition, our Compensation Committee has frozen the base salaries of our NEOs for several years. Mr. McCarthy has not received an increase in base salary since January 1, 2005, and the annual base salaries for Messrs. Merrill, Khoury and Salomon have not increased since they joined the Company in 2007, 2009 and 2008, respectively.

#### *Annual Incentive Compensation*

##### *Bonus Plan*

In 2006, our Compensation Committee established the Beazer Homes Employee Bonus Plan (the "Bonus Plan") for certain of our employees, including our NEOs. Awards under the Bonus Plan may be granted to participants based in whole or in part on the achievement of financial and non-financial performance guidelines established from time to time by our Compensation Committee. Awards may also be made by our Compensation Committee under this plan based on outstanding achievements, without reference to any specific performance guidelines. Payments under the Bonus Plan do not qualify as performance-based compensation under Code Section 162(m).

The Bonus Plan was the only annual incentive program employed by our Compensation Committee for our NEOs in fiscal year 2010. Our Compensation Committee, our Non-Executive Chairman and our Chief Executive Officer are charged with recommending performance guidelines at the start of the fiscal year and subsequently reviewing our executives' performances against such guidelines.

As described in detail in our Proxy Statement in connection with the Company's 2010 Stockholder's Meeting, the Compensation Committee established four key targets to earn cash awards under the bonus plan for fiscal year 2010 as follows: (1) the Economic Profit Account plan ("EPA"), which provided incentives for increasing the sum of (a) fiscal year 2010 earnings before interest and taxes ("EBIT") after certain adjustments as compared to fiscal year 2009 EBIT after certain adjustments and (b) the change in the annual charge for adjusted capital employed in the business, (2) extinguishing or extending debt maturities, (3) executing transactions to improve our tangible net worth ("TNW") and (4) accessing growth capital. Management exceeded by a small percentage its target of approximately \$58 million with respect to the EPA component. Management achieved its target level of performance with respect to debt maturities by repurchasing \$385 million of debt at a discount in open market repurchases, redeeming \$585 million of existing debt consisting of our 2011 and 2012 senior notes and 2024 convertible senior notes, issuing \$565 million of refinancing debt that extended our maturities and completing a restructuring of \$75 million of our junior subordinated notes. Management also achieved target levels with respect to increasing TNW from \$137 million at the close of fiscal year 2009 to \$350 million at the close of fiscal year 2010. However, management failed to reach target level performance with respect to accessing new growth capital and, accordingly, received no award with respect to this component of the bonus plan for fiscal year 2010.

#### *Long-Term Incentive Compensation*

##### *Equity-Based Long-Term Incentives*

Due to significant declines in the price of our stock, the stock options previously issued to our management team currently have significantly reduced potential value, and the restricted stock they have been awarded in the

past is worth only a small fraction of what it was worth when it was granted. During the last several years our Compensation Committee was severely limited in its ability to grant additional equity-based awards for two main reasons. First, as a result of the criminal and civil investigations of the Company by the U.S. Department of Justice, in December 2007 we suspended equity-based grants to our executive management team, including our NEOs. Second, the low number of shares that remained available under the 1999 Equity Plan and the depressed trading price of our common stock also impacted our ability to utilize equity-based long-term incentive awards to provide a level of value consistent with our normal long-term compensation philosophy. After the criminal and civil investigations were resolved in August 2009, we once again made equity awards, although at significantly reduced value levels.

With stockholder approval of the 2010 Equity Plan at the last year's annual meeting of stockholders, our Compensation Committee determined that for fiscal year 2010, the total compensation of our executive management team, including our NEOs, would again include long-term equity incentive grants more consistent with the Company's historic compensation practices. However, the continued depressed prices of the stock of virtually all homebuilders, including the Company, coupled with practical limits on the awards that may be granted consistent with good governance practices, decreased the incentive nature of such equity awards.

For fiscal year 2010, our Compensation Committee awarded equity grants to our NEOs divided evenly between stock options and restricted stock. See "Grants of Plan-Based Awards" below for additional information regarding these grants. The Compensation Committee considered long-term equity award practices of our peer companies and companies in other industries. As indicated above, the Compensation Committee limited the total number of shares available for fiscal year 2010. As a result, our NEOs received grants that were significantly below historical values. Fiscal year 2010 grants were made to incent future performance that will increase the value of our stock and in recognition of achievements in that fiscal year. The equity award to Mr. McCarthy was made in recognition of his role in leading the Company through the difficult financial, market and legal issues facing the Company. The Compensation Committee also considered that Mr. McCarthy had not received an equity award since 2006 and that he had requested that he not be granted an equity award for fiscal year 2009 in light of the limited number of shares under the 1999 Equity Plan available for other employees and the difficult issues the Company faced. The award made to Mr. Merrill was in recognition of his successful efforts to preserve our liquidity, increase our net worth and stockholder equity and restructure our indebtedness all as more fully described above. The award made to Mr. Khoury was in recognition of his contributions in connection with the settlement and resolution of the significant litigation involving the Company and for providing legal support to the refinancing and restructuring of the Company's indebtedness, described above. In addition, Mr. Khoury has taken meaningful steps to reduce outside counsel expenses, as well as helping to build a strong culture of compliance at the Company. Mr. Salomon's equity grant was made in recognition of the critical role he played, and will continue to play, in fostering a disciplined approach to financial reporting and compliance, particularly in light of the Company's resolution of governmental investigations.

#### ***Elements of Executive Compensation – Fiscal Year 2011***

In light of the continued challenges presented by the housing markets and management's substantial achievement of stabilizing the Company's financial situation in fiscal years 2009 and 2010, our Compensation Committee focused its design for fiscal year 2011 incentive compensation plans on providing incentives to: a) undertake actions and achieve goals to put the Company on a path to profitability at the earliest feasible time, b) generate earnings before interest and taxes (EBIT) and c) maintain strong liquidity and financial discipline.

The Company's fiscal year 2011 compensation program for our NEOs consists of base salary, an annual bonus plan (the 2011 Bonus Plan), a new medium-term incentive plan (the MT Plan) and long-term incentives in the form of equity grants. It is important to note that the new MT Plan does not increase total compensation opportunities for NEOs since opportunities under the equity component of overall compensation have been reduced, as well as overall target compensation against historical levels.

For the CEO and CFO positions, competitive compensation data was obtained from publicly available data for companies of comparable size and scope to the Company. For other NEO positions, where publicly available peer data was not available, we used widely recognized published surveys of general-industry compensation levels among companies of comparable size to the Company, adjusted to compensation levels prevailing in the homebuilding industry.

Using benchmarking data from peer companies and companies in other industries, the Compensation Committee established an overall incentive compensation target, inclusive of bonus, medium-term incentives and long-term equity grants, for each NEO as a multiple of base salary. For fiscal year 2011, the peer group consisted of Hovnanian Enterprises, Inc., KB Home, Lennar Corporation, M.D.C. Holdings, Inc., M/I Homes, Meritage Homes, NVR, Inc., The Ryland Group, Inc. and Standard Pacific Homes. The multiples established for our NEOs which, in general, are targeted at the median of our peer companies are as follows: Mr. McCarthy 3.5, Messrs. Merrill and Khoury 2.5 and Mr. Salomon 1.75. The Compensation Committee also established a target percentage of the overall incentive target for each of the three components of the incentive program. For fiscal year 2011, the following percentages of base pay for annual bonuses, the MT Plan and equity awards, respectively, have been established for each NEO: Mr. McCarthy 100%/75%/175%, Messrs. Merrill and Khoury 100%/50%/100% and Mr. Salomon 75%/25%/75%.

The 2011 Bonus Plan is designed to provide incentives to management to increase earnings before interest and taxes ( EBIT ), take actions that will position the Company for a return to profitability (based on generally accepted accounting principles ( GAAP )) and accomplish certain functional goals established by the Compensation Committee. In order to achieve an award under the EBIT component of the 2011 Bonus Plan, which constitutes 75% of the annual bonus opportunity, the Company will have to achieve at least an incremental EBIT of \$10 million over fiscal year 2010 EBIT. A target bonus for this component would be achieved if the Company shows an incremental EBIT of \$35 million up to a cap of \$47.5 million in EBIT improvement, which would result in an award of 150% of target. In addition, downward adjustments would be made for failure to maintain certain safety, quality and customer satisfaction and compliance goals. To receive an award on the return to profitability and functional achievement components of the 2011 Bonus Plan, each of which constitutes 12.5% of the bonus opportunity, management would have to implement certain pre-established strategies designed to lead the Company back to GAAP profitability and achieve certain pre-established functional performance goals for each NEO.

The MT Plan will reward management based on a comparison of the improvement in the Company s EBIT net of a charge representing the Company s cost of capital, as a percentage of revenue, against the performance of a group of peer companies over a two year measurement period (Standardized Economic Profit Added or SEPA ). Specifically, the peer group for the MT Plan includes M.D.C. Holdings, Inc., KB Home, Toll Brothers, Inc., Pulte Homes, Inc., D.R. Horton, Inc., Ryland Group, Inc., Hovnanian Enterprises, Inc., M/I Homes, Inc., Lennar Corporation and Meritage Homes Corporation and Standard Pacific Corporation.

Under the MT Plan, to achieve a threshold award, the Company s SEPA performance relative to its competitive group would have to be at the 33<sup>rd</sup> percentile, for a target award (100% of bonus target), it would have to be at the 67<sup>th</sup> percentile and for a maximum award (150% of bonus target) the Company s SEPA performance would have to be at the 100<sup>th</sup> percentile (i.e., better than all other companies in the competitive group).

Since no payment under the MT Plan could be made until after fiscal year 2012 results are calculated for the preceding two fiscal years, the Compensation Committee also adopted a transition MT Plan for fiscal year 2011. Under this transition plan, an award can be earned for fiscal year 2011 based on SEPA results against the peer group using the average of fiscal year 2010 and 2011 performance and the threshold target and maximum awards/targets described above. The Compensation Committee believes that this transition approach is challenging and fair and will immediately focus management on the actions it needs to take to achieve the performance goals established for the full MT Plan.

For fiscal year 2011, the Compensation Committee has approved equity awards for the NEOs covering a total of 863,726 shares pursuant to the 2010 Equity Plan. These awards consist of equal numbers of stock options and restricted stock. The Compensation Committee has determined that the award of stock options vesting in 1/3 increments over three years and restricted stock vesting after three years appropriately incentivizes longer-term, stockholder value-enhancing behavior. The value of long-term equity incentives will be lower than historical levels in general and in recognition of the incentive opportunities provided by the MT Plan.

#### ***Deferred Compensation Plan***

Effective January 1, 2002, we adopted the Beazer Homes Deferred Compensation Plan to provide eligible employees the opportunity to defer receipt of a portion of their current compensation. For fiscal year 2010, we provided matching cash contributions equal to the lesser of 50% of compensation deferred under the plan or 3% of eligible compensation, reduced by the matching contributions credited to the participant under our 401(k) plan. In the case of our Chief Executive Officer and our Chief Financial Officer, in lieu of matching contributions, the Company made discretionary deferred compensation payments on behalf of these executives in annual amounts of \$200,000, and \$50,000, respectively, in order to provide an attractive and competitive element of deferred, post-employment or supplemental retirement benefit. Our other NEOs, Messrs. Khoury and Salomon, did not receive discretionary deferred compensation payments under our Deferred Compensation Plan.

#### ***Other Benefits***

We do not have a defined benefit pension plan or supplemental executive retirement plan. During fiscal year 2010, certain of our NEOs were eligible, as were other senior managers, to use a company car or receive a car allowance. Our executive management team, including our NEOs, participate in our various benefit programs on the same terms as other employees; however, our NEOs pay more for their health and welfare programs than other employees for the same benefits. These programs are designed to facilitate retention and are part of our broad-based total compensation, which our Compensation Committee believes to be reasonable, competitive and consistent with our overall executive compensation program.

#### ***Change of Control Agreements***

Our Board of Directors, at the recommendation of our Compensation Committee, has determined that it is in the best interests of the Company and our stockholders to diminish the inevitable distraction certain of our executives by virtue of the personal uncertainties and risks created by a pending or threatened change of control, to encourage the executive's full attention and dedication to us currently and in the event of any threatened or pending change of control and to provide the executive with compensation and benefits arrangements upon a change of control which are customary and competitive. As such, we have previously entered into supplemental employment (change of control) agreements with each of our NEOs that have not been materially amended. These supplemental employment agreements provide for continued employment of the NEO for two years following a change of control or stated benefits if the NEO's employment is terminated without cause, or he or she leaves with good reason (as defined in the agreements), within two years of a change of control. The change of control provisions in these agreements supersede any similar provisions in an NEO's employment agreement.

PwC reviewed the terms of the supplemental employment agreements at the time the terms of such agreements were established. Based in part on the information provided by PwC, our Compensation Committee concluded that the agreements were reasonable in terms of both comparability to competitive practice and advancement of stockholder interests.

A description of additional terms of the supplemental employment agreements may be found below under Potential Payments Upon Termination or Change of Control.

***Tax Deductibility of Compensation***

It is our Compensation Committee's general policy to consider whether particular payments and awards are deductible to the Company for federal income tax purposes under Code Section 162(m). Section 162(m) limits the deductibility for federal income tax purposes of compensation payments to certain executive officers in excess of \$1 million subject to certain exemptions and exceptions. Although our Compensation Committee takes into consideration the provisions of Section 162(m), maintaining tax deductibility is but one consideration among many in the design of our executive compensation program.

**Report of Our Compensation Committee**

Our Compensation Committee has reviewed and discussed the Compensation Discussion and Analysis set forth above with management. Based on such review and discussions, our Compensation Committee recommended to our Board of Directors that the Compensation Discussion and Analysis set forth above be included in this Proxy Statement and our Annual Report on Form 10-K.

Larry T. Solari

Stephen P. Zelnak, Jr.

Norma Provencio

***The Members of the Compensation Committee***

**Compensation Committee Interlocks and Insider Participation**

The members of our Compensation Committee during fiscal year 2010 were Ms. Provencio (as of April 2010) and Messrs. Solari and Zelnak. None of the members of our Compensation Committee has ever been an officer or employee of the Company or any of our subsidiaries. None of the members of our Compensation Committee had any relationship requiring disclosure under Transactions with Related Persons below. During fiscal year 2010, none of our executive officers served as a director or member of our Compensation Committee (or other committee of our Board of Directors performing equivalent functions) of another entity an executive officer of which served on our Board of Directors.

**Summary Compensation Table**

Set forth below is summary compensation information for (1) each person who was at any time during fiscal year 2010 our Chief Executive Officer or Chief Financial Officer and (2) our only other two executive officers, other than our Chief Executive Officer and our Chief Financial Officer.

Name and Principal Position	Fiscal Year	Salary (\$)		Stock Awards (\$) (2)(3)	Option Awards (\$) (2)(3)	Non-Equity Incentive Plan	All Other Compensation	Total (3)
		(1)	Bonus (\$)			(2)(3)	(4)	
<b>Ian J. McCarthy</b>	2010	\$ 1,200,000	\$ 1,048,105	\$ 1,939,528	\$ 2,498,379	\$ 0	\$ 207,350	\$ 6,893,362
President and Chief Executive Officer	2009	\$ 1,200,000	\$ 0	\$ 2,613,238	\$ 2,408,342	\$ 0	\$ 208,673	\$ 6,430,253
	2008	\$ 1,200,000	\$ 0	\$ 3,183,274	\$ 2,692,655	\$ 600,000	\$ 222,936	\$ 7,898,865
<b>Allan P. Merrill</b>	2010	\$ 600,000	\$ 524,052	\$ 961,715	\$ 1,371,431	\$ 0	\$ 66,950	\$ 3,524,148
Executive Vice President and Chief Financial Officer	2009	\$ 600,000	\$ 120,000	\$ 758,475	\$ 1,025,819	\$ 0	\$ 66,950	\$ 2,571,244
	2008	\$ 600,000	\$ 100,000	\$ 729,287	\$ 974,480	\$ 300,000	\$ 608,252	\$ 3,312,019
<b>Kenneth F. Khoury</b>	2010	\$ 400,000	\$ 349,341	\$ 158,015	\$ 199,273	\$ 0	\$ 7,350	\$ 1,113,979
Executive Vice President and General Counsel	2009	\$ 297,180	\$ 100,000	\$ 14,594	\$ 27,001	\$ 0	\$ 5,436	\$ 444,211
<b>Robert L. Salomon</b>	2010	\$ 270,000	\$ 234,896	\$ 44,497	\$ 50,770	\$ 0	\$ 8,708	\$ 608,871
Senior Vice President, Chief Accounting Officer and Contoller	2009	\$ 270,000	\$ 54,000	\$ 3,502	\$ 6,480	\$ 0	\$ 6,488	\$ 340,470
	2008	\$ 173,942	\$ 75,000	\$ 0	\$ 0	\$ 150,000	\$ 5,700	\$ 404,642

- (1) Includes \$0, \$7,000 and \$21,000 for Mr. Merrill in fiscal year 2010, fiscal year 2009 and fiscal year 2008, respectively, which were deferred by Mr. Merrill under our Deferred Compensation Plan. Mr. Khoury joined the Company effective January 5, 2009. Mr. Salomon joined the Company effective February 11, 2008. Accordingly, their salaries reported for proxy statement purposes are from effective date of employment to September 30, 2009 and 2008, respectively.
- (2) Amounts reflect the dollar amount recognized for financial statement reporting purposes for the applicable fiscal year in accordance with FAS 123(R) except that estimated forfeitures have been disregarded for these purposes. These columns reflect the Company's FAS 123(R) amortization expense from awards of restricted stock, RSUs, stock options and SSARs granted in fiscal years 2005, 2006, 2007, 2009 and 2010, as applicable, that relate to awards that were outstanding during all or a portion of the fiscal year presented above. In fiscal year 2010, Mr. McCarthy received 713,192 new stock and option award grants and forfeited 26,254 shares of restricted common stock previously granted, due to failure to achieve specified performance criteria. In fiscal year 2010, Mr. Merrill received 356,596 new stock and option award grants and forfeited 17,647 shares of restricted common stock previously granted, due to failure to achieve specified performance criteria.
- (3) We caution that the amounts reported in the table for stock and options awards and, therefore, total compensation may not represent the amounts that the NEOs will actually realize from the awards. Whether, and to what extent, an NEO realizes value will depend on a number of factors, including our performance and stock price. For example, the table below reflects the value of the stock awards of certain of our NEOs that would have been expensed in 2010 if our share price at the respective grant dates was \$4.13, which was our closing share price at September 30, 2010. In addition, the table also reflects the value of the option awards of certain of our NEOs that would have been expensed in 2010 if our share price on the respective grant dates was \$4.13, and the exercise prices remained unchanged from those on the grant dates. Further information regarding the valuation of stock and option awards can be found in Note 1 to our Consolidated Financial Statements in our Annual Report on Form 10-K for the year ended September 30, 2010.

Name	Stock Awards			Change in Equity Value			Total Difference	Total 2010 Compensation if Share Price was \$4.13 on the Grant Date (b)
	2010 Expense in Summary Compensation Table	2010 Expense if Share Price was \$4.13 on the Grant Dates	Difference	2010 Expense in Summary Compensation Table	2010 Expense if Share Price was \$4.13 on the Grant Dates (a)	Difference		
Ian J. McCarthy	\$ 1,939,528	\$ 308,040	-\$ 1,631,488	\$ 2,498,379	\$ 89,304	-\$ 2,409,075	-\$ 4,040,563	\$ 2,852,799
Allan P. Merrill	\$ 961,715	\$ 364,276	-\$ 597,439	\$ 1,371,431	\$ 287,740	-\$ 1,083,691	-\$ 1,681,130	\$ 1,843,018

- (a) Assumes the dividend yield, risk-free interest rate, remaining expected life and volatility as of September 30, 2010 for Black-Scholes calculation purposes.
- (b) Includes Salary, Bonus, Non-Equity Incentive Plan Compensation and All Other Compensation from Summary Compensation Table above and 2010 Expense if Share Price was \$4.13 on the Grant Dates for Stock and Option Awards.
- (4) All Other Compensation consists of the following:

Name	Year	Deferred Compensation or Discretionary Lump Sum Contributions	401(k) Company Match	Car Allowance/ Company Car	Relocation Expenses	Total
Ian J. McCarthy	2010	\$ 200,000	\$ 7,350	\$ 0	N/A	\$ 207,350
Allan P. Merrill	2010	\$ 50,000	\$ 7,350	\$ 9,600	N/A	\$ 66,950
Kenneth F. Khoury	2010	\$ 0	\$ 7,350	\$ 0	N/A	\$ 7,350
Robert L. Salomon	2010	\$ 1,358	\$ 7,350	\$ 0	N/A	\$ 8,708

#### Grants of Plan-Based Awards

The following table shows information about eligible or granted plan-based awards for fiscal year 2010 to our NEOs.

Name	Grant Date	All Other Stock Awards: Number of Shares of Stock or Units (#)	All Other Option Awards: Number of Securities Underlying Options (#)	Exercise or Base Price of Option Awards (\$/sh)	Grant Date Fair Value of Stock and Option Awards (\$)
Ian J. McCarthy	5/11/2010	356,596		\$ 5.69	\$ 2,029,031
	5/11/2010		356,596	\$ 5.69	\$ 909,320
Allan P. Merrill	5/11/2010	178,298		\$ 5.69	\$ 1,014,516
	5/11/2010		178,298	\$ 5.69	\$ 454,660
Kenneth F. Khoury	5/11/2010	89,149		\$ 5.69	\$ 507,258
	5/11/2010		89,149	\$ 5.69	\$ 227,330
Robert L. Salomon	5/11/2010	29,716		\$ 5.69	\$ 169,084
	5/11/2010		29,716	\$ 5.69	\$ 75,776

#### Narrative Disclosure to Summary Compensation Table and Grants of Plan-Based Awards Table

#### Equity-Based Incentives

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Grants of equity incentive plan awards and the full grant date fair value (determined in accordance with FAS 123(R)) of such awards are disclosed in the Grants of Plan-Based Awards Table in the fiscal year in which they are granted. The amount recorded as compensation expense in our income statement in accordance with FAS 123(R) relating to any such awards is disclosed in the Summary Compensation Table in the year

when the compensation expense is recorded. We caution that the amounts reported in the Summary Compensation Table for these awards reflect our accounting expense and may not represent the amounts that the NEOs will actually realize from the awards. Whether, and to what extent, an NEO realizes value will depend on a number of factors, including our performance and stock price. See Note 3 to Summary Compensation Table above.

Historically, we have utilized four equity-based, long-term incentives: stock options, SSARs, time-based restricted stock and performance-based restricted stock pursuant to the 1999 Equity Plan. For fiscal year 2010, only stock options and restricted stock were awarded.

Except in the case of the grants made to Mr. McCarthy in February 2006 and to Mr. Merrill in May 2007, outstanding equity incentives vest as follows:

Grants of stock options and SSARs prior to August 2009 vest after three years from the date of grant; grants of stock options beginning in August 2009 vest ratably over a three year period. Awards of stock options and SSARs expire seven years after grant (ten years for stock options granted prior to May 2003).

Grants of time-based restricted stock prior to August 2009 vest five years from the date of grant; grants of time-based restricted stock beginning in August 2009 vest three years from the date of grant.

Performance-based restricted stock vests after three years from grant contingent upon the ranking of the compound annual growth rate ( CAGR ) of total return to stockholders of our common stock as compared to the CAGR of total stockholder return of the stock of a peer group of companies (the Performance Stock Peer Group ) over a defined time period (the performance period ).

In order to compete more effectively with industry peers in terms of equity vesting and to strengthen the retention impact of equity awards, in June 2008, our Compensation Committee determined that subsequent grants of stock options or SSARs will vest ratably over a three year period and that subsequent grants of time-based restricted stock will vest three years from the date of grant.

The performance criteria and corresponding vesting percentages for performance-based restricted stock are defined as follows:

CAGR Peer Ranking	Vesting Percentage
Above 3rd Ranked Peer	150%
Equal to 3rd Ranked Peer	130%
Equal to or Above 4th Ranked Peer	115%
Equal to or Above 5th Ranked Peer	100%
Equal to or Above 6th Ranked Peer	75%
Equal to or Above 7th Ranked Peer	50%
Below 7th Ranked Peer	0%

Total stockholder return is defined as ending stock price plus dividends paid, divided by beginning stock price. Beginning stock price is defined as the average of the closing stock prices for the 20 trading days ending on the last trading day prior to the first trading day of the applicable performance period. Ending stock price is defined as the average of the closing stock prices for the 20 trading days ending on the last trading day of the performance period.

In February 2006, our Compensation Committee approved long-term stock incentive grants for Mr. McCarthy. Mr. Merrill received a similar grant in May 2007, at the time he joined the Company. For both Mr. McCarthy and Mr. Merrill, the vesting schedule for these grants differed from those described above as follows:

*Performance-Based Restricted Stock:* One-third each of the aggregate number of performance-based restricted shares is eligible to vest depending on performance three, four and five years, respectively, after the beginning of the performance period, as defined in the award agreement. Depending on the level of performance achieved, as measured by the performance criteria described above, between 0% and 150% of shares then eligible for vesting on the performance date will vest. Upon termination of employment other than for cause or voluntary resignation, a portion of the performance-based restricted stock will vest, depending on length of service since the grant date. For Messrs. McCarthy and Merrill one-third of the aggregate number of performance-based restricted shares eligible to vest three years after the beginning of the performance period were forfeited in February and May 2010, respectively, due to failure to achieve any of the specified performance criteria.

*Time-Based Restricted Stock:* Beginning five years after the date of grant, the restrictions on one-third of the time-based restricted stock will lapse each year for three years, subject to continued employment. Upon termination of employment other than for cause or voluntary resignation, a portion of the restricted stock will vest, depending on length of service since the grant date.

*Stock Options or SSARs:* Beginning three years after the date of grant, the stock options or SSARs vest one-third each year for three years and will expire seven years after the date of grant. Upon termination of employment other than for cause or voluntary resignation, a portion of the stock options or SSARs will vest, depending on length of service since the grant date.

**Outstanding Equity Awards at Fiscal Year-End**

The following table provides information with respect to the common stock that may be issued upon the exercise of options and SSARs by our NEOs under our existing equity incentive plans as of September 30, 2010.

Name	Grant Date	Option Awards Number of Securities Underlying Unexercised Options/SSARs (#)		Option Exercise Price (\$)	Option Expiration Date	Number of Shares or Units of Stock That Have Not Vested (#)	Stock Awards		
		Exercisable	Unexercisable				Market Value of Shares or Units of Stock That Have Not Vested (\$) (7)	Equity Incentive Plan Awards Number of Unearned Shares, Units or Other Rights that Have Not Vested (#) (8)	Market or Payout Value of Unearned Shares, Units or Other Rights That Have Not Vested (\$) (7)
Ian J. McCarthy	11/15/2005					27,088(4)	\$ 111,873		
	2/2/2006	262,544	131,272(1)	\$ 68.56	2/2/2013				
	2/2/2006					78,763(5)	\$ 325,291		
	2/2/2006							26,255	\$ 108,433
	5/11/2010 5/11/2010		356,596	\$ 5.69	5/11/2017	356,596(6)	\$ 1,472,741		
Allan P. Merrill	5/1/2007	88,235	176,471(1)(2)	\$ 34.00	5/1/2014				
	5/1/2007					52,941(5)	\$ 218,646		
	5/1/2007							35,294	\$ 145,764
	8/10/2009	66,671	133,343(3)	\$ 3.94	8/10/2016				
	8/10/2009					133,344(6)	\$ 550,711		
	5/11/2010 5/11/2010		178,298	\$ 5.69	5/11/2017	178,298(6)	\$ 736,371		
Kenneth F. Khoury	8/10/2009	33,335	66,672(3)	\$ 3.94	8/10/2016				
	8/10/2009					66,672(6)	\$ 275,355		
	5/11/2010		89,149	\$ 5.69	5/11/2017				
	5/11/2010					89,149(6)	\$ 368,185		
Robert L. Salomon	8/10/2009	8,000	16,000(3)	\$ 3.94	8/10/2016				
	8/10/2009					16,000(6)	\$ 66,080		
	5/11/2010		29,716	\$ 5.69	5/11/2017				
	5/11/2010					29,716(6)	\$ 122,727		

(1) Award vests ratably over a three year period beginning three years following grant.

(2) Award in the form of SSARs.

(3) Award vests ratably over a three year period.

(4) Award vests five years following grant.

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- (5) Beginning five years after the date of grant, the restrictions on one-third of the award will lapse each year for three years subject to continued employment.
- (6) Award vests three years following grant.
- (7) Reflects the value using the closing share price of our common stock of \$4.13 on the last trading day of fiscal year 2010 (September 30, 2010).
- (8) Performance-based restricted stock vests contingent upon the ranking of the CAGR of total return to stockholders of our common stock as compared to the CAGR of total stockholder return of the stock of the Performance Stock Peer Group over the performance period. See Narrative Disclosure to Summary Compensation Table and Grants of Plan-Based Awards Table above for further detail. Amounts shown assume a threshold level of achievement at a 50% vesting percentage which assumes that our CAGR peer ranking achieved is equal to or above the 7th ranked peer during the performance period.

In conjunction with our January 2010 offerings of shares of our common stock and our 7<sup>1/2</sup>% Mandatory Convertible Subordinated Notes due 2013 (collectively, the Offerings), Mr. McCarthy entered into an agreement to forfeit his option to acquire 308,471 shares. This forfeiture agreement was entered into to ensure we had sufficient shares available for the Offerings.

### Option Exercises and Stock Vested

The following table provides information with respect to the number and value of shares acquired during fiscal year 2010 by our NEOs from the vesting of restricted stock and RSUs.

Name	Stock Awards	
	Number of Shares Acquired on Vesting (#)	Value Realized Upon Vesting (\$)
Ian J. McCarthy	33,102(1)	\$ 143,663(1)
Allan P. Merrill	40,103(2)	\$ 220,165(2)
Kenneth F. Khoury		
Robert L. Salomon		

(1) Vesting of restricted stocks on November 4, 2009. The per share market value of the vested restricted stock was \$4.34, which was the closing price of our common stock on that date.

(2) Vesting of RSUs on November 13, 2009. The per share market value of the vested RSU was \$5.49, which was the closing price of our common stock on that date.

### Non-Qualified Deferred Compensation

As discussed above, we maintain the Beazer Homes Deferred Compensation Plan (the Deferred Plan) to provide eligible employees the opportunity to defer receipt of current compensation. The following table sets forth the non-qualified deferred compensation of each of our NEOs in fiscal year 2010.

Name	Executive Contributions in Last FY (\$)	Registrant Contributions in Last FY (\$) (1)	Aggregate Earnings/(Losses) in Last FY (\$) (2)	Aggregate Withdrawals/(Distributions) (\$)	Aggregate Balance at Last FYE (\$) (3)
Ian J. McCarthy	\$ 0	\$ 200,000	\$ 345,031	\$ 0	\$ 5,759,065
Allan P. Merrill	\$ 0	\$ 50,000	\$ 9,472	\$ 0	\$ 210,245
Kenneth F. Khoury	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Robert L. Salomon	\$ 5,400	\$ 1,358	\$ 428	\$ 0	\$ 7,186

(1) Represents discretionary lump sum contributions by us for Messrs. McCarthy and Merrill. These amounts are also reported under the Summary Compensation Table All Other Compensation.

(2) Represents amounts of earnings on the balance of the participants' accounts that are attributable to the performance of independently managed funds available to and selected by each participant under the Deferred Plan and in which deferred amounts are deemed to be invested. There is no guaranteed rate of return on these funds and the rate of return depends on the participants' investment selections and on the market performance of the funds. None of the earnings in this column are included in the Summary Compensation Table above because they were not preferential or above-market.

(3) Aggregate balances include unvested amounts of Company contributions.

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## **Narrative Disclosure to Non-Qualified Deferred Compensation Table**

As previously discussed, in fiscal year 2010, discretionary deferred compensation payments, in lieu of matching contributions, totaled \$200,000 and \$50,000, for Messrs. McCarthy and Merrill, respectively. Under the Deferred Compensation Plan, participants select from a menu of investment options which track a variety of independently managed benchmark funds in which the funds are deemed to be invested. The return on the underlying investments determines the amount of earnings and losses that are credited or debited to the participants' account. There is no guaranteed rate of return on these funds and the rate of return depends on the participants' deemed investment option elections and on the market performance of the underlying funds. Deferred amounts and Company contributions are deposited in a trust that qualifies as a grantor trust under the Internal Revenue Code and are invested in Company-owned variable life insurance contracts. We own these contracts and are the sole beneficiary. Our obligations under the Deferred Compensation Plan are unsecured general obligations and rank equally with our other unsecured general creditors. Amounts deferred by participants and earnings and losses thereon are 100% vested.

### **Potential Payments Upon Termination or Change of Control**

We have entered into employment agreements with certain of our NEOs and supplemental employment (change of control) agreements with each of our current NEOs. Under the terms of these agreements, our NEOs are entitled to severance payments and other benefits in the event of termination of employment under certain circumstances. These benefits may include cash payments, continuation of benefits and the acceleration of vesting of outstanding equity-based incentives.

### ***Employment Agreements***

We have entered into employment agreements with Messrs. McCarthy and Merrill. The employment agreements set forth the basic terms of employment for each executive, including base salary, bonus and benefits, including benefits to which each executive is entitled if employment is terminated for various reasons.

In 2004, Mr. McCarthy entered into an employment agreement with us for a three year period, and, in 2007, Mr. Merrill entered into an employment agreement with us for a two year period. Each of the employment agreements with Messrs. McCarthy and Merrill have been and will be extended for successive one year periods unless earlier terminated by us or the executive or otherwise terminated in accordance with the respective employment agreement.

If the employment of Mr. McCarthy or Mr. Merrill is terminated by us other than for cause, as defined below (or, in the case of Mr. McCarthy, terminated by the executive for good reason, generally defined as the assignment of the executive to any duties materially inconsistent with his position as contemplated under the employment agreement or to any office or location other than as provided in the employment agreement or certain other failures or breaches by us with respect to certain provisions under the employment agreement), we will pay to the executive in a lump sum in cash within 30 days after the date of termination the following amounts: (1) the executive's annual base salary through the date of termination to the extent not already paid, (2) any accrued but unpaid annual bonus for any completed fiscal year ending prior to the date of termination, (3) the arithmetic average of the executive's bonuses under our annual incentive plans in which the executive participates during the last three full fiscal years prior to the date of termination or for such lesser period as the executive has been employed by the Company (annualized in the event that the executive was not employed by the Company for the whole of any such fiscal year) (Average Annual Bonus), pro-rated to the date of termination and (4) any deferred compensation (subject to payment election previously made by the executive) and accrued vacation pay. The sum of these amounts is referred to as Accrued Obligations.

In addition, Messrs. McCarthy and Merrill will be entitled to receive an amount equal to the sum of (1) the executive's annual base salary and (2) the executive's Average Annual Bonus, for the severance period. The sum

of these amounts is referred to herein as Severance. The severance periods are three years from the date of termination for Mr. McCarthy, and two years from the date of termination for Mr. Merrill. These executives also continue to participate in our benefit plans during the severance period. These amounts will be paid at the same time that payments of annual base salary and bonus would otherwise have become due and payable absent termination. The Severance payments and the continuation of the benefits are subject to compliance by the executive with the non-compete, non-solicitation and confidentiality provisions in the applicable employment agreement.

If either of Messrs. McCarthy or Merrill voluntarily terminates his employment, he will be entitled to receive an amount equal to the executive's Accrued Obligations.

If the employment of Messrs. McCarthy or Merrill is terminated by us for cause, or as a result of the executive's death or disability, the executive will be entitled to receive an amount equal to his base salary through the effective date of termination and all other amounts to which the executive may be entitled under his employment agreement to the effective date of termination, including, in the case of termination for death or disability only, bonus amounts under the incentive plans in which the executive participates, which will be prorated to the date of termination. For the purposes of the employment agreements with Messrs. McCarthy and Merrill, cause is generally defined as (1) any act or failure to act by the NEO done with the intent to harm in any material respect the financial interests or reputation of the Company; (2) NEO being convicted of (or entering a plea of guilty or nolo contendere to) a felony; (3) NEO's dishonesty, misappropriation or fraud to the Company; (4) a grossly negligent act or failure to act by NEO which has a material adverse effect on the Company; (5) the material breach by NEO of his agreements or obligations under the employment agreement which has a material adverse effect on the Company; or (6) the continued refusal to follow the directives of our Board of Directors or its designees which are consistent with executive's duties and responsibilities.

The timing of payment by us of any deferred compensation shall remain subject to the terms and conditions of the Deferred Compensation Plan and any payment election previously made by the executive; provided however, that if at the time of termination, the executive is a specified employee within the meaning of Section 409A of the Code, as amended, then payments shall not be made before the date which is six months after the date of separation from service with the Company.

Under the employment agreements, each of Messrs. McCarthy and Merrill is subject to certain non-compete and non-solicitation restrictions at all times that the executive is employed by us and for a period of time after the executive's employment under the employment agreement is terminated for any reason equal to the greater of 180 days or such longer period of time that the executive is entitled to receive payments under the employment agreement.

#### ***Supplemental Employment (Change of Control) Agreements***

Prior to fiscal year 2010, we had entered into supplemental employment agreements that provide for continued employment of our NEOs for two years following a change of control or stated benefits if the NEO's employment is terminated without cause, or he or she leaves with good reason within two years of a change of control. A change of control is defined generally as:

The acquisition by any individual, entity or group of beneficial ownership of 25% or more of either the outstanding shares of our common stock or the combined voting power of our outstanding voting securities entitled to vote in the election of directors (subject to certain exceptions, including acquisitions directly from us); or

Individuals who, as of the date of the supplemental employment agreement, constitute our Board of Directors (the Incumbent Board) cease for any reason to constitute at least a majority of our Board of Directors; provided however, that any individual subsequently becoming a director whose election was

approved by a vote of at least a majority of the Incumbent Board shall be considered as though such individual were a member of the Incumbent Board; or

Consummation of a reorganization, merger or consolidation or sale or other disposition of all or substantially all of our assets; or

Approval by our stockholders of a complete liquidation or dissolution of the Company.

The change of control provisions in these agreements supersede any similar provisions in Messrs. McCarthy's and Merrill's employment agreements. Pursuant to the supplemental employment agreements, we will continue to employ the executive for a period of two years from the date the change of control occurs (the Effective Date). In the event a change of control occurs and an executive terminates his or her employment for good reason or is terminated by us other than for cause, then the executive will be entitled to an amount, payable in a lump sum, equal to the sum of (1) the executive's Accrued Obligations; (2) the product of (A) a stated multiple ranging from 2.0 to 3.0 and (B) the sum of the executive's annual base salary and the highest annual bonus paid to the executive during the preceding three full fiscal years or for such lesser period as the executive has been employed by us (annualized in the event that the executive was not employed by us for the whole of any such fiscal year) (Highest Annual Bonus); and (3) all other amounts to which the executive may be entitled under his supplemental employment agreement. In addition, we must provide the executive and his or her family benefits similar to those in place prior to the Effective Date for a period of one year times the applicable stated multiple following the effective date of termination.

The stated multiple is 3.0 for Mr. McCarthy, 2.0 for Messrs. Merrill and Khoury and 1.5 for Mr. Salomon. The supplemental employment agreements for Messrs. McCarthy, Merrill and Khoury also provide that the executive may terminate his employment during the 30-day period following the six-month anniversary of a change of control, and such termination will be deemed to be termination for good reason. If the executive terminates his employment pursuant to the good reason termination provision, then the executive will be subject to certain non-compete and non-solicitation restrictions for a period of one year following the termination of the executive's employment. Subsequent to a change of control, if the executive's employment is terminated by us for cause, the executive will be entitled to receive an amount equal to the portion of his or her annual base salary accrued through the effective date of termination and any compensation previously deferred and all other payments to which the executive may be entitled under his supplemental employment agreement.

The supplemental employment agreements provide that if any payment or distribution by us to the NEO would be subject to the excise tax imposed by Section 4999 of the Code, we will pay the NEO an additional amount sufficient to cover the excise tax, as well as any applicable federal, state income and employment taxes and other payments that may apply to the additional amounts paid (collectively, gross-up payments). These gross-up payments are intended to preserve the level of change of control severance protections that we have determined is appropriate, and the net result of making such gross-up payments is to place the NEO in the same after-tax position as if the excise tax had not been imposed.

#### ***Disposition of Outstanding Equity Awards at Termination***

Under our equity incentive plans, executives who resign from the Company, or are terminated for cause, before equity-based grants are vested, forfeit such grants, except as described below with respect to grants of RSUs.

Our equity incentive plans provide for accelerated vesting of all outstanding equity-based grants in the event of a change of control. In the event that an executive's employment is terminated by us other than for cause or due to death or disability, vested grants of most stock options and SSARs are exercisable for a period of 3 to 12 months following termination, depending on the reason for termination, and (except as noted in the next sentence) unvested grants are forfeited. Certain grants of stock options or SSARs made to Messrs. McCarthy and

Merrill and grants of restricted stock or performance-based restricted stock are subject to pro-rata vesting based on the number of whole months worked since the date of grant up to the date of termination (except in the case of termination for cause or voluntary resignation).

Under our Corporate Management Stock Purchase Program ( CMSPP ) for which new purchases have been suspended for several years, executives who resign from the Company, or are terminated for cause, prior to the vesting of RSUs receive the lesser of the amount originally deferred by the executive or the current value of the equivalent number of shares of stock represented by the RSUs. In the event of a change of control or termination of employment due to death or incapacity, RSUs vest in full.

Executives whose employment is otherwise terminated by us other than for cause receive shares represented by RSUs on a pro-rata basis based on the number of whole months worked since the date of grant up to the date of termination. For RSUs that do not convert to shares as described above, executives receive the lesser of the amount originally deferred by the executive or the current value of the remaining RSUs that did not convert.

The definitions of change of control under the 1999 Equity Plan, the CMSPP, the 2010 Equity Plan and our supplemental employment agreements described above are substantially similar except that the 1999 Equity Plan and the CMSPP contain a trigger based on the acquisition of 20%, rather than 25% as in the 2010 Equity Plan and the supplemental employment agreements, of our common stock or other voting securities.

**Potential Post-Employment Compensation Table**

The following table summarizes the payments and benefits that each executive would be entitled to receive in the event of termination of employment under certain circumstances as of the last day of our fiscal year, September 30, 2010, and is based on each executive's compensation and a closing stock price of \$4.13 as of that date.

	Payment or Benefit Type	Change of Control (1)	Termination Following Change of Control (2)	Death or Disability	Type of Termination			By the Company Other than Cause (3)
					Voluntarily By Executive	Voluntarily by Executive for Good Reason	By the Company for Cause	
<b>Ian J. McCarthy</b>	Severance (4)		\$ 5,400,000			\$ 4,200,000		\$ 4,200,000
	Accrued Obligations (5)		\$ 292,308	\$ 292,308	\$ 292,308	\$ 292,308	\$ 92,308	\$ 292,308
	Continuation of Benefits (6)		\$ 49,716			\$ 49,716		\$ 49,716
	Stock Option/SSAR Vesting							
	Restricted Stock Vesting	\$ 1,909,906	\$ 1,909,906	\$ 484,796				\$ 484,796
	Restricted Stock Unit Vesting/Payout							
	Performance Restricted Stock Vesting	\$ 126,811	\$ 126,811	\$ 125,280				\$ 125,280
	Gross-up Payment (7)							
<b>Total</b>		\$ 2,036,717	\$ 7,778,741	\$ 902,384	\$ 292,308	\$ 4,542,024	\$ 92,308	\$ 5,152,100
<b>Allan P. Merrill</b>	Severance (4)		\$ 3,600,000			N/A		\$ 2,346,667
	Accrued Obligations (5)		\$ 621,795	\$ 621,795	\$ 621,795	N/A	\$ 48,462	\$ 621,795
	Continuation of Benefits (6)		\$ 51,178			N/A		\$ 51,178
	Stock Option/SSAR Vesting	\$ 25,334	\$ 25,334			N/A		
	Restricted Stock Vesting	\$ 1,505,728	\$ 1,505,728	\$ 387,415		N/A		\$ 387,415
	Restricted Stock Unit Vesting/Payout					N/A		
	Performance Restricted Stock Vesting	\$ 152,827	\$ 152,827	\$ 150,590		N/A		\$ 150,590
	Gross-up Payment (7)		\$ 1,680,296					
<b>Total</b>		\$ 1,683,889	\$ 7,637,158	\$ 1,159,800	\$ 621,795	N/A	\$ 48,462	\$ 3,557,645
<b>Kenneth F. Khoury</b>	Severance (4)		\$ 1,000,000			N/A		\$ 38,462
	Accrued Obligations (5)		\$ 138,462	\$ 38,462	\$ 38,462	N/A	\$ 38,462	\$ 38,462
	Continuation of Benefits (6)		\$ 768			N/A		
	Stock Option/SSAR Vesting	\$ 12,668	\$ 12,668			N/A		
	Restricted Stock Vesting	\$ 643,541	\$ 643,541	\$ 140,346		N/A		\$ 140,346
	Restricted Stock Unit Vesting/Payout					N/A		
	Performance Restricted Stock Vesting					N/A		
	Gross-up Payment (7)		\$ 421,983					
<b>Total</b>		\$ 656,209	\$ 2,217,422	\$ 178,808	\$ 38,462	N/A	\$ 38,462	\$ 217,270
<b>Robert L. Salomon</b>	Severance (4)		\$ 742,500			N/A		\$ 36,346
	Accrued Obligations (5)		\$ 156,115	\$ 16,615	\$ 16,615	N/A	\$ 16,615	\$ 16,615
	Continuation of Benefits (6)		\$ 21,133			N/A		
	Stock Option/SSAR Vesting	\$ 3,040	\$ 3,040			N/A		
	Restricted Stock Vesting	\$ 188,807	\$ 188,807	\$ 37,500		N/A		\$ 37,500
	Restricted Stock Unit Vesting/Payout					N/A		
	Performance Restricted Stock Vesting					N/A		
	Gross-up Payment (7)							
<b>Total</b>		\$ 191,847	\$ 1,111,595	\$ 54,115	\$ 16,615	N/A	\$ 16,615	\$ 90,461

(1) Represents the value of awards with vesting accelerated as a result of the change of control under both the 1999 Equity Plan and the 2010 Equity Plan and assumes that no termination occurs in connection with the change of control.

- (2) Amounts set forth in this column are payable following a change of control only upon a termination by us other than for cause or a termination by the executive for good reason.

- (3) For Messrs. McCarthy and Merrill, severance in the event of a termination of employment by us other than for cause (or for good reason in the case of Mr. McCarthy) equals the executive's stated multiple times the sum of the executive's annual base salary and the executive's Average Annual Bonus. Mr. Merrill's supplemental employment agreement, which he entered into in May 2007 upon joining us, stipulates for the purpose solely of calculating his Average Annual Bonus that his fiscal year 2007 bonus was deemed to be equal to two times his then annual salary, or \$1,200,000.
- (4) Severance in the event of a change of control equals the executive's stated multiple times the sum of the executive's annual base salary and the Highest Annual Bonus. Mr. Merrill's supplemental employment agreement, which he entered into in May 2007 upon joining the Company, stipulates for the purpose solely of calculating his Highest Annual Bonus that his fiscal year 2007 bonus was deemed to be equal to two times his then annual salary, or \$1,200,000.
- (5) At September 30, 2010, Accrued Obligations would have equaled one times Average Annual Bonus plus accrued vacation for termination other than for cause, and accrued vacation for termination for cause.
- (6) Continuation of benefits during the severance period includes car allowance or use of company-owned automobile, if applicable, and medical, life and accidental death and dismemberment insurance coverage.
- (7) In the event of a termination due to a Change of Control effective September 30, 2010, it is estimated that the payments under Mr. Merrill's and Mr. Khoury's Supplemental Employment Agreements, entered into in 2007 and 2009, respectively, would be subject to an excise tax. Under these respective agreements, the Company will pay Messrs. Merrill and Khoury each an additional amount sufficient to cover the excise tax, as well as any applicable federal, state income and employment taxes or other payments that may apply to the additional amounts paid. This amount is represented by "Gross-Up Payment" in the table.

#### Director Compensation

The following table sets forth the compensation of each non-employee director in fiscal year 2010. As discussed further in footnote 3 to the following table, we believe it is important to note that the compensation information relating to stock and option awards appearing in the table is calculated according to SEC rules and does not represent current values which may be substantially lower due to declines in the value of our common stock.

Name (1)	Fees Earned or Paid in Cash (\$) (2)	Stock Awards (\$) (3)(4)	Option Awards (\$) (3)(5)	Total (\$)
Laurent Alpert	\$ 70,000	\$ 41,954	\$ 12,895	\$ 124,849
Brian C. Beazer	\$ 225,000	\$ 67,293	\$ 45,137	\$ 337,430
Peter G. Leemputte	\$ 65,500	\$ 97,267	\$ 12,895	\$ 175,662
Norma A. Provencio	\$ 52,745	\$ 7,508	\$ 3,365	\$ 63,618
Larry T. Solari	\$ 82,000	\$ 43,594	\$ 12,895	\$ 138,489
Stephen P. Zelnak, Jr.	\$ 83,500	\$ 43,594	\$ 12,895	\$ 139,989

- (1) Mr. McCarthy is a member of our Board of Directors, as well as our President and Chief Executive Officer. His compensation is disclosed in the preceding executive compensation tables. Since Mr. McCarthy does not receive compensation separately for his duties as a director, he is not included in the Director Compensation table.
- (2) For Mr. Beazer, amount includes annual retainer fee only. For other directors, amounts include annual retainer fee, paid quarterly, of \$35,000, \$1,500 fee per meeting attended, and \$5,000 chair fee for Messrs. Alpert, Leemputte, Solari and Zelnak. Ms. Provencio's annual fee was prorated from her date of election to the Board of Directors, November 20, 2009.

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- (3) Amounts reflect the dollar amount recognized for financial statement reporting purposes for the fiscal year ended September 30, 2010 in accordance with FAS 123(R) except that estimated forfeitures have been disregarded for these purposes. These columns reflect our FAS 123(R) amortization expense from awards of

restricted stock, RSUs, stock options and SSARs granted in fiscal years 2005, 2006, 2007, 2008, 2009 and 2010. In fiscal year 2010, Messrs. Alpert, Leemputte, Solari and Zelnak were each granted 4,500 shares of restricted stock and 4,500 stock options, Ms. Provencio was granted 9,500 shares of restricted stock and 9,500 stock options covering her service in 2009 and 2010, and Mr. Beazer was granted 16,350 shares of restricted stock and 16,350 stock options. We caution that the amounts reported in the table for these awards may not represent the amounts that our non-employee directors will actually realize from the awards. Whether, and to what extent, a non-employee director realizes value will depend on a number of factors, including our performance and stock price. Further information regarding the valuation of stock and option awards can be found in Note 1 to the Consolidated Financial Statements in our Annual Report on Form 10-K for the year ended September 30, 2010. The grant date fair value of the director stock and option awards that incurred amortization expense in fiscal year 2010 is as follows:

Grant Date	Director(s) Receiving Grant	Grant Date Fair Value of Stock Awards per Director	Grant Date Fair Value of Option Awards per Director
November 4, 2004 (a)	Mr. Beazer	\$ 116,702	
November 4, 2004 (a)	Messrs. Alpert, Solari and Zelnak	\$ 57,095	
August 3, 2005 (b)	Mr. Leemputte	\$ 327,750	
November 15, 2005 (c)	Mr. Beazer	\$ 123,544	
November 15, 2005 (c)	Messrs. Alpert, Leemputte, Solari and Zelnak	\$ 93,030	
November 15, 2006 (d)	Messrs. Alpert, Leemputte, Solari and Zelnak	\$ 4,367	
February 6, 2007 (e)	Mr. Beazer	\$ 75,949	\$ 121,076
February 6, 2007 (e)	Messrs. Alpert, Leemputte, Solari and Zelnak	\$ 64,650	\$ 33,795
November 30, 2007 (f)	Messrs. Beazer, Leemputte, Solari and Zelnak	\$ 4,374	
August 10, 2009	Mr. Beazer	\$ 40,562	\$ 45,863
August 10, 2009	Messrs. Alpert, Leemputte, Solari and Zelnak	\$ 17,730	\$ 13,365
May 11, 2010	Messrs. Alpert, Leemputte, Solari and Zelnak, Ms. Provencio	\$ 25,605	\$ 11,475
May 11, 2010 (g)	Ms. Provencio	\$ 28,450	\$ 12,750
May 11, 2010	Mr. Beazer	\$ 93,032	\$ 41,693

- (a) Restricted stock award vested November 4, 2009.
- (b) Initial restricted stock award grant to newly elected director vested August 3, 2010.
- (c) Restricted stock award vested November 15, 2010.
- (d) RSUs vested November 15, 2009.
- (e) Restricted stock award grant to vest February 6, 2012. Performance-based restricted stock award was forfeited February 6, 2010 due to failure to meet performance criteria based on performance of the Company's stock as compared to the performance of a defined peer group. Option award vested February 6, 2010. None of these options have been exercised to date.
- (f) RSUs vested November 30, 2010.
- (g) Ms. Provencio joined our Board of Directors in November 2009. The Company customarily grants restricted stock and option awards to newly elected directors. The initial awards to Ms. Provencio were delayed until stockholder approval of the 2010 Equity Plan.
- (4)

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Our non-employee directors held the following amounts of restricted stock and RSUs at September 30, 2010: Mr. Alpert 12,000; Mr. Beazer 32,288; Mr. Leemutte 14,576; Ms. Provencio 9,500; Mr. Solari 14,576 and Mr. Zelnak 14,576. See Security Ownership of Management above for complete beneficial ownership information of our common stock for each of our directors.

- (5) Our non-employee directors held the following amounts of stock options and SSARs at September 30, 2010: Mr. Alpert 28,500; Mr. Beazer 37,166; Mr. Leemutte 10,500; Ms. Provencio 9,500; Mr. Solari 16,500 and Mr. Zelnak 40,500. See Security Ownership of Management above for complete beneficial ownership information of our common stock for each of our directors.

In conjunction with the Offerings, Messrs. Alpert, Beazer, Leemputte, Solari and Zelnak entered into forfeiture agreements to forfeit their options to acquire 4,500, 59,193, 6,500, 10,500 and 4,500 shares, respectively. These forfeiture agreements were entered into to ensure we had sufficient shares available for the Offerings.

#### **Narrative Disclosure to Director Compensation Table**

##### ***Non-Employee Directors (excluding Brian C. Beazer)***

Non-employee directors receive an annual retainer of \$35,000 for services as members of our Board of Directors. In addition, directors receive \$1,500 for each meeting or teleconference of our Board of Directors or any of its committees attended as well as for attendance at the annual meeting of stockholders and separate meetings of the independent directors. In addition, all committee chairs receive an annual fee of \$5,000 relating to their role as chair. Committee chairs, in addition to the payments described above, may also receive additional payments for meetings with the Non-Executive Chairman or other work in furtherance of their duties as chair as approved from time to time by the Non-Executive Chairman.

Directors are eligible to receive grants of stock options, SSARs and time-based restricted shares under the 2010 Equity Plan, at the discretion of our Compensation Committee.

Our Compensation Committee's rationale for equity grants to directors is similar to that for the NEOs, with an aim to align their interests with those of stockholders. The amount of the director grant is determined in consultation with our Compensation Committee's retained compensation consultants. Grants of stock options and SSARs prior to August 2009 fully vest after three years and expire seven years after grant, and shares of time-based restricted stock granted prior to August 2009 are restricted for use or sale for five years from grant. As noted above, in June 2008, our Compensation Committee determined that future grants of stock options or SSARs would vest ratably over a three year period and that future grants of time-based restricted stock will vest three years from the date of grant. For fiscal year 2010, our Compensation Committee approved director equity grants as noted in the Director Compensation Table above.

All directors receive reimbursement for reasonable out-of-pocket expenses incurred by them in connection with participating in meetings of our Board of Directors and any committees thereof.

##### ***Brian C. Beazer***

For fiscal year 2010, we paid our Non-Executive Chairman of the Board of Directors a retainer of \$225,000 for services rendered. This amount will remain the same for fiscal year 2011. Mr. Beazer is eligible to receive grants of stock options, SSARs and both performance-based and time-based restricted shares, at the discretion of our Compensation Committee. In determining the amount of equity compensation to be granted to Mr. Beazer, our Compensation Committee historically has employed a defined multiple of approximately 0.8 of his annual retainer (which was set in light of his position of Non-Executive Chairman of our Board of Directors) although this is subject to the discretion of our Compensation Committee. The resulting dollar amount is converted to a unit equivalent based on the closing stock price on the grant date, and, in the case of stock options or SSARs, the closing stock price on the grant date is discounted by 60% solely for the purpose of converting the multiple of salary to a unit equivalent; as noted above, the exercise price is equal to 100% of fair market value of the common stock on the date of grant and is disclosed in the Director Compensation Table above. Vesting and expiration of such grants of stock options, SSARs and time-based restricted shares are the same as those for the other directors. Grants of performance-based shares vest after three years, contingent upon the ranking of the CAGR of total return to stockholders of the Company's common stock as compared to the CAGR of total stockholder return of the stock of the Performance Stock Peer Group over the performance period as described above.

Other than described above, no director receives any compensation from the Company for services rendered as a director.

## TRANSACTIONS WITH RELATED PERSONS

### Transactions with Related Persons

There were no reportable transactions with related persons during fiscal year 2010.

### Review, Approval or Ratification of Transactions with Related Persons

Our Charter for the Nominating/Corporate Governance Committee of our Board of Directors provides that our Nominating/Corporate Governance Committee will conduct an appropriate review of all proposed related party transactions to identify potential conflict of interest situations and will submit the related party transactions to our Board of Directors for its approval and implementation of appropriate action to protect us from potential conflicts of interest. Our Nominating/Corporate Governance Committee has not adopted any specific procedures for conducting such reviews and considers each transaction in light of the specific facts and circumstances presented. Also, as described below, a portion of the review authority, in the case of transactions with employees, is delegated to supervising employees pursuant to the terms of our Code of Business Conduct and Ethics.

Our Code of Business Conduct and Ethics, which applies to all directors, officers and employees, directs each individual to avoid any actual or apparent conflict of interest. Under our Code of Business Conduct and Ethics, each director is required to notify the Chair of our Nominating/Corporate Governance Committee, in writing, as soon as such director or any related person (as defined below) becomes involved with, or affiliated with, any activity, business or other entity which is in competition with us, is involved in any adversarial litigation matter with the Company or other proceeding adverse to us (except where disclosure is prohibited by law) or has a business, charitable or other relationship with us. In addition, our Code of Business Conduct and Ethics requires each employee, including all executive officers, to promptly notify his or her immediate supervisor, in writing, before the employee or any related person becomes actively involved with, or affiliated with, any activity, business or other entity which is in competition with us, or which has a business, charitable or other relationship with us. If any employee, including any executive officer, of the Company becomes an officer, director, principal or employee of another for-profit business entity (as defined below) or otherwise has a business affiliation (as defined below) with any other for-profit business entity, the employee must disclose the affiliation to a division president of the Company or our Compliance Officer. In determining whether a conflict exists, the supervisor shall seek further guidance as is appropriate (which may include discussions with more senior officers or our Nominating/Corporate Governance Committee).

Each director, officer and employee is required to provide an annual acknowledgment that he or she has received and reviewed our Code of Business Conduct and Ethics and disclose any related persons transactions.

For purposes of the disclosure set forth above, a related person includes a person having any of the following relationships with an employee or director of the Company: a spouse or significant other, parents, children, siblings, mothers- and fathers-in-law, sons- and daughters-in-law, brothers and sisters-in-law, in each case whether by blood, marriage or adoption or anyone (other than tenants and domestic employees) who share(s) an employee's or director's home. Further, a for-profit business entity includes any business operated with the purpose of generating a profit, regardless of whether a profit has in fact been generated, and business affiliation includes any full or part-time job, side job, side business, self-employment, consulting arrangement or any other for-profit business or similar arrangement with which an employee is affiliated or directly involved.

**PROPOSALS FOR THE NEXT ANNUAL MEETING**

Any proposal by a stockholder to be presented at our 2012 annual meeting of stockholders (including any proposal intended to be included in our Proxy Statement for that meeting) must be received at our principal executive offices, 1000 Abernathy Road, Suite 1200, Atlanta, Georgia 30328, not later than [date]. Any such proposal must also meet the other requirements of the rules of the SEC relating to stockholders' proposals and the requirements of our by-laws. Proxies may confer discretionary authority to vote on any matter for which we receive notice after [date], without the matter being described in the Proxy Statement for our 2012 annual meeting.

By Order of the Board of Directors,

Brian C. Beazer

*Non-Executive Chairman of the Board of Directors*

Dated: December \_\_, 2010

**PROPOSED AMENDMENT TO THE  
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION**

**OF**

**BEAZER HOMES USA, INC.**

Below is the proposed Protective Amendment to the Amended and Restated Certificate of Incorporation of Beazer Homes USA, Inc. If the Protective Amendment is adopted, this language would be inserted into Beazer's Certificate of Incorporation as a new Article Eight.

ARTICLE EIGHT. Restrictions on the transfer of shares are as follows:

**PART I DEFINITIONS**

As used in this Article EIGHT, the following capitalized terms have the following meanings when used herein with initial capital letters (and any references to any portions of Treasury Regulation § 1.382-2T shall include any successor provisions):

- (a) *4.95-percent Transaction* means any Transfer described in clause (a) or (b) of Part II of this Article EIGHT.
- (b) *4.95-percent Stockholder* a Person who owns a Percentage Stock Ownership equal to or exceeding 4.95% of the Corporation's then-outstanding Stock, whether directly or indirectly, and including Stock such Person would be deemed to constructively own or which otherwise would be aggregated with shares owned by such Person pursuant to Section 382 of the Code, or any successor provision or replacement provision and the applicable Treasury Regulations thereunder.
- (c) *Agent* has the meaning set forth in Part V of this Article EIGHT.
- (d) *Board of Directors* or *Board* means the board of directors of the Corporation.
- (e) *Code* means the United States Internal Revenue Code of 1986, as amended from time to time.
- (f) *Corporation Security* or *Corporation Securities* means (1) any Stock, (2) shares of Preferred Stock issued by the Corporation (other than Preferred Stock described in Section 1504(a)(4) of the Code), and (3) warrants, rights, or options (including options within the meaning of Treasury Regulation § 1.382-2T(h)(4)(v)) to purchase Securities of the Corporation.
- (g) *Effective Date* means the date of filing of this Certificate of Amendment to the Amended and Restated Certificate of Incorporation of the Corporation with the Secretary of State of the State of Delaware.
- (h) *Excess Securities* has the meaning given such term in Part IV of this Article EIGHT.
- (i) *Expiration Date* means the earliest of (1) the repeal of Section 382 of the Code or any successor statute if the Board of Directors determines that this Article EIGHT is no longer necessary or desirable for the preservation of Tax Benefits, (2) the close of business on the first day of a taxable year of the Corporation as to which the Board of Directors determines that no Tax Benefits may be carried forward, (3) such date as the Board of Directors shall fix in accordance with Part XII of this Article EIGHT and (4) November 12, 2013.
- (j) *Percentage Stock Ownership* means the percentage Stock Ownership interest of any Person or group (as the context may require) for purposes of Section 382 of the Code as determined in accordance with the Treasury Regulation § 1.382-2T(g), (h), (j) and (k) or any successor provision.
- (k) *Person* means any individual, firm, corporation or other legal entity, including persons treated as an entity pursuant to Treasury Regulation § 1.382-3(a)(1)(i); and includes any successor (by merger or otherwise) of such entity.

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(l) *Prohibited Distributions* means any and all dividends or other distributions paid by the Corporation with respect to any Excess Securities received by a Purported Transferee.

(m) *Prohibited Transfer* means any Transfer or purported Transfer of Corporation Securities to the extent that such Transfer is prohibited and/or void under this Article EIGHT.

(n) *Public Group* has the meaning set forth in Treasury Regulation § 1.382-2T(f)(13).

(o) *Purported Transferee* has the meaning set forth in Part IV of this Article EIGHT.

(p) *Securities* and *Security* each has the meaning set forth in Part VII of this Article EIGHT.

(q) *Stock* means any interest that would be treated as stock of the Corporation pursuant to Treasury Regulation § 1.382-2T(f)(18).

(r) *Stock Ownership* means any direct or indirect ownership of Stock, including any ownership by virtue of application of constructive ownership rules, with such direct, indirect, and constructive ownership determined under the provisions of Section 382 of the Code and the regulations thereunder.

(s) *Tax Benefits* means the net operating loss carryforwards, capital loss carryforwards, general business credit carryforwards, alternative minimum tax credit carryforwards and foreign tax credit carryforwards, as well as any loss or deduction attributable to a net unrealized built-in loss of the Corporation or any direct or indirect subsidiary thereof, within the meaning of Section 382 of the Code.

(t) *Transfer* means, any direct or indirect sale, transfer, assignment, conveyance, pledge or other disposition or other action taken by a person, other than the Corporation, that alters the Percentage Stock Ownership of any Person. A Transfer also shall include the creation or grant of an option (including an option within the meaning of Treasury Regulation § 1.382-4(d)). For the avoidance of doubt, a Transfer shall not include the creation or grant of an option by the Corporation, nor shall a Transfer include the issuance of Stock by the Corporation.

(u) *Transferee* means any Person to whom Corporation Securities are Transferred.

(v) *Treasury Regulations* means the regulations, including temporary regulations or any successor regulations promulgated under the Code, as amended from time to time.

## PART II TRANSFER AND OWNERSHIP RESTRICTIONS

In order to preserve the Tax Benefits, from and after the Effective Date of this Article EIGHT any attempted Transfer of Corporation Securities prior to the Expiration Date and any attempted Transfer of Corporation Securities pursuant to an agreement entered into prior to the Expiration Date, shall be prohibited and void *ab initio* to the extent that, as a result of such Transfer (or any series of Transfers of which such Transfer is a part), either (a) any Person or Persons would become a 4.95-percent Stockholder or (b) the Percentage Stock Ownership in the Corporation of any 4.95-percent Stockholder would be increased.

## PART III EXCEPTIONS

(a) Notwithstanding anything to the contrary herein, Transfers to a Public Group (including a new Public Group created under Treasury Regulation § 1.382-2T(j)(3)(i)) shall be permitted.

(b) The restrictions set forth in Part II of this Article EIGHT shall not apply to an attempted Transfer that is a 4.95-percent Transaction if the transferor or the Transferee obtains the written approval of the Board of Directors or a duly authorized committee thereof. As a condition to granting its approval pursuant to this Part III of Article EIGHT, the Board of Directors, may, in its discretion, require (at the expense of the transferor and/or transferee) an opinion of counsel selected by the Board of Directors that the Transfer shall not result in a limitation on the use of the Tax Benefits as a result of the application of Section 382 of the Code; provided that

the Board may grant such approval notwithstanding the effect of such approval on the Tax Benefits if it determines that the approval is in the best interests of the Corporation. The Board of Directors may impose any conditions that it deems reasonable and appropriate in connection with such approval, including, without limitation, restrictions on the ability of any Transferee to Transfer Stock acquired through a Transfer. Approvals of the Board of Directors hereunder may be given prospectively or retroactively. The Board of Directors, to the fullest extent permitted by law, may exercise the authority granted by this Article EIGHT through duly authorized officers or agents of the Corporation. Nothing in this Part III of this Article EIGHT shall be construed to limit or restrict the Board of Directors in the exercise of its fiduciary duties under applicable law.

#### **PART IV EXCESS SECURITIES**

(a) No employee or agent of the Corporation shall record any Prohibited Transfer, and the purported transferee of such a Prohibited Transfer (the *Purported Transferee* ) shall not be recognized as a stockholder of the Corporation for any purpose whatsoever in respect of the Corporation Securities which are the subject of the Prohibited Transfer (the *Excess Securities* ). Until the Excess Securities are acquired by another person in a Transfer that is not a Prohibited Transfer, the Purported Transferee shall not be entitled, with respect to such Excess Securities, to any rights of stockholders of the Corporation, including, without limitation, the right to vote such Excess Securities and to receive dividends or distributions, whether liquidating or otherwise, in respect thereof, if any, and the Excess Securities shall be deemed to remain with the transferor unless and until the Excess Securities are transferred to the Agent pursuant to Part V of this Article EIGHT or until an approval is obtained under Part III of this Article EIGHT. After the Excess Securities have been acquired in a Transfer that is not a Prohibited Transfer, the Corporation Securities shall cease to be Excess Securities. For this purpose, any Transfer of Excess Securities not in accordance with the provisions of Parts IV or V of this Article EIGHT shall also be a Prohibited Transfer.

(b) The Corporation may require as a condition to the registration of the Transfer of any Corporation Securities or the payment of any distribution on any Corporation Securities that the proposed Transferee or payee furnish to the Corporation all information reasonably requested by the Corporation with respect to its direct or indirect ownership interests in such Corporation Securities. The Corporation may make such arrangements or issue such instructions to its stock transfer agent as may be determined by the Board of Directors to be necessary or advisable to implement this Article EIGHT, including, without limitation, authorizing such transfer agent to require an affidavit from a Purported Transferee regarding such Person's actual and constructive ownership of Stock and other evidence that a Transfer will not be prohibited by this Article EIGHT as a condition to registering any transfer.

#### **PART V TRANSFER TO AGENT**

If the Board of Directors determines that a Transfer of Corporation Securities constitutes a Prohibited Transfer then, upon written demand by the Corporation sent within thirty days of the date on which the Board of Directors determines that the attempted Transfer would result in Excess Securities, the Purported Transferee shall transfer or cause to be transferred any certificate or other evidence of ownership of the Excess Securities within the Purported Transferee's possession or control, together with any Prohibited Distributions, to an agent designated by the Board of Directors (the *Agent* ). The Agent shall thereupon sell to a buyer or buyers, which may include the Corporation, the Excess Securities transferred to it in one or more arm's-length transactions (on the public securities market on which such Excess Securities are traded, if possible, or otherwise privately); provided, however, that any such sale must not constitute a Prohibited Transfer and provided, further, that the Agent shall effect such sale or sales in an orderly fashion and shall not be required to effect any such sale within any specific time frame if, in the Agent's discretion, such sale or sales would disrupt the market for the Corporation Securities or otherwise would adversely affect the value of the Corporation Securities. If the Purported Transferee has resold the Excess Securities before receiving the Corporation's demand to surrender Excess Securities to the Agent, the Purported Transferee shall be deemed to have sold the Excess Securities for the Agent, and shall be required to transfer to the Agent any Prohibited Distributions and proceeds of such sale, except to the extent that the Corporation grants written permission to the Purported Transferee to retain a portion

of such sales proceeds not exceeding the amount that the Purported Transferee would have received from the Agent pursuant to Part VI of this Article EIGHT if the Agent rather than the Purported Transferee had resold the Excess Securities.

#### **PART VI APPLICATION OF PROCEEDS AND PROHIBITED DISTRIBUTIONS**

The Agent shall apply any proceeds of a sale by it of Excess Securities and, if the Purported Transferee has previously resold the Excess Securities, any amounts received by it from a Purported Transferee, together, in either case, with any Prohibited Distributions, as follows: (a) first, such amounts shall be paid to the Agent to the extent necessary to cover its costs and expenses incurred in connection with its duties hereunder; (b) second, any remaining amounts shall be paid to the Purported Transferee, up to the amount paid by the Purported Transferee for the Excess Securities (or the fair market value at the time of the Transfer, in the event the purported Transfer of the Excess Securities was, in whole or in part, a gift, inheritance or similar Transfer) which amount shall be determined at the discretion of the Board of Directors; and (c) third, any remaining amounts shall be paid to one or more organizations qualifying under section 501(c)(3) of the Code (or any comparable successor provision) selected by the Board of Directors. The Purported Transferee of Excess Securities shall have no claim, cause of action or any other recourse whatsoever against any transferor of Excess Securities. The Purported Transferee's sole right with respect to such shares shall be limited to the amount payable to the Purported Transferee pursuant to this Part VI of Article EIGHT. In no event shall the proceeds of any sale of Excess Securities pursuant to this Part VI of Article EIGHT inure to the benefit of the Corporation or the Agent, except to the extent used to cover costs and expenses incurred by Agent in performing its duties hereunder.

#### **PART VII MODIFICATION OF REMEDIES FOR CERTAIN INDIRECT TRANSFERS**

In the event of any Transfer which does not involve a transfer of securities of the Corporation within the meaning of Delaware law ( *Securities*, and individually, a *Security* ) but which would cause a 4.95-percent Stockholder to violate a restriction on Transfers provided for in this Article EIGHT, the application of Parts V and VI of this Article EIGHT shall be modified as described in this Part VII of this Article EIGHT. In such case, no such 4.95-percent Stockholder shall be required to dispose of any interest that is not a Security, but such 4.95-percent Stockholder and/or any Person whose ownership of Securities is attributed to such 4.95-percent Stockholder shall be deemed to have disposed of and shall be required to dispose of sufficient Securities (which Securities shall be disposed of in the inverse order in which they were acquired) to cause such 4.95-percent Stockholder, following such disposition, not to be in violation of this Article EIGHT. Such disposition shall be deemed to occur simultaneously with the Transfer giving rise to the application of this provision, and such number of Securities that are deemed to be disposed of shall be considered Excess Securities and shall be disposed of through the Agent as provided in Parts V and VI of this Article EIGHT, except that the maximum aggregate amount payable either to such 4.95-percent Stockholder, or to such other Person that was the direct holder of such Excess Securities, in connection with such sale shall be the fair market value of such Excess Securities at the time of the purported Transfer. All expenses incurred by the Agent in disposing of such Excess Stock shall be paid out of any amounts due such 4.95-percent Stockholder or such other Person. The purpose of this Part VII of Article EIGHT is to extend the restrictions in Part II and V of this Article EIGHT to situations in which there is a 4.95-percent Transaction without a direct Transfer of Securities, and this Part VII of Article EIGHT, along with the other provisions of this Article EIGHT, shall be interpreted to produce the same results, with differences as the context requires, as a direct Transfer of Corporation Securities.

#### **PART VIII LEGAL PROCEEDINGS; PROMPT ENFORCEMENT**

If the Purported Transferee fails to surrender the Excess Securities or the proceeds of a sale thereof to the Agent within thirty days from the date on which the Corporation makes a written demand pursuant to Part V of this Article EIGHT (whether or not made within the time specified in Part V of this Article EIGHT), then the Corporation may take such actions as it deems appropriate to enforce the provisions hereof, including the institution of legal proceedings to compel the surrender. Nothing in this Part VIII of Article EIGHT shall (a) be deemed inconsistent with any Transfer of the Excess Securities provided in this Article EIGHT being void *ab*

*initio*, (b) preclude the Corporation in its discretion from immediately bringing legal proceedings without a prior demand or (c) cause any failure of the Corporation to act within the time periods set forth in Part V of this Article EIGHT to constitute a waiver or loss of any right of the Corporation under this Article EIGHT. The Board of Directors may authorize such additional actions as it deems advisable to give effect to the provisions of this Article EIGHT.

#### **PART IX LIABILITY**

To the fullest extent permitted by law, any stockholder subject to the provisions of this Article EIGHT who knowingly violates the provisions of this Article EIGHT and any Persons controlling, controlled by or under common control with such stockholder shall be jointly and severally liable to the Corporation for, and shall indemnify and hold the Corporation harmless against, any and all damages suffered as a result of such violation, including but not limited to damages resulting from a reduction in, or elimination of, the Corporation's ability to utilize its Tax Benefits, and attorneys' and auditors' fees incurred in connection with such violation.

#### **PART X OBLIGATION TO PROVIDE INFORMATION**

As a condition to the registration of the Transfer of any Stock, any Person who is a beneficial, legal or record holder of Stock, and any proposed Transferee and any Person controlling, controlled by or under common control with the proposed Transferee, shall provide such information as the Corporation may request from time to time in order to determine compliance with this Article EIGHT or the status of the Tax Benefits of the Corporation.

#### **PART XI LEGENDS**

The Board of Directors may require that any certificates issued by the Corporation evidencing ownership of shares of Stock that are subject to the restrictions on transfer and ownership contained in this Article EIGHT bear the following legend:

THE AMENDED AND RESTATED CERTIFICATE OF INCORPORATION, AS AMENDED (THE CERTIFICATE OF INCORPORATION), OF THE CORPORATION CONTAINS RESTRICTIONS PROHIBITING THE TRANSFER (AS DEFINED IN THE CERTIFICATE OF INCORPORATION) OF STOCK OF THE CORPORATION (INCLUDING THE CREATION OR GRANT OF CERTAIN OPTIONS, RIGHTS AND WARRANTS) WITHOUT THE PRIOR AUTHORIZATION OF THE BOARD OF DIRECTORS OF THE CORPORATION (THE BOARD OF DIRECTORS) IF SUCH TRANSFER AFFECTS THE PERCENTAGE OF STOCK OF THE CORPORATION (WITHIN THE MEANING OF SECTION 382 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE CODE) AND THE TREASURY REGULATIONS PROMULGATED THEREUNDER), THAT IS TREATED AS OWNED BY A 4.95 PERCENT STOCKHOLDER (AS DEFINED IN THE CERTIFICATE OF INCORPORATION). IF THE TRANSFER RESTRICTIONS ARE VIOLATED, THEN THE TRANSFER WILL BE VOID *AB INITIO* AND THE PURPORTED TRANSFEREE OF THE STOCK WILL BE REQUIRED TO TRANSFER EXCESS SECURITIES (AS DEFINED IN THE CERTIFICATE OF INCORPORATION) TO THE CORPORATION'S AGENT. IN THE EVENT OF A TRANSFER WHICH DOES NOT INVOLVE SECURITIES OF THE CORPORATION WITHIN THE MEANING OF THE GENERAL CORPORATION LAW OF THE STATE OF DELAWARE (SECURITIES) BUT WHICH WOULD VIOLATE THE TRANSFER RESTRICTIONS, THE PURPORTED TRANSFEREE (OR THE RECORD OWNER) OF THE SECURITIES WILL BE REQUIRED TO TRANSFER SUFFICIENT SECURITIES PURSUANT TO THE TERMS PROVIDED FOR IN THE CORPORATION'S CERTIFICATE OF INCORPORATION TO CAUSE THE 4.95 PERCENT STOCKHOLDER TO NO LONGER BE IN VIOLATION OF THE TRANSFER RESTRICTIONS. THE CORPORATION WILL FURNISH WITHOUT CHARGE TO THE HOLDER OF RECORD OF THIS CERTIFICATE A COPY OF THE CERTIFICATE OF INCORPORATION, CONTAINING THE ABOVE-REFERENCED TRANSFER RESTRICTIONS, UPON WRITTEN REQUEST TO THE CORPORATION AT ITS PRINCIPAL PLACE OF BUSINESS.

The Board of Directors may also require that any certificates issued by the Corporation evidencing ownership of shares of Stock that are subject to conditions imposed by the Board of Directors under Part III of this Article EIGHT also bear a conspicuous legend referencing the applicable restrictions.

## **PART XII AUTHORITY OF BOARD OF DIRECTORS**

(a) The Board of Directors shall have the power to determine all matters necessary for assessing compliance with this Article EIGHT, including, without limitation, (1) the identification of 4.95-percent Stockholders, (2) whether a Transfer is a 4.95-percent Transaction or a Prohibited Transfer, (3) the Percentage Stock Ownership in the Corporation of any 4.95-percent Stockholder, (4) whether an instrument constitutes a Corporation Security, (5) the amount (or fair market value) due to a Purported Transferee pursuant to Part VI of this Article EIGHT, and (6) any other matters which the Board of Directors determines to be relevant; and the good faith determination of the Board of Directors on such matters shall be conclusive and binding for all the purposes of this Article EIGHT. In addition, the Board of Directors may, to the extent permitted by law, from time to time establish, modify, amend or rescind by-laws, regulations and procedures of the Corporation not inconsistent with the provisions of this Article EIGHT for purposes of determining whether any Transfer of Corporation Securities would jeopardize or endanger the Corporation's ability to preserve and use the Tax Benefits and for the orderly application, administration and implementation of this Article EIGHT.

(b) Nothing contained in this Article EIGHT shall limit the authority of the Board of Directors to take such other action to the extent permitted by law as it deems necessary or advisable to protect the Corporation and its stockholders in preserving the Tax Benefits. Without limiting the generality of the foregoing, in the event of a change in law making one or more of the following actions necessary or desirable, the Board of Directors may, by adopting a written resolution, (1) accelerate the Expiration Date, (2) modify the ownership interest percentage in the Corporation or the Persons or groups covered by this Article EIGHT, (3) modify the definitions of any terms set forth in this Article EIGHT or (4) modify the terms of this Article EIGHT as appropriate, in each case, in order to prevent an ownership change for purposes of Section 382 of the Code as a result of any changes in applicable Treasury Regulations or otherwise; provided, however, that the Board of Directors shall not cause there to be such acceleration or modification unless it determines, by adopting a written resolution, that such action is reasonably necessary or advisable to preserve the Tax Benefits or that the continuation of these restrictions is no longer reasonably necessary for the preservation of the Tax Benefits. Stockholders of the Corporation shall be notified of such determination through a filing with the Securities and Exchange Commission or such other method of notice as the Secretary of the Corporation shall deem appropriate.

(c) In the case of an ambiguity in the application of any of the provisions of this Article EIGHT, including any definition used herein, the Board of Directors shall have the power to determine the application of such provisions with respect to any situation based on its reasonable belief, understanding or knowledge of the circumstances. In the event this Article EIGHT requires an action by the Board of Directors but fails to provide specific guidance with respect to such action, the Board of Directors shall have the power to determine the action to be taken so long as such action is not contrary to the provisions of this Article EIGHT. All such actions, calculations, interpretations and determinations which are done or made by the Board of Directors in good faith shall be conclusive and binding on the Corporation, the Agent, and all other parties for all other purposes of this Article EIGHT. The Board of Directors may delegate all or any portion of its duties and powers under this Article EIGHT to a committee of the Board of Directors as it deems necessary or advisable and, to the fullest extent permitted by law, may exercise the authority granted by this Article EIGHT through duly authorized officers or agents of the Corporation. Nothing in this Article EIGHT shall be construed to limit or restrict the Board of Directors in the exercise of its fiduciary duties under applicable law.

## **PART XIII RELIANCE**

To the fullest extent permitted by law, the Corporation and the members of the Board of Directors shall be fully protected in relying in good faith upon the information, opinions, reports or statements of the chief executive officer, the chief financial officer, the chief accounting officer or the corporate controller of the

Corporation and the Corporation's legal counsel, independent auditors, transfer agent, investment bankers or other employees and agents in making the determinations and findings contemplated by this Article EIGHT. The members of the Board of Directors shall not be responsible for any good faith errors made in connection therewith. For purposes of determining the existence and identity of, and the amount of any Corporation Securities owned by any stockholder, the Corporation is entitled to rely on the existence and absence of filings of Schedule 13D or 13G under the Securities and Exchange Act of 1934, as amended (or similar filings), as of any date, subject to its actual knowledge of the ownership of Corporation Securities.

#### **PART XIV BENEFITS OF THIS ARTICLE EIGHT**

Nothing in this Article EIGHT shall be construed to give to any Person other than the Corporation or the Agent any legal or equitable right, remedy or claim under this Article EIGHT. This Article EIGHT shall be for the sole and exclusive benefit of the Corporation and the Agent.

#### **PART XV SEVERABILITY**

The purpose of this Article EIGHT is to facilitate the Corporation's ability to maintain or preserve its Tax Benefits. If any provision of this Article EIGHT or the application of any such provision to any Person or under any circumstance shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this Article EIGHT.

#### **PART XVI WAIVER**

With regard to any power, remedy or right provided herein or otherwise available to the Corporation or the Agent under this Article EIGHT, (a) no waiver will be effective unless expressly contained in a writing signed by the waiving party; and (b) no alteration, modification or impairment will be implied by reason of any previous waiver, extension of time, delay or omission in exercise, or other indulgence.

**BEAZER HOMES USA, INC.**

and

**AMERICAN STOCK TRANSFER & TRUST COMPANY, LLC**

as

*Rights Agent*

Section 382 Rights Agreement, as amended

(restated and conformed solely for purposes of presentation in this Proxy Statement

to give effect to a first amendment dated December \_\_, 2010)

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**SECTION 382 RIGHTS AGREEMENT**

(restated and conformed solely for purposes of presentation in this Proxy Statement to give effect to a first amendment dated December \_\_, 2010)

SECTION 382 RIGHTS AGREEMENT, dated as of November 12, 2010 (the Agreement ), between Beazer Homes USA, Inc., a Delaware corporation (the Company ), and American Stock Transfer & Trust Company, LLC, a New York limited liability trust company (the Rights Agent ).

**WITNESSETH:**

WHEREAS, the Company has generated NOLs (as defined in Section 1 hereof) for United States federal income tax purposes; and such NOLs may potentially provide valuable tax benefits to the Company; the Company desires to avoid an ownership change within the meaning of Section 382 of the Internal Revenue Code of 1986, as amended (the Code ) and the Treasury Regulations promulgated thereunder, and thereby preserve the ability to utilize fully such NOLs and certain other tax benefits; and, in furtherance of such objective, the Company desires to enter into this Agreement; and

WHEREAS, on November 12, 2010 (the Rights Dividend Declaration Date ), the Board of Directors of the Company authorized and declared a dividend distribution of one preferred share purchase right (a Right ) for each share of common stock, par value \$0.001 per share, of the Company (the Common Stock ) outstanding at the close of business on November 22, 2010 (the Record Date ), and has authorized the issuance of one Right (as such number may hereinafter be adjusted pursuant to the provisions of Section 11(p) hereof) for each share of Common Stock issued between the Record Date (whether originally issued or delivered from the Company's treasury) and the earlier of the close of business on the Distribution Date (as defined in Section 3 hereof) and the Expiration Date (as defined in Section 7(a) hereof), each Right initially representing the right to purchase one one-thousandth of a share (a Unit ) of Series A Junior Participating Preferred Stock (the Preferred Stock ) of the Company having the rights, powers and preferences set forth in the form of Designations, Preferences and Rights attached hereto as Exhibit A, upon the terms and subject to the conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein set forth, the parties hereby agree as follows:

**Section 1. Certain Definitions.** For purposes of this Agreement, the following terms have the meanings indicated:

(a) Acquiring Person shall mean any Person who or which, together with all Affiliates and Associates of such Person, shall be the Beneficial Owner of 4.95% or more of the shares of Common Stock then outstanding, but shall not include (i) the Company, (ii) any Subsidiary of the Company, (iii) any employee benefit plan of the Company, or of any Subsidiary of the Company, or any Person or entity organized, appointed or established by the Company for or pursuant to the terms of any such plan, (iv) any Exempted Person or (v) any Person that beneficially owns at least a majority of the Common Stock following consummation of a Qualified Offer. Notwithstanding the foregoing, no Person shall become an Acquiring Person solely as a result of an Exempted Transaction.

(b) Affiliate and Associate shall mean, with respect to any Person, any other Person whose Common Stock would be deemed constructively owned by such first Person for purposes of Section 382 of the Code, would be deemed owned by a single entity as defined in Treasury Regulation § 1.382-3(a)(1) in which both such Persons are included, or otherwise would be deemed aggregated with Common Stock owned by such first Person pursuant to the provisions of Section 382 of the Code and the Treasury Regulations thereunder; provided, however, that a Person shall not be deemed to be the Affiliate or Associate of another Person solely because either or both Persons are or were directors of the Company.

(c) A Person shall be deemed a Beneficial Owner of, shall be deemed to have Beneficial Ownership and shall be deemed to beneficially own any securities which such Person directly owns, or would be deemed to constructively own, pursuant to Section 382 of the Code and the Treasury Regulations promulgated thereunder.

- (d) Business Day shall mean any day other than a Saturday, Sunday or a day on which banking institutions in the State of New York are authorized or obligated by law or executive order to close.
- (e) close of business on any given date shall mean 5:00 P.M., New York City time, on such date; provided, however, that if such date is not a Business Day it shall mean 5:00 P.M., New York City time, on the next succeeding Business Day.
- (f) Code shall have the meaning set forth in the recitals to this Agreement.
- (g) Common Stock shall have the meaning set forth in the recitals to this Agreement, except that Common Stock when used with reference to any Person other than the Company shall mean the capital stock of such Person with the greatest voting power, or the equity securities or other equity interest having power to control or direct the management, of such Person (or, if such Person is a Subsidiary of another Person, the Person or Persons that ultimately control such first mentioned Person).
- (h) Common Stock Equivalents shall have the meaning set forth in Section 11(a)(iii) hereof.
- (i) Current Market Price shall have the meaning set forth in Sections 11(d)(i) and 11(d)(ii) hereof.
- (j) Current Value shall have the meaning set forth in Section 11(a)(iii) hereof.
- (k) Distribution Date shall have the meaning set forth in Section 3(a) hereof.
- (l) Equivalent Preferred Stock shall have the meaning set forth in Section 11(b) hereof.
- (m) Exempted Person shall mean any Person who, together with all Affiliates and Associates of such Person,
- (i) is the Beneficial Owner of securities (as disclosed in public filings with the Securities and Exchange Commission on the Rights Dividend Declaration Date), representing 4.95% or more of the shares of Common Stock outstanding on the Rights Dividend Declaration Date, provided, however, that any such Person described in this clause (i) shall no longer be deemed to be an Exempted Person and shall be deemed an Acquiring Person if such Person, together with all Affiliates and Associates of such Person, becomes the Beneficial Owner of securities representing a percentage of Common Stock that exceeds by one-half of one percent (0.5%) or more the lowest percentage of Beneficial Ownership of Common Stock that such Person had at any time since the Rights Dividend Declaration Date, except solely (x) pursuant to equity compensation awards granted to such Person by the Company or as a result of an adjustment to the number of shares of Common Stock represented by such equity compensation award pursuant to the terms thereof or (y) as a result of a redemption of shares of Common Stock by the Company; or
- (ii) becomes the Beneficial Owner of securities representing 4.95% or more of the shares of Common Stock then outstanding because of a reduction in the number of outstanding shares of Common Stock then outstanding as a result of the purchase by the Company or a Subsidiary of the Company of shares of Common Stock, provided, however, that any such Person described in this clause (ii) shall no longer be deemed to be an Exempted Person and shall be deemed an Acquiring Person if such Person, together with all Affiliates and Associates of such Person, becomes the Beneficial Owner, at any time after the date such Person became the Beneficial Owner of 4.95% or more of the then outstanding shares of Common Stock, of securities representing a percentage of Common Stock that exceeds by one-half of one percent (0.5%) or more the lowest percentage of Beneficial Ownership of Common Stock that such Person had at any time since the date such Person first became the Beneficial Owner of 4.95% or more of the then outstanding shares of Common Stock, except solely (x) pursuant to equity compensation awards granted to such Person by the Company or as a result of an adjustment to the number of shares of Common Stock represented by such equity compensation award pursuant to the terms thereof or (y) as a result of a redemption of shares of Common Stock by the Company; or
- (iii) who is a Beneficial Owner of 4.95% or more of the shares of Common Stock outstanding and whose beneficial ownership, as determined by the Board of Directors in its sole discretion, (x) would

not jeopardize or endanger the availability to the Company of its NOLs or other Tax Benefits or (y) is otherwise in the best interests of the Company, provided, however, that if a Person is an Exempted Person solely by reason of this clause (iii), then such Person shall cease to be an Exempted Person if (A) such Person ceases to beneficially own 4.95% or more of the shares of the then outstanding Common Stock, (B) after the date of such determination by the Board of Directors, such Person, together with all Affiliates and Associates of such Person, becomes the Beneficial Owner of securities representing a percentage of Common Stock that exceeds by one-half of one percent (0.5%) or more the lowest percentage of Beneficial Ownership of Common Stock that such Person had at any time since the date such Person first became the Beneficial Owner of 4.95% or more of the then outstanding shares of Common Stock, except solely (I) pursuant to equity compensation awards granted to such Person by the Company or as a result of an adjustment to the number of shares of Common Stock represented by such equity compensation award pursuant to the terms thereof or (II) as a result of a redemption of shares of Common Stock by the Company, or (C) the Board of Directors of the Company, in its sole discretion, makes a contrary determination with respect to the effect of such Person's beneficial ownership (together with all Affiliates and Associates of such Person) with respect to the availability to the Company of its NOLs or other Tax Benefits.

A purchaser, assignee or transferee of the shares of Common Stock (or warrants or options exercisable for Common Stock) from an Exempted Person shall not thereby become an Exempted Person, except that a transferee from the estate of an Exempted Person who receives Common Stock as a bequest or inheritance from an Exempted Person shall be an Exempted Person so long as such Person continues to be the Beneficial Owner of 4.95% or more of the then outstanding shares of Common Stock.

(n) Exempted Transaction shall mean any transaction that the Board of Directors determines, in its sole discretion, is exempt from this Agreement, which determination shall be made in the sole and absolute discretion of the Board of Directors prior to the date of such transaction, including, without limitation, if the Board of Directors determines that (i) neither the Beneficial Ownership of shares of Common Stock by any Person, directly or indirectly, as a result of such transaction nor any other aspect of such transaction would jeopardize or endanger the availability to the Company of the Tax Benefits or (ii) such transaction is otherwise in the best interests of the Company. In granting an exemption under this definition, the Board of Directors may require any Person who would otherwise be an Acquiring Person to make certain representations or undertakings or to agree that any violation or attempted violation of such representations or undertakings will result in such consequences and subject to such conditions as the Board of Directors may determine in its sole discretion, including that any such violation shall result in such Person becoming an Acquiring Person.

(o) Expiration Date shall have the meaning set forth in Section 7(a) hereof.

(p) Final Expiration Date shall have the meaning set forth in Section 7(a) hereof.

(q) NOLs shall mean the Company's net operating loss carryforwards.

(r) Person shall mean any individual, firm, corporation, limited liability company, partnership or other entity, or a group of Persons making a coordinated acquisition of shares or otherwise treated as an entity within the meaning of Section 1.382-3(a)(1) of the Treasury Regulations, and shall include any successor (by merger or otherwise) of such individual or entity, but shall not include a Public Group (as such term is defined in Section 1.382-2T(f)(13) of the Treasury Regulations).

(s) Preferred Stock shall mean shares of Series A Junior Participating Preferred Stock, par value \$0.01 per share, of the Company, and, to the extent that there are not a sufficient number of shares of Series A Junior Participating Preferred Stock authorized to permit the full exercise of the Rights, any other series of Preferred Stock, par value \$0.01 per share, of the Company designated for such purpose containing terms substantially similar to the terms of the Series A Junior Participating Preferred Stock.

(t) Principal Party shall have the meaning set forth in Section 13(b) hereof.

(u) Purchase Price shall have the meaning set forth in Section 4(a) hereof.

(v) Qualified Offer shall mean an offer, determined by a majority of the members of the Board of Directors of the Company that are independent of the relevant offeror, to have each of the following characteristics with respect to the Common Stock: (i) a tender or exchange offer for all of the outstanding shares of Common Stock at the same per-share consideration; (ii) an offer that has commenced within the meaning of Rule 14d-2(a) under the Exchange Act; (iii) an offer that is conditioned on a minimum of at least a majority of the outstanding shares of the Common Stock being tendered and not withdrawn as of the offer's expiration date, which condition shall not be waivable; (iv) an offer pursuant to which the offeror has announced that it intends, as promptly as practicable upon successful completion of the offer, to consummate a second step transaction whereby all shares of the Common Stock not tendered into the offer will be acquired using the same form and amount of consideration per share actually paid pursuant to the offer, subject to stockholders' statutory appraisal rights, if any; (v) an offer pursuant to which the Company and its stockholders have received an irrevocable written commitment of the offeror that the offer will remain open for not less than 60 days; and (vi) an offer at a per-share consideration, and on such other terms and conditions, that in each case are adequate and fair. An offer shall constitute a Qualified Offer if and only for so long as each of the foregoing requirements in clauses (i) through (vi) remain satisfied, and if any such requirement shall at any time thereafter fail to be satisfied such offer shall no longer constitute a Qualified Offer.

(w) Record Date shall have the meaning set forth in the recitals of this Agreement.

(x) Right shall have the meaning set forth in the recitals of this Agreement.

(y) Rights Agent shall have the meaning set forth in the recitals of this Agreement.

(z) Rights Certificate shall have the meaning set forth in Section 3(a) hereof.

(aa) Rights Dividend Declaration Date shall have the meaning set forth in the recitals of this Agreement.

(bb) Section 11(a)(ii) Event shall mean any event described in Section 11(a)(ii) hereof.

(cc) Section 13 Event shall mean any event described in clause (x), (y) or (z) of Section 13(a) hereof.

(dd) Stock Acquisition Date shall mean the first date of public announcement (which, for purposes of this definition, shall include, without limitation, a report filed pursuant to Section 13(d) under the Exchange Act) by the Company or an Acquiring Person that an Acquiring Person has become such.

(ee) Subsidiary shall mean, with reference to any Person, any Person of which a majority of the voting power of voting equity securities or equity interests is beneficially owned, directly or indirectly, by such Person or otherwise controlled by such Person.

(ff) Substitution Period shall have the meaning set forth in Section 11(a)(iii) hereof.

(gg) Summary of Rights shall have the meaning set forth in Section 3(b) hereof.

(hh) Trading Day shall have the meaning set forth in Section 11(d)(i) hereof.

(ii) Tax Benefits shall mean the net operating loss carryovers, capital loss carryovers, general business credit carryovers, alternative minimum tax credit carryovers, foreign tax credit carryovers, any loss or deduction attributable to a net unrealized built-in loss within the meaning of Section 382 of the Code, and the Treasury Regulations promulgated thereunder, of the Company or any of its Subsidiaries.

(jj) Treasury Regulations shall mean final, temporary and proposed income tax regulations promulgated under the Code, as amended.

(kk) Triggering Event shall mean any Section 11(a)(ii) Event or any Section 13 Event.

**Section 2. Appointment of Rights Agent.** The Company hereby appoints the Rights Agent to act as agent for the Company and the holders of the Rights (who, in accordance with Section 3 hereof, shall prior to the Distribution Date also be the holders of the Common Stock) in accordance with the terms and conditions hereof, and the Rights Agent hereby accepts such appointment. The Company may from time to time appoint such co-rights agents as it may deem necessary or desirable.

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**Section 3. Issue of Rights Certificates.**

(a) Until the earlier of (i) the close of business on the tenth day after the Stock Acquisition Date (or, if the tenth day after the Stock Acquisition Date occurs before the Record Date, the close of business on the Record Date), or (ii) the close of business on the tenth Business Day (or such later date as the Board of Directors of the Company shall determine prior to such time as any Person becomes an Acquiring Person) after the date that a tender or exchange offer by any Person (other than any Exempted Person, the Company, any Subsidiary of the Company, any employee benefit plan of the Company or of any Subsidiary of the Company, or any Person or entity organized, appointed or established by the Company for or pursuant to the terms of any such plan) is first published or sent or given within the meaning of Rule 14d-2(a) of the General Rules and Regulations under the Exchange Act, if upon consummation thereof, such Person would become an Acquiring Person (the earlier of (i) and (ii) being herein referred to as the Distribution Date ), (x) the Rights will be evidenced (subject to the provisions of paragraph (b) of this Section 3) by the certificates for the Common Stock registered in the names of the holders of the Common Stock (which certificates for Common Stock shall be deemed also to be certificates for Rights) and not by separate certificates, and (y) the Rights will be transferable only in connection with the transfer of the underlying shares of Common Stock (including a transfer to the Company). As soon as practicable after the Distribution Date, the Company will prepare and execute, the Rights Agent will countersign and the Rights Agent will send by first-class, insured, postage prepaid mail, to each record holder of the Common Stock as of the close of business on the Distribution Date, at the address of such holder shown on the records of the Company, one or more rights certificates, in substantially the form of Exhibit B hereto (the Rights Certificates ), evidencing one Right for each share of Common Stock so held, subject to adjustment as provided herein. In the event that an adjustment in the number of Rights per share of Common Stock has been made pursuant to Section 11(p) hereof, at the time of distribution of the Rights Certificates, the Company shall make the necessary and appropriate rounding adjustments (in accordance with Section 14(a) hereof) so that Rights Certificates representing only whole numbers of Rights are distributed and cash is paid in lieu of any fractional Rights. As of and after the Distribution Date, the Rights will be evidenced solely by such Rights Certificates.

(b) As promptly as practicable following the Record Date, the Company shall send a copy of a Summary of Rights, in substantially the form attached hereto as Exhibit C (the Summary of Rights ), by first-class, postage prepaid mail, to each record holder of the Common Stock as of the close of business on the Record Date, at the address of such holder shown on the records of the Company. With respect to certificates for the Common Stock outstanding as of the Record Date, or issued subsequent to the Record Date, unless and until the Distribution Date shall occur, the Rights will be evidenced by such certificates for the Common Stock and the registered holders of the Common Stock shall also be the registered holders of the associated Rights. Until the earliest of the Distribution Date, the Expiration Date (as such term is defined in Section 7 hereof) or the redemption of the Rights pursuant to Section 23 hereof, the transfer of any certificates representing shares of Common Stock in respect of which Rights have been issued shall also constitute the transfer of the Rights associated with such shares of Common Stock.

(c) Rights shall be issued in respect of all shares of Common Stock which are issued (whether originally issued or from the Company's treasury) after the Record Date but prior to the earliest of the Distribution Date, the Expiration Date or the redemption of the Rights pursuant to Section 23 hereof. Certificates representing such shares of Common Stock shall also be deemed to be certificates for Rights, and shall bear a legend substantially in the following form: This certificate also evidences and entitles the holder hereof to certain Rights as set forth in the Section 382 Rights Agreement between Beazer Homes USA, Inc. (the Company ) and American Stock Transfer & Trust Company, LLC (the Rights Agent ), dated as of November 12, 2010, as amended (the Rights Agreement ), the terms of which are hereby incorporated herein by reference and a copy of which is on file at the principal offices of the Rights Agent. Under certain circumstances, as set forth in the Rights Agreement, such Rights will be evidenced by separate certificates and will no longer be evidenced by this certificate. The Rights Agent will mail to the holder of this certificate a copy of the Rights Agreement, as in effect on the date of mailing, without charge promptly after receipt of a written request therefor. Under certain circumstances set forth in the Rights Agreement, Rights issued to, or held by, any Person who is,

was or becomes an Acquiring Person or any Affiliate or Associate thereof (as such terms are defined in the Rights Agreement), whether currently held by or on behalf of such Person or by any subsequent holder, may become null and void. With respect to such certificates containing the foregoing legend, until the earlier of the (i) Distribution Date or (ii) the Expiration Date, the Rights associated with the Common Stock represented by such certificates shall be evidenced by such certificates alone and registered holders of Common Stock shall also be the registered holders of the associated Rights, and the transfer of any of such certificates shall also constitute the transfer of the Rights associated with the Common Stock represented by such certificates.

#### **Section 4. Form of Rights Certificates.**

(a) The Rights Certificates (and the forms of election to purchase and of assignment to be printed on the reverse thereof) shall each be substantially in the form set forth in Exhibit B hereto and may have such marks of identification or designation and such legends, summaries or endorsements printed thereon as the Company may deem appropriate and as are not inconsistent with the provisions of this Agreement, or as may be required to comply with any applicable law or with any rule or regulation made pursuant thereto or with any rule or regulation of any stock exchange on which the Rights may from time to time be listed, or to conform to usage. Subject to the provisions of Section 11 and Section 22 hereof, the Rights Certificates, whenever distributed, shall be dated as of the Record Date or, in the case of Rights with respect to Common Stock issued or becoming outstanding after the Record Date, the same date as the date of the share certificate evidencing such shares, and on their face shall entitle the holders thereof to purchase such number of one one-thousandths of a share of Preferred Stock as shall be set forth therein at the price set forth therein (such exercise price per one one-thousandth of a share, the Purchase Price ), but the amount and type of securities purchasable upon the exercise of each Right and the Purchase Price thereof shall be subject to adjustment as provided herein.

(b) Any Rights Certificate issued pursuant to Section 3(a), Section 11(i) or Section 22 hereof that represents Rights beneficially owned by any Person known to be: (i) an Acquiring Person or any Associate or Affiliate of an Acquiring Person, (ii) a transferee of an Acquiring Person (or of any such Associate or Affiliate) who becomes a transferee after the Acquiring Person becomes such, (iii) a transferee of an Acquiring Person (or of any such Associate or Affiliate) who becomes a transferee prior to or concurrently with the Acquiring Person becoming such and receives such Rights pursuant to either (A) a transfer (whether or not for consideration) from the Acquiring Person to holders of equity interests in such Acquiring Person or to any Person with whom such Acquiring Person has any continuing plan, agreement, arrangement or understanding regarding the transferred Rights or (B) a transfer which the Board of Directors of the Company has determined is part of a plan, agreement, arrangement or understanding which has as a primary purpose or effect avoidance of Section 7(e) hereof, or (iv) subsequent transferees of such Persons described in clause (i), (ii) or (iii) of this sentence, and any Rights Certificate issued pursuant to Section 6 or Section 11 hereof upon transfer, exchange, replacement or adjustment of any other Rights Certificate referred to in this sentence, shall contain (to the extent feasible) a legend substantially in the following form: The Rights represented by this Rights Certificate are or were beneficially owned by a Person who was or became an Acquiring Person or an Affiliate or Associate of an Acquiring Person (as such terms are defined in the Rights Agreement). Accordingly, this Rights Certificate and the Rights represented hereby may become null and void in the circumstances specified in Section 7(e) of such Agreement. The absence of the foregoing legend on any Rights Certificate shall in no way affect any of the other provisions of this Agreement, including, without limitation, the provisions of Section 7(e).

#### **Section 5. Countersignature and Registration.**

(a) The Rights Certificates shall be executed on behalf of the Company by its Chairman of the Board, its Vice Chairman, its Chief Executive Officer, its President or any Vice President, either manually or by facsimile signature, and shall have affixed thereto the Company's seal or a facsimile thereof which shall be attested by the Secretary or an Assistant Secretary of the Company, either manually or by facsimile signature. The Rights Certificates shall be countersigned by the Rights Agent, either manually or by facsimile signature, and shall not be valid for any purpose unless so countersigned. In case any officer of the Company who shall

have signed any of the Rights Certificates shall cease to be such officer of the Company before countersignature by the Rights Agent and issuance and delivery by the Company, such Rights Certificates, nevertheless, may be countersigned by the Rights Agent and issued and delivered by the Company with the same force and effect as though the person who signed such Rights Certificates had not ceased to be such officer of the Company; and any Rights Certificates may be signed on behalf of the Company by any person who, at the actual date of the execution of such Rights Certificate, shall be a proper officer of the Company to sign such Rights Certificate, although at the date of the execution of this Rights Agreement any such person was not such an officer.

(b) Following the Distribution Date, the Rights Agent shall keep, or cause to be kept, at its principal office or offices designated as the appropriate place for surrender of Rights Certificates upon exercise or transfer, books for registration and transfer of the Rights Certificates issued hereunder. Such books shall show the names and addresses of the respective holders of the Rights Certificates, the number of Rights evidenced on its face by each of the Rights Certificates and the date of each of the Rights Certificates.

**Section 6. Transfer, Split Up, Combination and Exchange of Rights Certificates; Mutilated, Destroyed, Lost or Stolen Rights Certificates.**

(a) Subject to the provisions of Section 4(b), Section 7(e), Section 14 and Section 27 hereof, at any time after the close of business on the Distribution Date, and at or prior to the close of business on the Expiration Date or the redemption of the rights pursuant to Section 23 hereof, any Rights Certificate or Certificates may be transferred, split up, combined or exchanged for another Rights Certificate or Certificates, entitling the registered holder to purchase a like number of one one-thousandths of a share of Preferred Stock (or, following a Triggering Event, Common Stock, other securities, cash or other assets, as the case may be) as the Rights Certificate or Certificates surrendered then entitles such holder (or former holder in the case of a transfer) to purchase. Any registered holder desiring to transfer, split up, combine or exchange any Rights Certificate or Certificates shall make such request in writing delivered to the Rights Agent, and shall surrender the Rights Certificate or Certificates to be transferred, split up, combined or exchanged at the principal office or offices of the Rights Agent designated for such purpose. Neither the Rights Agent nor the Company shall be obligated to take any action whatsoever with respect to the transfer of any such surrendered Rights Certificate until the registered holder shall have completed and signed the certificate contained in the form of assignment on the reverse side of such Rights Certificate and shall have provided such additional evidence of the identity of the Beneficial Owner (or former Beneficial Owner) or Affiliates or Associates thereof as the Company shall reasonably request. Thereupon the Rights Agent shall, subject to Section 4(b), Section 7(e), Section 14 and Section 27 hereof, countersign and deliver to the Person entitled thereto a Rights Certificate or Rights Certificates, as the case may be, as so requested. The Company may require payment of a sum sufficient to cover any tax or governmental charge that may be imposed in connection with any transfer, split up, combination or exchange of Rights Certificates. The Rights Agent shall promptly forward any such sum collected by it to the Company or to such Persons as the Company shall specify by written notice.

(b) Upon receipt by the Company and the Rights Agent of evidence reasonably satisfactory to them of the loss, theft, destruction or mutilation of a Rights Certificate, and, in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to them, and, at the Company's request, reimbursement to the Company and the Rights Agent of all reasonable expenses incidental thereto, and upon surrender to the Rights Agent and cancellation of the Rights Certificate if mutilated, the Company will execute and deliver a new Rights Certificate of like tenor to the Rights Agent for countersignature and delivery to the registered owner in lieu of the Rights Certificate so lost, stolen, destroyed or mutilated.

**Section 7. Exercise of Rights; Purchase Price; Expiration Date of Rights.**

(a) Subject to Section 7(e) and Section 27 hereof, the registered holder of any Rights Certificate may exercise the Rights evidenced thereby (except as otherwise provided herein including, without limitation, the restrictions on exercisability set forth in Section 9(c), Section 11(a)(iii) and Section 23(a) hereof) in whole or in

part at any time after the Distribution Date upon surrender of the Rights Certificate, with the form of election to purchase and the certificate on the reverse side thereof duly executed, to the Rights Agent at the principal office or offices of the Rights Agent designated for such purpose, together with payment of the aggregate Purchase Price with respect to the total number of one one-thousandth of a share of Preferred Stock (or other securities, cash or other assets, as the case may be) as to which such surrendered Rights are then exercisable, at or prior to the earliest of (i) the close of business on November 12, 2013 (the Final Expiration Date ), (ii) the time at which the Rights are redeemed as provided in Section 23 hereof, (iii) the time at which all of the Rights (other than Rights that have become void pursuant to the provisions of Section 7(e) hereof) are exchanged for Common Stock or other assets or securities as provided in Section 27 hereof, (iv) the close of business on the effective date of the repeal of Section 382 or any successor statute if the Board of Directors of the Company determines that this Agreement is no longer necessary or desirable for the preservation of Tax Benefits, (v) the close of business on the first day of a taxable year of the Company to which the Board of Directors of the Company determines that no Tax Benefits may be carried forward, or (vi) the earlier of (A) the date on which shareholders vote on and do not approve of this Agreement (if any) or (B) the first anniversary of adoption of the Agreement if shareholder approval of the Agreement has not been received by or on such date (the earliest of (i) and (ii) and (iii) and (iv) and (v) and (vi) being herein referred to as the Expiration Date ).

(b) The Purchase Price for each one one-thousandth of a share of Preferred Stock pursuant to the exercise of a Right shall initially be \$50.00, and shall be subject to adjustment from time to time as provided in Sections 11 and 13(a) hereof and shall be payable in accordance with paragraph (c) below.

(c) Upon receipt of a Rights Certificate representing exercisable Rights, with the form of election to purchase and the certificate duly executed, accompanied by payment, with respect to each Right so exercised, of the Purchase Price per one one-thousandth of a share of Preferred Stock (or other shares, securities, cash or other assets, as the case may be) to be purchased as set forth below and an amount equal to any applicable transfer tax, the Rights Agent shall, subject to Section 20(k) hereof, thereupon promptly (i) (A) requisition from any transfer agent of the shares of Preferred Stock (or make available, if the Rights Agent is the transfer agent for such shares) certificates for the total number of one one-thousandths of a share of Preferred Stock to be purchased and the Company hereby irrevocably authorizes its transfer agent to comply with all such requests, or (B) if the Company shall have elected to deposit the total number of shares of Preferred Stock issuable upon exercise of the Rights hereunder with a depository agent, requisition from the depository agent depository receipts representing such number of one one-thousandths of a share of Preferred Stock as are to be purchased (in which case certificates for the shares of Preferred Stock represented by such receipts shall be deposited by the transfer agent with the depository agent) and the Company shall direct the depository agent to comply with such request, (ii) requisition from the Company the amount of cash, if any, to be paid in lieu of fractional shares in accordance with Section 14 hereof, (iii) after receipt of such certificates or depository receipts, cause the same to be delivered to, or upon the order of the registered holder of such Rights Certificate, registered in such name or names as may be designated by such holder, and (iv) after receipt thereof, deliver such cash described in clause (ii) hereof, if any, to or upon the order of the registered holder of such Rights Certificate. The payment of the Purchase Price (as such amount may be reduced pursuant to Section 11(a)(iii) hereof) shall be made in cash or by certified bank check or bank draft payable to the order of the Company. In the event that the Company is obligated to issue other securities (including Common Stock) of the Company, pay cash and/or distribute other property pursuant to Section 11(a) hereof, the Company will make all arrangements necessary so that such other securities, cash and/or other property are available for distribution by the Rights Agent, if and when appropriate. The Company reserves the right to require prior to the occurrence of a Triggering Event that, upon any exercise of Rights, a number of Rights be exercised so that only whole shares of Preferred Stock would be issued.

(d) In case the registered holder of any Rights Certificate shall exercise less than all the Rights evidenced thereby, a new Rights Certificate evidencing Rights equivalent to the Rights remaining unexercised shall be issued by the Rights Agent and delivered to, or upon the order of, the registered holder of such Rights Certificate, registered in such name or names as may be designated by such holder, subject to the provisions of Section 14 hereof.

(e) Notwithstanding anything in this Agreement to the contrary, from and after the first occurrence of a Section 11(a)(ii) Event, any Rights beneficially owned by any Person known to be (i) an Acquiring Person or an Associate or Affiliate of an Acquiring Person, (ii) a transferee of an Acquiring Person (or of any such Associate or Affiliate) who becomes a transferee after the Acquiring Person becomes such, (iii) a transferee of an Acquiring Person (or of any such Associate or Affiliate) who becomes a transferee prior to or concurrently with the Acquiring Person becoming such and receives such Rights pursuant to either (A) a transfer (whether or not for consideration) from the Acquiring Person to holders of equity interests in such Acquiring Person or to any Person with whom the Acquiring Person has any continuing plan, agreement, arrangement or understanding regarding the transferred Rights or (B) a transfer which the Board of Directors of the Company has determined is part of a plan, agreement, arrangement or understanding which has as a primary purpose or effect the avoidance of this Section 7(e), or (iv) subsequent transferees of such Persons described in clause (i), (ii) or (iii) of this sentence, shall become null and void without any further action and no holder of such Rights shall have any rights whatsoever with respect to such Rights, whether under any provision of this Agreement or otherwise. The Company shall use all reasonable efforts to insure that the provisions of this Section 7(e) and Section 4(b) hereof are complied with, but shall have no liability to any holder of Rights Certificates or other Person as a result of its failure to make any determinations with respect to an Acquiring Person or any of its Affiliates, Associates or transferees hereunder.

(f) Notwithstanding anything in this Agreement to the contrary, neither the Rights Agent nor the Company shall be obligated to undertake any action with respect to a registered holder upon the occurrence of any purported exercise as set forth in this Section 7 unless such registered holder shall have (i) properly completed and signed the certificate contained in the form of election to purchase set forth on the reverse side of the Rights Certificate surrendered for such exercise, and (ii) provided such additional evidence of the identity of the Beneficial Owner (or former Beneficial Owner) or Affiliates or Associates thereof as the Company shall reasonably request.

**Section 8. Cancellation and Destruction of Rights Certificates.** All Rights Certificates surrendered for the purpose of exercise, transfer, split up, combination or exchange shall, if surrendered to the Company or any of its agents, be delivered to the Rights Agent for cancellation or in canceled form, or, if surrendered to the Rights Agent, shall be canceled by it, and no Rights Certificates shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Agreement. The Company shall deliver to the Rights Agent for cancellation and retirement, and the Rights Agent shall so cancel and retire, any other Rights Certificate purchased or acquired by the Company otherwise than upon the exercise thereof. The Rights Agent shall deliver all canceled Rights Certificates to the Company, or shall, at the written request of the Company, destroy such canceled Rights Certificates, and in such case shall deliver a certificate of destruction thereof to the Company.

**Section 9. Reservation and Availability of Capital Stock.**

(a) The Company covenants and agrees that it will cause to be reserved and kept available out of its authorized and unissued shares of Preferred Stock (and, following the occurrence of a Triggering Event, out of its authorized and unissued shares of Common Stock and/or other securities or out of its authorized and issued shares held in its treasury), the number of shares of Preferred Stock (and, following the occurrence of a Triggering Event, Common Stock and/or other securities) that, as provided in this Agreement, including Section 11(a)(iii) hereof, will be sufficient to permit the exercise in full of all outstanding Rights.

(b) So long as the shares of Preferred Stock (and, following the occurrence of a Triggering Event, Common Stock and/or other securities) issuable and deliverable upon the exercise of the Rights may be listed on any national securities exchange, the Company shall use its best efforts to cause, from and after such time as the Rights become exercisable, all shares reserved for such issuance to be listed on such exchange upon official notice of issuance upon such exercise.

(c) The Company shall use its best efforts to (i) file, as soon as practicable following the earliest date after the first occurrence of a Section 11(a)(ii) Event on which the consideration to be delivered by the Company

upon exercise of the Rights has been determined in accordance with Section 11(a)(iii) hereof, a registration statement under the Securities Act of 1933 (the "Act") with respect to the securities purchasable upon exercise of the Rights on an appropriate form, (ii) cause such registration statement to become effective as soon as practicable after such filing, and (iii) cause such registration statement to remain effective (with a prospectus at all times meeting the requirements of the Act) until the earlier of (A) the date as of which the Rights are no longer exercisable for such securities, and (B) the date of the expiration of the Rights. The Company will also take such action as may be appropriate under, or to ensure compliance with, the securities or "blue sky" laws of the various states in connection with the exercisability of the Rights. The Company may temporarily suspend, for a period of time not to exceed ninety (90) days after the date set forth in clause (i) of the first sentence of this Section 9(c), the exercisability of the Rights in order to prepare and file such registration statement and permit it to become effective. Upon any such suspension, the Company shall issue a public announcement stating that the exercisability of the Rights has been temporarily suspended, as well as a public announcement at such time as the suspension has been rescinded. In addition, if the Company shall determine that a registration statement is required following the Distribution Date, the Company may temporarily suspend the exercisability of the Rights until such time as a registration statement has been declared effective. Notwithstanding any provision of this Agreement to the contrary, the Rights shall not be exercisable in any jurisdiction if the requisite qualification in such jurisdiction shall not have been obtained, the exercise thereof shall not be permitted under applicable law or a registration statement shall not have been declared effective.

(d) The Company covenants and agrees that it will take all such action as may be necessary to ensure that all one one-thousandths of a share of Preferred Stock (and, following the occurrence of a Triggering Event, Common Stock and/or other securities) delivered upon exercise of Rights shall, at the time of delivery of the certificates for such shares (or Units) (subject to payment of the Purchase Price), be duly and validly authorized and issued and fully paid and nonassessable.

(e) The Company further covenants and agrees that it will pay when due and payable any and all federal and state transfer taxes and charges which may be payable in respect of the issuance or delivery of the Rights Certificates and of any certificates for a number of one one-thousandths of a share of Preferred Stock (or Common Stock and/or other securities, as the case may be) upon the exercise of Rights. The Company shall not, however, be required to pay any transfer tax which may be payable in respect of any transfer or delivery of Rights Certificates to a Person other than, or the issuance or delivery of a number of one one-thousandths of a share of Preferred Stock (or Common Stock and/or other securities, as the case may be) in respect of a name other than that of, the registered holder of the Rights Certificates evidencing Rights surrendered for exercise or to issue or deliver any certificates for a number of one one-thousandths of a share of Preferred Stock (or Common Stock and/or other securities, as the case may be) in a name other than that of the registered holder upon the exercise of any Rights until such tax shall have been paid (any such tax being payable by the holder of such Rights Certificate at the time of surrender) or until it has been established to the Company's satisfaction that no such tax is due.

**Section 10. Preferred Stock Record Date.** Each Person in whose name any certificate for a number of one one-thousandths of a share of Preferred Stock (or Common Stock and/or other securities, as the case may be) is issued upon the exercise of Rights shall for all purposes be deemed to have become the holder of record of such fractional shares of Preferred Stock (or Common Stock and/or other securities, as the case may be) represented thereby on, and such certificate shall be dated, the date upon which the Rights Certificate evidencing such Rights was duly surrendered and payment of the Purchase Price (and all applicable transfer taxes) was made; provided, however, that if the date of such surrender and payment is a date upon which the Preferred Stock (or Common Stock and/or other securities, as the case may be) transfer books of the Company are closed, such Person shall be deemed to have become the record holder of such shares (fractional or otherwise) on, and such certificate shall be dated, the next succeeding Business Day on which the Preferred Stock (or Common Stock and/or other securities, as the case may be) transfer books of the Company are open. Prior to the exercise of the Rights evidenced thereby, the holder of a Rights Certificate shall not be entitled to any rights of a stockholder of the Company with respect to shares for which the Rights shall be exercisable, including, without limitation, the right to vote, to receive dividends or other distributions or to exercise any preemptive rights, and shall not be entitled to receive any notice of any proceedings of the Company, except as provided herein.

**Section 11. Adjustment of Purchase Price, Number and Kind of Shares or Number of Rights.** The Purchase Price, the number and kind of shares covered by each Right and the number of Rights outstanding are subject to adjustment from time to time as provided in this Section 11.

(a)(i) In the event the Company shall at any time after the date of this Agreement (A) declare a dividend on the Preferred Stock payable in shares of Preferred Stock, (B) subdivide the outstanding Preferred Stock, (C) combine the outstanding Preferred Stock into a smaller number of shares, or (D) issue any shares of its capital stock in a reclassification of the Preferred Stock (including any such reclassification in connection with a consolidation or merger in which the Company is the continuing or surviving corporation), except as otherwise provided in this Section 11(a) and Section 7(e) hereof, the Purchase Price in effect at the time of the record date for such dividend or of the effective date of such subdivision, combination or reclassification, and the number and kind of shares of Preferred Stock or capital stock, as the case may be, issuable on such date, shall be proportionately adjusted so that the holder of any Right exercised after such time shall be entitled to receive, upon payment of the Purchase Price then in effect, the aggregate number and kind of shares of Preferred Stock or capital stock, as the case may be, which, if such Right had been exercised immediately prior to such date and at a time when the Preferred Stock transfer books of the Company were open, such holder would have owned upon such exercise and been entitled to receive by virtue of such dividend, subdivision, combination or reclassification; provided, however, that in no event shall the consideration to be paid upon the exercise of one Right be less than the aggregate par value of the shares of Preferred Stock or capital stock, as the case may be, issuable upon exercise of one Right. If an event occurs which would require an adjustment under both this Section 11(a)(i) and Section 11(a)(ii) hereof, the adjustment provided for in this Section 11(a)(i) shall be in addition to, and shall be made prior to, any adjustment required pursuant to Section 11(a)(ii) hereof.

(ii) In the event any Person shall become an Acquiring Person, then, promptly following the occurrence of such event, proper provision shall be made so that each holder of a Right (except as provided below and in Section 7(e) hereof) shall thereafter have the right to receive, upon exercise thereof at the then current Purchase Price in accordance with the terms of this Agreement, in lieu of a number of one one-thousandths of a share of Preferred Stock, such number of shares of Common Stock of the Company as shall equal the result obtained by (x) multiplying the then current Purchase Price by the then number of one one-thousandths of a share of Preferred Stock for which a Right was exercisable immediately prior to the first occurrence of a Section 11(a)(ii) Event, and (y) dividing that product (which, following such first occurrence, shall thereafter be referred to as the Purchase Price for each Right and for all purposes of this Agreement) by 50% of the Current Market Price (determined pursuant to Section 11(d) hereof) per share of Common Stock on the date of such first occurrence (such number of shares, the Adjustment Shares ).

(iii) In the event that the number of shares of Common Stock which are authorized by the Company's Certificate of Incorporation but not outstanding, subscribed for or reserved for issuance for purposes other than upon exercise of the Rights are not sufficient to permit the exercise in full of the Rights in accordance with the foregoing subparagraph (ii) of this Section 11(a), the Company shall (A) determine the value of the Adjustment Shares issuable upon the exercise of a Right (the Current Value ), and (B) with respect to each Right (subject to Section 7(e) hereof), make adequate provision to substitute for the Adjustment Shares, upon the exercise of a Right and payment of the applicable Purchase Price, (1) cash, (2) a reduction in the Purchase Price, (3) Common Stock or other equity securities of the Company (including, without limitation, shares, or units of shares, of preferred stock, such as the Preferred Stock, which the Board of Directors of the Company has deemed to have essentially the same value or economic rights as shares of Common Stock (such shares of preferred stock being referred to as Common Stock Equivalents )), (4) debt securities of the Company, (5) other assets, or (6) any combination of the foregoing, having an aggregate value equal to the Current Value (less the amount of any reduction in the Purchase Price), where such aggregate value has been determined by the Board based upon the advice of a nationally recognized investment banking firm selected by the Board; provided, however, that if the Company shall not have made adequate provision to deliver value pursuant to clause (B) above within thirty (30) days following the later of (x) the first occurrence of a Section 11(a)(ii) Event and (y) the date on which the Company's right of redemption

pursuant to Section 23(a) expires (the later of (x) and (y) being referred to herein as the Section 11(a)(ii) Trigger Date ), then the Company shall be obligated to deliver, upon the surrender for exercise of a Right and without requiring payment of the Purchase Price, shares of Common Stock (to the extent available) and then, if necessary, cash, which shares and/or cash have an aggregate value equal to the Spread. For purposes of the preceding sentence, the term Spread shall mean the excess of (i) the Current Value over (ii) the Purchase Price. If the Board of Directors of the Company determines in good faith that it is likely that sufficient additional shares of Common Stock could be authorized for issuance upon exercise in full of the Rights, the thirty (30) day period set forth above may be extended to the extent necessary, but not more than ninety (90) days after the Section 11(a)(ii) Trigger Date, in order that the Company may seek stockholder approval for the authorization of such additional shares (such thirty (30) day period, as it may be extended, is herein called the Substitution Period ). To the extent that the Company determines that action should be taken pursuant to the first and/or third sentences of this Section 11(a)(iii), the Company (1) shall provide, subject to Section 7(e) hereof, that such action shall apply uniformly to all outstanding Rights, and (2) may suspend the exercisability of the Rights until the expiration of the Substitution Period in order to seek such stockholder approval for such authorization of additional shares and/or to decide the appropriate form of distribution to be made pursuant to such first sentence and to determine the value thereof. In the event of any such suspension, the Company shall issue a public announcement stating that the exercisability of the Rights has been temporarily suspended, as well as a public announcement at such time as the suspension is no longer in effect. For purposes of this Section 11(a)(iii), the value of each Adjustment Share shall be the Current Market Price per share of the Common Stock on the Section 11(a)(ii) Trigger Date and the per share or per unit value of any Common Stock Equivalent shall be deemed to equal the Current Market Price per share of the Common Stock on such date.

(b) In case the Company shall fix a record date for the issuance of rights, options or warrants to all holders of Preferred Stock entitling them to subscribe for or purchase (for a period expiring within forty-five (45) calendar days after such record date) Preferred Stock (or shares having the same rights, privileges and preferences as the shares of Preferred Stock ( Equivalent Preferred Stock )) or securities convertible into Preferred Stock or Equivalent Preferred Stock at a price per share of Preferred Stock or per share of Equivalent Preferred Stock (or having a conversion price per share, if a security convertible into Preferred Stock or Equivalent Preferred Stock) less than the Current Market Price (as determined pursuant to Section 11(d) hereof) per share of Preferred Stock on such record date, the Purchase Price to be in effect after such record date shall be determined by multiplying the Purchase Price in effect immediately prior to such record date by a fraction, the numerator of which shall be the number of shares of Preferred Stock outstanding on such record date, plus the number of shares of Preferred Stock which the aggregate offering price of the total number of shares of Preferred Stock and/or Equivalent Preferred Stock so to be offered (and/or the aggregate initial conversion price of the convertible securities so to be offered) would purchase at such Current Market Price, and the denominator of which shall be the number of shares of Preferred Stock outstanding on such record date, plus the number of additional shares of Preferred Stock and/or Equivalent Preferred Stock to be offered for subscription or purchase (or into which the convertible securities so to be offered are initially convertible); provided, however, that in no event shall the consideration to be paid upon the exercise of one Right be less than the aggregate par value of the shares of Preferred Stock or capital stock, as the case may be, issuable upon exercise of one Right. In case such subscription price may be paid by delivery of consideration part or all of which may be in a form other than cash, the value of such consideration shall be as determined in good faith by the Board of Directors of the Company, whose determination shall be described in a statement filed with the Rights Agent and shall be binding on the Rights Agent and the holders of the Rights. Shares of Preferred Stock owned by or held for the account of the Company shall not be deemed outstanding for the purpose of any such computation. Such adjustment shall be made successively whenever such a record date is fixed, and in the event that such rights or warrants are not so issued, the Purchase Price shall be adjusted to be the Purchase Price which would then be in effect if such record date had not been fixed.

(c) In case the Company shall fix a record date for a distribution to all holders of Preferred Stock (including any such distribution made in connection with a consolidation or merger in which the Company

is the continuing corporation) of cash (other than a regular quarterly cash dividend out of the earnings or retained earnings of the Company), assets (other than a dividend payable in Preferred Stock, but including any dividend payable in stock other than Preferred Stock) or evidences of indebtedness, or of subscription rights or warrants (excluding those referred to in Section 11(b) hereof), the Purchase Price to be in effect after such record date shall be determined by multiplying the Purchase Price in effect immediately prior to such record date by a fraction, the numerator of which shall be the Current Market Price (as determined pursuant to Section 11(d) hereof) per share of Preferred Stock on such record date, less the fair market value (as determined in good faith by the Board of Directors of the Company, whose determination shall be described in a statement filed with the Rights Agent) of the portion of the cash, assets or evidences of indebtedness so to be distributed or of such subscription rights or warrants applicable to a share of Preferred Stock and the denominator of which shall be such Current Market Price (as determined pursuant to Section 11(d) hereof) per share of Preferred Stock; provided, however, that in no event shall the consideration to be paid upon the exercise of one Right be less than the aggregate par value of the shares of Preferred Stock or capital stock, as the case may be, issuable upon exercise of one Right. Such adjustments shall be made successively whenever such a record date is fixed, and in the event that such distribution is not so made, the Purchase Price shall be adjusted to be the Purchase Price which would have been in effect if such record date had not been fixed.

(d)(i) For the purpose of any computation hereunder, other than computations made pursuant to Section 11(a)(iii) hereof, the Current Market Price per share of Common Stock on any date shall be deemed to be the average of the daily closing prices per share of such Common Stock for the thirty (30) consecutive Trading Days immediately prior to such date, and for purposes of computations made pursuant to Section 11(a)(iii) hereof, the Current Market Price per share of Common Stock on any date shall be deemed to be the average of the daily closing prices per share of such Common Stock for the ten (10) consecutive Trading Days immediately following such date; provided, however, that in the event that the Current Market Price per share of the Common Stock is determined during a period following the announcement by the issuer of such Common Stock of (A) a dividend or distribution on such Common Stock payable in shares of such Common Stock or securities convertible into shares of such Common Stock (other than the Rights), or (B) any subdivision, combination or reclassification of such Common Stock, and the ex-dividend date for such dividend or distribution, or the record date for such subdivision, combination or reclassification shall not have occurred prior to the commencement of the requisite thirty (30) Trading Day or ten (10) Trading Day period, as set forth above, then, and in each such case, the Current Market Price shall be properly adjusted to take into account ex-dividend trading. The closing price for each day shall be the last sale price, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the New York Stock Exchange or, if the shares of Common Stock are not listed or admitted to trading on the New York Stock Exchange, as reported in the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which the shares of Common Stock are listed or admitted to trading or, if the shares of Common Stock are not listed or admitted to trading on any national securities exchange, the last quoted price or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market or such other system then in use, or, if on any such date the shares of Common Stock are not so quoted, the average of the closing bid and asked prices as furnished by a professional market maker making a market in the Common Stock selected by the Board of Directors of the Company. If on any such date no market maker is making a market in the Common Stock, the fair value of such shares on such date as determined in good faith by the Board shall be used. The term Trading Day shall mean a day on which the principal national securities exchange on which the shares of Common Stock are listed or admitted to trading is open for the transaction of business or, if the shares of Common Stock are not listed or admitted to trading on any national securities exchange, a Business Day. If the Common Stock is not publicly held or not so listed or traded, Current Market Price per share shall mean the fair value per share as determined in good faith by the Board, whose determination shall be described in a statement filed with the Rights Agent and shall be conclusive for all purposes.

(ii) For the purpose of any computation hereunder, the Current Market Price per share of Preferred Stock shall be determined in the same manner as set forth above for the Common Stock in clause (i) of this Section 11(d) (other than the last sentence thereof). If the Current Market Price per share of Preferred Stock cannot be determined in the manner provided above or if the Preferred Stock is not publicly held or listed or traded in a manner described in clause (i) of this Section 11(d), the Current Market Price per share of Preferred Stock shall be conclusively deemed to be an amount equal to 1,000 (as such number may be appropriately adjusted for such events as stock splits, stock dividends and recapitalizations with respect to the Common Stock occurring after the date of this Agreement) multiplied by the Current Market Price per share of the Common Stock. If neither the Common Stock nor the Preferred Stock is publicly held or so listed or traded, Current Market Price per share of the Preferred Stock shall mean the fair value per share as determined in good faith by the Board of Directors of the Company, whose determination shall be described in a statement filed with the Rights Agent and shall be conclusive for all purposes. For all purposes of this Agreement, the Current Market Price of a Unit shall be equal to the Current Market Price of one share of Preferred Stock divided by 1,000.

(e) Anything herein to the contrary notwithstanding, no adjustment in the Purchase Price shall be required unless such adjustment would require an increase or decrease of at least 1% in the Purchase Price; provided, however, that any adjustments which by reason of this Section 11(e) are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this Section 11 shall be made to the nearest cent or to the nearest one-thousandth of a share of Common Stock or other share of capital stock or one-ten millionth of a share of Preferred Stock, as the case may be. Notwithstanding the first sentence of this Section 11(e), any adjustment required by this Section 11 shall be made no later than the earlier of (i) three (3) years from the date of the transaction which mandates such adjustment, or (ii) the Expiration Date.

(f) If as a result of an adjustment made pursuant to Section 11(a)(ii) or Section 13(a) hereof, the holder of any Right thereafter exercised shall become entitled to receive any shares of capital stock other than Preferred Stock, thereafter the number of such other shares so receivable upon exercise of any Right and the Purchase Price thereof shall be subject to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to the Preferred Stock contained in Sections 11(a), (b), (c), (e), (g), (h), (i), (j), (k) and (m), and the provisions of Sections 7, 9, 10, 13 and 14 hereof with respect to the Preferred Stock shall apply on like terms to any such other shares.

(g) All Rights originally issued by the Company subsequent to any adjustment made to the Purchase Price hereunder shall evidence the right to purchase, at the adjusted Purchase Price, the number of one one-thousandths of a share of Preferred Stock purchasable from time to time hereunder upon exercise of the Rights, all subject to further adjustment as provided herein.

(h) Unless the Company shall have exercised its election as provided in Section 11(i), upon each adjustment of the Purchase Price as a result of the calculations made in Sections 11(b) and (c), each Right outstanding immediately prior to the making of such adjustment shall thereafter evidence the right to purchase, at the adjusted Purchase Price, that number of one one-thousandths of a share of Preferred Stock (calculated to the nearest one-ten millionth of a share of Preferred Stock) obtained by:

(i) multiplying (x) the number of one one-thousandths of a share covered by a Right immediately prior to this adjustment, by (y) the Purchase Price in effect immediately prior to such adjustment of the Purchase Price, and

(ii) dividing the product so obtained by the Purchase Price in effect immediately after such adjustment of the Purchase Price.

(i) The Company may elect on or after the date of any adjustment of the Purchase Price to adjust the number of Rights, in lieu of any adjustment in the number of one one-thousandths of a share of Preferred Stock purchasable upon the exercise of a Right. Each of the Rights outstanding after the adjustment in the number of Rights shall be exercisable for the number of one one-thousandths of a share of Preferred Stock for which a Right was exercisable immediately prior to such adjustment. Each Right held of record prior to

such adjustment of the number of Rights shall become that number of Rights (calculated to the nearest one one-thousandth) obtained by dividing the Purchase Price in effect immediately prior to adjustment of the Purchase Price by the Purchase Price in effect immediately after adjustment of the Purchase Price. The Company shall make a public announcement of its election to adjust the number of Rights, indicating the record date for the adjustment, and, if known at the time, the amount of the adjustment to be made. This record date may be the date on which the Purchase Price is adjusted or any day thereafter, but, if the Rights Certificates have been issued, shall be at least ten (10) days later than the date of the public announcement. If Rights Certificates have been issued, upon each adjustment of the number of Rights pursuant to this Section 11(i), the Company shall, as promptly as practicable, cause to be distributed to holders of record of Rights Certificates on such record date Rights Certificates evidencing, subject to Section 14 hereof, the additional Rights to which such holders shall be entitled as a result of such adjustment, or, at the option of the Company, shall cause to be distributed to such holders of record in substitution and replacement for the Rights Certificates held by such holders prior to the date of adjustment, and upon surrender thereof, if required by the Company, new Rights Certificates evidencing all the Rights to which such holders shall be entitled after such adjustment. Rights Certificates so to be distributed shall be issued, executed and countersigned in the manner provided for herein (and may bear, at the option of the Company, the adjusted Purchase Price) and shall be registered in the names of the holders of record of Rights Certificates on the record date specified in the public announcement.

(j) Irrespective of any adjustment or change in the Purchase Price or the number of one one-thousandths of a share of Preferred Stock issuable upon the exercise of the Rights, the Rights Certificates theretofore and thereafter issued may continue to express the Purchase Price per one one-thousandth of a share and the number of one one-thousandths of a share which were expressed in the initial Rights Certificates issued hereunder.

(k) Before taking any action that would cause an adjustment reducing the Purchase Price below the then par value, if any, of the number of one one-thousandths of a share of Preferred Stock issuable upon exercise of the Rights, the Company shall take any corporate action which may, in the opinion of its counsel, be necessary in order that the Company may validly and legally issue fully paid and nonassessable such number of one one-thousandths of a share of Preferred Stock at such adjusted Purchase Price.

(l) In any case in which this Section 11 shall require that an adjustment in the Purchase Price be made effective as of a record date for a specified event, the Company may elect to defer until the occurrence of such event the issuance to the holder of any Right exercised after such record date the number of one one-thousandths of a share of Preferred Stock and other capital stock or securities of the Company, if any, issuable upon such exercise over and above the number of one one-thousandths of a share of Preferred Stock and other capital stock or securities of the Company, if any, issuable upon such exercise on the basis of the Purchase Price in effect prior to such adjustment; provided, however, that the Company shall deliver to such holder a due bill or other appropriate instrument evidencing such holder's right to receive such additional shares (fractional or otherwise) or securities upon the occurrence of the event requiring such adjustment.

(m) Anything in this Section 11 to the contrary notwithstanding, the Company shall be entitled to make such reductions in the Purchase Price, in addition to those adjustments expressly required by this Section 11, as and to the extent that in their good faith judgment the Board of Directors of the Company shall determine to be advisable in order that any (i) consolidation or subdivision of the Preferred Stock, (ii) issuance wholly for cash of any shares of Preferred Stock at less than the Current Market Price, (iii) issuance wholly for cash of shares of Preferred Stock or securities which by their terms are convertible into or exchangeable for shares of Preferred Stock, (iv) stock dividends or (v) issuance of rights, options or warrants referred to in this Section 11, hereafter made by the Company to holders of its Preferred Stock shall not be taxable to such stockholders.

(n) The Company covenants and agrees that it shall not, at any time after the Distribution Date, (i) consolidate with any other Person (other than a Subsidiary of the Company in a transaction which complies with Section 11(o) hereof), (ii) merge with or into any other Person (other than a Subsidiary of the Company in a transaction which complies with Section 11(o) hereof), or (iii) sell or transfer (or permit any

Subsidiary to sell or transfer), in one transaction, or a series of related transactions, assets, cash flow or earning power aggregating more than 50% of the assets or earning power of the Company and its Subsidiaries (taken as a whole) to any other Person or Persons (other than the Company and/or any of its Subsidiaries in one or more transactions each of which complies with Section 11(o) hereof), if (x) at the time of or immediately after such consolidation, merger or sale there are any rights, warrants or other instruments or securities outstanding or agreements in effect which would substantially diminish or otherwise eliminate the benefits intended to be afforded by the Rights or (y) prior to, simultaneously with or immediately after such consolidation, merger or sale, the stockholders of the Person who constitutes, or would constitute, the Principal Party for purposes of Section 13(a) hereof shall have received a distribution of Rights previously owned by such Person or any of its Affiliates and Associates.

(o) The Company covenants and agrees that, after the Distribution Date, it will not, except as permitted by Section 23 or Section 26 hereof, take (or permit any Subsidiary to take) any action if at the time such action is taken it is reasonably foreseeable that such action will diminish substantially or otherwise eliminate the benefits intended to be afforded by the Rights.

(p) Anything in this Agreement to the contrary notwithstanding, in the event that the Company shall at any time after the Rights Dividend Declaration Date and prior to the Distribution Date (i) declare a dividend on the outstanding shares of Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding shares of Common Stock, or (iii) combine or consolidate the outstanding shares of Common Stock into a smaller number of shares, the number of Rights associated with each share of Common Stock then outstanding, or issued or delivered thereafter but prior to the Distribution Date, shall be proportionately adjusted so that the number of Rights thereafter associated with each share of Common Stock following any such event shall equal the result obtained by multiplying the number of Rights associated with each share of Common Stock immediately prior to such event by a fraction the numerator which shall be the total number of shares of Common Stock outstanding immediately prior to the occurrence of the event and the denominator of which shall be the total number of shares of Common Stock outstanding immediately following the occurrence of such event.

**Section 12. Certificate of Adjusted Purchase Price or Number of Shares.** Whenever an adjustment is made as provided in Section 11 and Section 13 hereof, the Company shall (a) promptly prepare a certificate setting forth such adjustment and a brief statement of the facts accounting for such adjustment, (b) promptly file with the Rights Agent, and with each transfer agent for the Preferred Stock and the Common Stock, a copy of such certificate, and (c) mail a brief summary thereof to each holder of a Rights Certificate (or, if prior to the Distribution Date, to each holder of a certificate representing shares of Common Stock) in accordance with Section 25 hereof. The Rights Agent shall be fully protected in relying on any such certificate and on any adjustment therein contained.

**Section 13. Consolidation, Merger or Sale or Transfer of Assets, Cash Flow or Earning Power.**

(a) In the event that, following the Stock Acquisition Date, directly or indirectly, (x) the Company shall consolidate with, or merge with and into, any other Person (other than a Subsidiary of the Company in a transaction which complies with Section 11(o) hereof), and the Company shall not be the continuing or surviving corporation of such consolidation or merger, (y) any Person (other than a Subsidiary of the Company in a transaction which complies with Section 11(o) hereof) shall consolidate with, or merge with or into, the Company, and the Company shall be the continuing or surviving corporation of such consolidation or merger and, in connection with such consolidation or merger, all or part of the outstanding shares of Common Stock shall be changed into or exchanged for stock or other securities of any other Person or cash or any other property, or (z) the Company shall sell or otherwise transfer (or one or more of its Subsidiaries shall sell or otherwise transfer), in one transaction or a series of related transactions, assets, cash flow or earning power aggregating more than 50% of the assets, cash flow or earning power of the Company and its Subsidiaries (taken as a whole) to any Person or Persons (other than the Company or any Subsidiary of the Company in one or more transactions each of which complies with Section 11(o) hereof), then, and in each such case, proper provision shall be made

so that: (i) each holder of a Right, except as provided in Section 7(e) hereof, shall thereafter have the right to receive, upon the exercise thereof at the then current Purchase Price in accordance with the terms of this Agreement and in lieu of shares of Preferred Stock, such number of validly authorized and issued, fully paid, non-assessable and freely tradeable shares of Common Stock of the Principal Party (as such term is hereinafter defined), not subject to any liens, encumbrances, rights of first refusal or other adverse claims, as shall be equal to the result obtained by (1) multiplying the then current Purchase Price by the number of one one-thousandths of a share of Preferred Stock for which a Right is exercisable immediately prior to the first occurrence of a Section 13 Event (or, if a Section 11(a)(ii) Event has occurred prior to the first occurrence of a Section 13 Event, multiplying the number of such one one-thousandths of a share for which a Right was exercisable immediately prior to the first occurrence of a Section 11(a)(ii) Event by the Purchase Price in effect immediately prior to such first occurrence of a Section 11(a)(ii) Event), and (2) dividing that product (which, following the first occurrence of a Section 13 Event, shall be referred to as the Purchase Price for each Right and for all purposes of this Agreement) by 50% of the Current Market Price (determined pursuant to Section 11(d)(i) hereof) per share of the Common Stock of such Principal Party on the date of consummation of such Section 13 Event; (ii) such Principal Party shall thereafter be liable for, and shall assume, by virtue of such Section 13 Event, all the obligations and duties of the Company pursuant to this Agreement; (iii) the term Company shall thereafter be deemed to refer to such Principal Party, it being specifically intended that the provisions of Section 11 hereof shall apply only to such Principal Party following the first occurrence of a Section 13 Event; (iv) such Principal Party shall take such steps (including, but not limited to, the reservation of a sufficient number of shares of its Common Stock) in connection with the consummation of any such transaction as may be necessary to assure that the provisions hereof shall thereafter be applicable, as nearly as reasonably may be, in relation to its shares of Common Stock thereafter deliverable upon the exercise of the Rights; and (v) the provisions of Section 11(a)(ii) hereof shall be of no effect following the first occurrence of any Section 13 Event.

(b) Principal Party shall mean:

(i) in the case of any transaction described in clause (x) or (y) of the first sentence of Section 13(a), the Person that is the issuer of any securities into which shares of Common Stock of the Company are converted in such merger or consolidation, and if no securities are so issued, the Person that is the other party to such merger or consolidation; and

(ii) in the case of any transaction described in clause (z) of the first sentence of Section 13(a), the Person that is the party receiving the greatest portion of the assets, cash flow or earning power transferred pursuant to such transaction or transactions; provided, however, that in any such case, (1) if the Common Stock of such Person is not at such time and has not been continuously over the preceding twelve-month period registered under Section 12 of the Exchange Act, and such Person is a direct or indirect Subsidiary of another Person the Common Stock of which is and has been so registered, Principal Party shall refer to such other Person; and (2) in case such Person is a Subsidiary, directly or indirectly, of more than one Person, the Common Stocks of two or more of which are and have been so registered, Principal Party shall refer to whichever of such Persons is the issuer of the Common Stock having the greatest aggregate market value.

(c) The Company shall not consummate any such consolidation, merger, sale or transfer unless the Principal Party shall have a sufficient number of authorized shares of its Common Stock which have not been issued or reserved for issuance to permit the exercise in full of the Rights in accordance with this Section 13 and unless prior thereto the Company and such Principal Party shall have executed and delivered to the Rights Agent a supplemental agreement providing for the terms set forth in paragraphs (a) and (b) of this Section 13 and further providing that, as soon as practicable after the date of any consolidation, merger or sale of assets mentioned in paragraph (a) of this Section 13, the Principal Party will:

(i) prepare and file a registration statement under the Act, with respect to the Rights and the securities purchasable upon exercise of the Rights on an appropriate form, and will use its best efforts to cause such registration statement (A) to become effective as soon as practicable after such filing and (B) to remain effective (with a prospectus at all times meeting the requirements of the Act) until the Expiration Date; and

(ii) take all such other action as may be necessary to enable the Principal Party to issue the securities purchasable upon exercise of the Rights, including but not limited to the registration or qualification of such securities under all requisite securities laws of jurisdictions of the various states and the listing of such securities on such exchanges and trading markets as may be necessary or appropriate; and

(iii) deliver to holders of the Rights historical financial statements for the Principal Party and each of its Affiliates which comply in all respects with the requirements for registration on Form 10 under the Exchange Act.

The provisions of this Section 13 shall similarly apply to successive mergers or consolidations or sales or other transfers. In the event that a Section 13 Event shall occur at any time after the occurrence of a Section 11(a)(ii) Event, the Rights which have not theretofore been exercised shall thereafter become exercisable in the manner described in Section 13(a).

#### **Section 14. Fractional Rights and Fractional Shares.**

(a) The Company shall not be required to issue fractions of Rights, except prior to the Distribution Date as provided in Section 11(p) hereof, or to distribute Rights Certificates which evidence fractional Rights. In lieu of such fractional Rights, there shall be paid to the registered holders of the Rights Certificates with regard to which such fractional Rights would otherwise be issuable, an amount in cash equal to the same fraction of the current market value of a whole Right. For purposes of this Section 14(a), the current market value of a whole Right shall be the closing price of the Rights for the Trading Day immediately prior to the date on which such fractional Rights would have been otherwise issuable. The closing price of the Rights for any day shall be the last sale price, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the New York Stock Exchange or, if the Rights are not listed or admitted to trading on the New York Stock Exchange, as reported in the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which the Rights are listed or admitted to trading, or if the Rights are not listed or admitted to trading on any national securities exchange, the last quoted price or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market or such system then in use or, if on any such date the Rights are not so quoted, the average of the closing bid and asked prices as furnished by a professional market maker making a market in the Rights selected by the Board of Directors of the Company. If on any such date no such market maker is making a market in the Rights the fair value of the Rights on such date as determined in good faith by the Board of Directors of the Company shall be used.

(b) The Company shall not be required to issue fractions of shares of Preferred Stock (other than fractions which are integral multiples of one one-thousandth of a share of Preferred Stock) upon exercise of the Rights or to distribute certificates which evidence fractional shares of Preferred Stock (other than fractions which are integral multiples of one one-thousandth of a share of Preferred Stock). In lieu of fractional shares of Preferred Stock that are not integral multiples of one one-thousandth of a share of Preferred Stock, the Company may pay to the registered holders of Rights Certificates at the time such Rights are exercised as herein provided an amount in cash equal to the same fraction of the current market value of one one-thousandth of a share of Preferred Stock. For purposes of this Section 14(b), the current market value of one one-thousandth of a share of Preferred Stock shall be one one-thousandth of the closing price of a share of Preferred Stock (as determined pursuant to Section 11(d)(ii) hereof) for the Trading Day immediately prior to the date of such exercise.

(c) Following the occurrence of a Triggering Event, the Company shall not be required to issue fractions of shares of Common Stock upon exercise of the Rights or to distribute certificates which evidence fractional shares of Common Stock. In lieu of fractional shares of Common Stock, the Company may pay to the registered holders of Rights Certificates at the time such Rights are exercised as herein provided an amount in cash equal to the same fraction of the current market value of one (1) share of Common Stock. For purposes of this Section 14(c), the current market value of one (1) share of Common Stock shall be the closing price of one (1) share of Common Stock (as determined pursuant to Section 11(d)(i) hereof) for the Trading Day immediately prior to the date of such exercise.

(d) The holder of a Right by the acceptance of the Rights expressly waives his or her right to receive any fractional Rights or any fractional shares upon exercise of a Right, except as permitted by this Section 14.

**Section 15. Rights of Action.** All rights of action in respect of this Agreement, except the rights of action that are given to the Rights Agent under Section 18 hereof, are vested in the respective registered holders of the Rights Certificates (and, prior to the Distribution Date, the registered holders of the Common Stock); and any registered holder of any Rights Certificate (or, prior to the Distribution Date, of the Common Stock), without the consent of the Rights Agent or of the holder of any other Rights Certificate (or, prior to the Distribution Date, of the Common Stock), may, in such holder's own behalf and for such holder's own benefit, enforce, and may institute and maintain any suit, action or proceeding against the Company to enforce, or otherwise act in respect of, such holder's right to exercise the Rights evidenced by such Rights Certificate in the manner provided in such Rights Certificate and in this Agreement. Without limiting the foregoing or any remedies available to the holders of Rights, it is specifically acknowledged that the holders of Rights would not have an adequate remedy at law for any breach of this Agreement and shall be entitled to specific performance of the obligations hereunder and injunctive relief against actual or threatened violations of the obligations hereunder of any Person subject to this Agreement.

**Section 16. Agreement of Rights Holders.** Every holder of a Right by accepting the same consents and agrees with the Company and the Rights Agent and with every other holder of a Right that:

(a) prior to the Distribution Date, the Rights will be transferable only in connection with the transfer of Common Stock;

(b) after the Distribution Date, the Rights Certificates are transferable only on the registry books of the Rights Agent if surrendered at the principal office or offices of the Rights Agent designated for such purposes, duly endorsed or accompanied by a proper instrument of transfer and with the appropriate forms and certificates fully executed;

(c) subject to Section 6(a) and Section 7(f) hereof, the Company and the Rights Agent may deem and treat the Person in whose name a Rights Certificate (or, prior to the Distribution Date, the associated Common Stock certificate) is registered as the absolute owner thereof and of the Rights evidenced thereby (notwithstanding any notations of ownership or writing on the Rights Certificates or the associated Common Stock certificate made by anyone other than the Company or the Rights Agent) for all purposes whatsoever, and neither the Company nor the Rights Agent, subject to the last sentence of Section 7(e) hereof, shall be required to be affected by any notice to the contrary; and

(d) notwithstanding anything in this Agreement to the contrary, neither the Company nor the Rights Agent shall have any liability to any holder of a Right or other Person as a result of its inability to perform any of its obligations under this Agreement by reason of any preliminary or permanent injunction or other order, decree or ruling issued by a court of competent jurisdiction or by a governmental, regulatory or administrative agency or commission, or any statute, rule, regulation or executive order promulgated or enacted by any governmental authority, prohibiting or otherwise restraining performance of such obligation; provided, however, the Company must use its best efforts to have any such order, decree or ruling lifted or otherwise overturned as soon as possible.

**Section 17. Rights Certificate Holder Not Deemed a Stockholder.** No holder, as such, of any Rights Certificate shall be entitled to vote, receive dividends or be deemed for any purpose the holder of the number of one one-thousandths of a share of Preferred Stock or any other securities of the Company which may at any time be issuable on the exercise of the Rights represented thereby, nor shall anything contained herein or in any Rights Certificate be construed to confer upon the holder of any Rights Certificate, as such, any of the rights of a stockholder of the Company or any right to vote for the election of directors or upon any matter submitted to stockholders at any meeting thereof, or to give or withhold consent to any corporate action, or to receive notice of meetings or other actions affecting stockholders (except as provided in Section 24 hereof), or to receive dividends or subscription rights, or otherwise, until the Right or Rights evidenced by such Rights Certificate shall have been exercised in accordance with the provisions hereof.

**Section 18. Concerning the Rights Agent.**

(a) The Company agrees to pay to the Rights Agent reasonable compensation for all services rendered by it hereunder and, from time to time, on demand of the Rights Agent, its reasonable expenses and counsel fees and disbursements and other disbursements incurred in the administration and execution of this Agreement and the exercise and performance of its duties hereunder. The Company also agrees to indemnify the Rights Agent for, and to hold it harmless against, any loss, liability, or expense, incurred without negligence, bad faith or willful misconduct on the part of the Rights Agent, for anything done or omitted by the Rights Agent in connection with the acceptance and administration of this Agreement, including the costs and expenses of defending against any claim of liability in the premises. In no case shall the Rights Agent be liable for special, indirect, incidental or consequential loss or damage.

(b) The Rights Agent shall be protected and shall incur no liability for or in respect of any action taken, suffered or omitted by it in connection with its administration of this Agreement in reliance upon any Rights Certificate or certificate for Common Stock or for other securities of the Company, instrument of assignment or transfer, power of attorney, endorsement, affidavit, letter, notice, direction, consent, certificate, statement, or other paper or document believed by it to be genuine and to be signed, executed and, where necessary, verified or acknowledged, by the proper Person or Persons.

**Section 19. Merger or Consolidation or Change of Name of Rights Agent.**

(a) Any corporation into which the Rights Agent or any successor Rights Agent may be merged or with which it may be consolidated, or any corporation resulting from any merger or consolidation to which the Rights Agent or any successor Rights Agent shall be a party, or any corporation succeeding to the corporate trust, stock transfer or other shareholder services business of the Rights Agent or any successor Rights Agent, shall be the successor to the Rights Agent under this Agreement without the execution or filing of any paper or any further act on the part of any of the parties hereto; but only if such corporation would be eligible for appointment as a successor Rights Agent under the provisions of Section 21 hereof. In case at the time such successor Rights Agent shall succeed to the agency created by this Agreement, any of the Rights Certificates shall have been countersigned but not delivered, any such successor Rights Agent may adopt the countersignature of a predecessor Rights Agent and deliver such Rights Certificates so countersigned; and in case at that time any of the Rights Certificates shall not have been countersigned, any successor Rights Agent may countersign such Rights Certificates either in the name of the predecessor or in the name of the successor Rights Agent; and in all such cases such Rights Certificates shall have the full force provided in the Rights Certificates and in this Agreement.

(b) In case at any time the name of the Rights Agent shall be changed and at such time any of the Rights Certificates shall have been countersigned but not delivered, the Rights Agent may adopt the countersignature under its prior name and deliver Rights Certificates so countersigned; and in case at that time any of the Rights Certificates shall not have been countersigned, the Rights Agent may countersign such Rights Certificates either in its prior name or in its changed name; and in all such cases such Rights Certificates shall have the full force provided in the Rights Certificates and in this Agreement.

**Section 20. Duties of Rights Agent.** The Rights Agent undertakes the duties and obligations imposed by this Agreement upon the following terms and conditions, by all of which the Company and the holders of Rights Certificates, by their acceptance thereof, shall be bound:

(a) The Rights Agent may consult with legal counsel (who may be legal counsel for the Company), and the advice of such counsel shall be full and complete authorization and protection to the Rights Agent as to any action taken or omitted by it in good faith and in accordance with such opinion.

(b) Whenever in the performance of its duties under this Agreement the Rights Agent shall deem it necessary or desirable that any fact or matter (including, without limitation, the identity of any Acquiring

Person and the determination of Current Market Price) be proved or established by the Company prior to taking or suffering any action hereunder, such fact or matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a certificate signed by the Chairman of the Board, the Vice Chairman, the Chief Executive Officer, the President, any Vice President, the Treasurer, any Assistant Treasurer, the Secretary or any Assistant Secretary of the Company and delivered to the Rights Agent; and such certificate shall be full authorization to the Rights Agent for any action taken or suffered in good faith by it under the provisions of this Agreement in reliance upon such certificate.

(c) The Rights Agent shall be liable hereunder only for its own negligence, bad faith or willful misconduct.

(d) The Rights Agent shall not be liable for or by reason of any of the statements of fact or recitals contained in this Agreement or in the Rights Certificates or be required to verify the same (except as to its countersignature on such Rights Certificates), but all such statements and recitals are and shall be deemed to have been made by the Company only.

(e) The Rights Agent shall not be under any responsibility in respect of the validity of this Agreement or the execution and delivery hereof (except the due execution hereof by the Rights Agent) or in respect of the validity or execution of any Rights Certificate (except its countersignature thereof); nor shall it be responsible for any breach by the Company of any covenant or condition contained in this Agreement or in any Rights Certificate; nor shall it be responsible for any adjustment required under the provisions of Section 11 or Section 13 hereof or responsible for the manner, method or amount of any such adjustment or the ascertaining of the existence of facts that would require any such adjustment (except with respect to the exercise of Rights evidenced by Rights Certificates after actual notice of any such adjustment); nor shall it by any act hereunder be deemed to make any representation or warranty as to the authorization or reservation of any shares of Common Stock or Preferred Stock to be issued pursuant to this Agreement or any Rights Certificate or as to whether any shares of Common Stock or Preferred Stock will, when so issued, be validly authorized and issued, fully paid and nonassessable.

(f) The Company agrees that it will perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and delivered all such further and other acts, instruments and assurances as may reasonably be required by the Rights Agent for the carrying out or performing by the Rights Agent of the provisions of this Agreement.

(g) The Rights Agent is hereby authorized and directed to accept instructions with respect to the performance of its duties hereunder from the Chairman of the Board, the Vice Chairman, the Chief Executive Officer, the President, any Vice President, the Secretary, any Assistant Secretary, the Treasurer or any Assistant Treasurer of the Company, and to apply to such officers for advice or instructions in connection with its duties, and it shall not be liable for any action taken or suffered to be taken by it in good faith in accordance with instructions of any such officer.

(h) The Rights Agent and any stockholder, director, officer or employee of the Rights Agent may buy, sell or deal in any of the Rights or other securities of the Company or become pecuniarily interested in any transaction in which the Company may be interested, or contract with or lend money to the Company or otherwise act as fully and freely as though it were not Rights Agent under this Agreement. Nothing herein shall preclude the Rights Agent from acting in any other capacity for the Company or for any other legal entity.

(i) The Rights Agent may execute and exercise any of the rights or powers hereby vested in it or perform any duty hereunder either itself or by or through its attorneys or agents, and the Rights Agent shall not be answerable or accountable for any act, default, neglect or misconduct of any such attorneys or agents or for any loss to the Company resulting from any such act, default, neglect or misconduct; provided, however, reasonable care was exercised in the selection and continued employment thereof.

(j) No provision of this Agreement shall require the Rights Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of its rights if there shall be reasonable grounds for believing that repayment of such funds or adequate indemnification against such risk or liability is not reasonably assured to it.

(k) If, with respect to any Rights Certificate surrendered to the Rights Agent for exercise or transfer, the certificate attached to the form of assignment or form of election to purchase, as the case may be, has either not been completed or indicates an affirmative response to clause 1 and/or 2 thereof, the Rights Agent shall not take any further action with respect to such requested exercise of transfer without first consulting with the Company.

**Section 21. Change of Rights Agent.** The Rights Agent or any successor Rights Agent may resign and be discharged from its duties under this Agreement upon thirty (30) days' notice in writing mailed to the Company, and to each transfer agent of the Common Stock and Preferred Stock, by registered or certified mail, and, if such resignation occurs after the Distribution Date, to the registered holders of the Rights Certificates by first-class mail. The Company may, in its sole discretion, remove the Rights Agent or any successor Rights Agent upon thirty (30) days' notice in writing, mailed to the Rights Agent or successor Rights Agent, as the case may be, and to each transfer agent of the Common Stock and Preferred Stock, by registered or certified mail, and, if such resignation occurs after the Distribution Date, to the holders of the Rights Certificates by first-class mail. If the Rights Agent shall resign or be removed or shall otherwise become incapable of acting, the Company shall appoint a successor to the Rights Agent. If the Company shall fail to make such appointment within a period of thirty (30) days after giving notice of such removal or after it has been notified in writing of such resignation or incapacity by the resigning or incapacitated Rights Agent or by the holder of a Rights Certificate (who shall, with such notice, submit his Rights Certificate for inspection by the Company), then any registered holder of any Rights Certificate may apply to any court of competent jurisdiction for the appointment of a new Rights Agent. Any successor Rights Agent, whether appointed by the Company or by such a court, shall be either (a) a legal business entity organized and doing business under the laws of the United States or of any state of the United States, in good standing, which is authorized under such laws to exercise corporate trust powers and is subject to supervision or examination by federal or state authority and which has at the time of its appointment as Rights Agent a combined capital and surplus of at least \$100,000,000 or (b) an Affiliate of a legal business entity described in clause (a) of this sentence. After appointment, the successor Rights Agent shall be vested with the same powers, rights, duties and responsibilities as if it had been originally named as Rights Agent without further act or deed; but the predecessor Rights Agent shall deliver and transfer to the successor Rights Agent any property at the time held by it hereunder, and execute and deliver any further assurance, conveyance, act or deed necessary for the purpose. Not later than the effective date of any such appointment, the Company shall file notice thereof in writing with the predecessor Rights Agent and each transfer agent of the Common Stock and the Preferred Stock, and, if such appointment occurs after the Distribution Date, mail a notice thereof in writing to the registered holders of the Rights Certificates. Failure to give any notice provided for in this Section 21, however, or any defect therein, shall not affect the legality or validity of the resignation or removal of the Rights Agent or the appointment of the successor Rights Agent, as the case may be.

**Section 22. Issuance of New Rights Certificates.** Notwithstanding any of the provisions of this Agreement or of the Rights to the contrary, the Company may, at its option, issue new Rights Certificates evidencing Rights in such form as may be approved by its Board of Directors to reflect any adjustment or change in the Purchase Price and the number or kind or class of shares or other securities or property purchasable under the Rights Certificates made in accordance with the provisions of this Agreement. In addition, in connection with the issuance or sale of shares of Common Stock following the Distribution Date and prior to the redemption or expiration of the Rights, the Company (a) shall, with respect to shares of Common Stock so issued or sold pursuant to the exercise of stock options or under any employee plan or arrangement, granted or awarded as of the Distribution Date, or upon the exercise, conversion or exchange of securities hereinafter issued by the Company, and (b) may, in any other case, if deemed necessary or appropriate by the Board of Directors of the Company, issue Rights Certificates representing the appropriate number of Rights in connection with such issuance or sale; provided, however, that (i) no such Rights Certificate shall be issued if, and to the extent that,

the Company shall be advised by counsel that such issuance would create a significant risk of material adverse tax consequences to the Company or the Person to whom such Rights Certificate would be issued, and (ii) no such Rights Certificate shall be issued if, and to the extent that, appropriate adjustment shall otherwise have been made in lieu of the issuance thereof.

### **Section 23. Redemption and Termination.**

(a) The Board of Directors of the Company may, at its option, at any time prior to the earlier of (i) the close of business on the tenth day following the Stock Acquisition Date (or, if the Stock Acquisition Date shall have occurred prior to the Record Date, the close of business on the twentieth day following the Record Date), or (ii) the Final Expiration Date, redeem all but not less than all the then outstanding Rights at a redemption price of \$0.001 per Right, as such amount may be appropriately adjusted to reflect any stock split, stock dividend or similar transaction occurring after the date hereof (such redemption price being hereinafter referred to as the Redemption Price ). Notwithstanding anything contained in this Agreement to the contrary, the Rights shall not be exercisable after the first occurrence of a Section 11(a)(ii) Event until such time as the Company's right of redemption hereunder has expired. The Company may, at its option, pay the Redemption Price in cash, shares of Common Stock (based on the Current Market Price, as defined in Section 11(d)(i) hereof, of the Common Stock at the time of redemption) or any other form of consideration deemed appropriate by the Board of Directors.

(b) Immediately upon the action of the Board of Directors of the Company ordering the redemption of the Rights, evidence of which shall have been filed with the Rights Agent and without any further action and without any notice, the right to exercise the Rights will terminate and the only right thereafter of the holders of Rights shall be to receive the Redemption Price for each Right so held. Promptly after the action of the Board of Directors ordering the redemption of the Rights, the Company shall give notice of such redemption to the Rights Agent and the holders of the then outstanding Rights by mailing such notice to all such holders at each holder's last address as it appears upon the registry books of the Rights Agent or, prior to the Distribution Date, on the registry books of the transfer agent for the Common Stock. Any notice which is mailed in the manner herein provided shall be deemed given, whether or not the holder receives the notice. Each such notice of redemption will state the method by which the payment of the Redemption Price will be made.

### **Section 24. Notice of Certain Events.**

(a) In case the Company shall propose, at any time after the Distribution Date, (i) to pay any dividend payable in stock of any class to the holders of Preferred Stock or to make any other distribution to the holders of Preferred Stock (other than a regular quarterly cash dividend out of earnings or retained earnings of the Company), or (ii) to offer to the holders of Preferred Stock rights or warrants to subscribe for or to purchase any additional shares of Preferred Stock or shares of stock of any class or any other securities, rights or options, or (iii) to effect any reclassification of its Preferred Stock (other than a reclassification involving only the subdivision of outstanding shares of Preferred Stock), or (iv) to effect any consolidation or merger into or with any other Person (other than a Subsidiary of the Company in a transaction which complies with Section 11(o) hereof), or to effect any sale or other transfer (or to permit one or more of its Subsidiaries to effect any sale or other transfer), in one transaction or a series of related transactions, of more than 50% of the assets, cash flow or earning power of the Company and its Subsidiaries (taken as a whole) to any other Person or Persons (other than the Company and/or any of its Subsidiaries in one or more transactions each of which complies with Section 11(o) hereof), or (v) to effect the liquidation, dissolution or winding up of the Company, then, in each such case, the Company shall give to each holder of a Rights Certificate, to the extent feasible and in accordance with Section 25 hereof, a notice of such proposed action, which shall specify the record date for the purposes of such stock dividend, distribution of rights or warrants, or the date on which such reclassification, consolidation, merger, sale, transfer, liquidation, dissolution, or winding up is to take place and the date of participation therein by the holders of the shares of Preferred Stock, if any such date is to be fixed, and such notice shall be so given in the case of any action covered by clause (i) or (ii) above at least twenty (20) days prior to the record date for

determining holders of the shares of Preferred Stock for purposes of such action, and in the case of any such other action, at least twenty (20) days prior to the date of the taking of such proposed action or the date of participation therein by the holders of the shares of Preferred Stock, whichever shall be the earlier.

(b) In case any of the events set forth in Section 11(a)(ii) hereof shall occur, then, in any such case, (i) the Company shall as soon as practicable thereafter give to each holder of a Rights Certificate, to the extent feasible and in accordance with Section 25 hereof, a notice of the occurrence of such event, which shall specify the event and the consequences of the event to holders of Rights under Section 11(a)(ii) hereof, and (ii) all references in the preceding paragraph to Preferred Stock shall be deemed thereafter to refer to Common Stock and/or, if appropriate, other securities.

**Section 25. Notices.** Notices or demands authorized by this Agreement to be given or made by the Rights Agent or by the holder of any Rights Certificate to or on the Company shall be sufficiently given or made if sent by first-class mail, postage prepaid, addressed (until another address is filed in writing with the Rights Agent) as follows:

Beazer Homes USA, Inc.

1000 Abernathy Road, Suite 1200

Atlanta, Georgia 30328

Attention: Chief Executive Officer

Subject to the provisions of Section 21, any notice or demand authorized by this Agreement to be given or made by the Company or by the holder of any Rights Certificate to or on the Rights Agent shall be sufficiently given or made if sent by first-class mail, postage prepaid, addressed (until another address is filed in writing with the Company) as follows:

American Stock Transfer & Trust Company, LLC

6201 15th Avenue

Brooklyn, NY 11219

Notices or demands authorized by this Agreement to be given or made by the Company or the Rights Agent to the holder of any Rights Certificate (or, if prior to the Distribution Date, to the holder of certificates representing shares of Common Stock) shall be sufficiently given or made if sent by first-class mail, postage prepaid, addressed to such holder at the address of such holder as shown on the registry books of the Company.

**Section 26. Supplements and Amendments.** Prior to the Distribution Date and subject to the penultimate sentence of this Section 26, the Company and the Rights Agent shall, if the Company so directs, supplement or amend any provision of this Agreement without the approval of any holders of certificates representing shares of Common Stock. From and after the Distribution Date and subject to the penultimate sentence of this Section 26, the Company and the Rights Agent shall, if the Company so directs, supplement or amend this Agreement without the approval of any holders of Rights Certificates in order (i) to cure any ambiguity, (ii) to correct or supplement any provision contained herein which may be defective or inconsistent with any other provisions herein, (iii) to shorten or lengthen any time period hereunder, or (iv) to change or supplement the provisions hereunder in any manner which the Company may deem necessary or desirable and which shall not adversely affect the interests of the holders of Rights Certificates (other than an Acquiring Person or an Affiliate or Associate of an Acquiring Person); provided, however, this Agreement may not be supplemented or amended to lengthen, pursuant to clause (iii) of this sentence, (A) a time period relating to when the Rights may be redeemed at such time as the Rights are not then redeemable, or (B) any other time period unless such lengthening is for the purpose of protecting, enhancing or clarifying the rights of, and/or the benefits to, the holders of Rights. Upon the delivery of a certificate from an appropriate officer of the Company which states that the proposed supplement or amendment is in compliance with the terms of this Section 26, the Rights Agent shall execute such supplement or amendment. Notwithstanding anything contained in this Agreement to the contrary, no supplement or amendment shall be made which changes the Redemption Price, extends the Final Expiration Date, changes the

Purchase Price or changes the number of one one-thousandths of a share of Preferred Stock for which a Right is exercisable, and following the first occurrence of an event set forth in clauses (i) and (ii) of the first sentence of Section 23(a) hereof any supplement or amendment shall require the concurrence of a majority of the members of the Board of Directors of the Company. Prior to the Distribution Date, the interests of the holders of Rights shall be deemed coincident with the interests of the holders of Common Stock.

**Section 27. Exchange.**

(a)(i) The Company may, at its option, at any time after the Stock Acquisition Date, upon resolution by the Board of Directors of the Company, exchange all or part of the then outstanding and exercisable Rights (which shall not include Rights that have become void pursuant to the provisions of Section 7(e) hereof) for Common Stock at an exchange ratio of one share of Common Stock per Right, appropriately adjusted to reflect any stock split, stock dividend or similar transaction occurring after the date of this Agreement (such exchange ratio being hereinafter referred to as the Section 27(a)(i) Exchange Ratio ). Notwithstanding the foregoing, the Company may not effect such exchange at any time after any Acquiring Person, together with all Affiliates and Associates of such Acquiring Person, becomes the Beneficial Owner of 50% or more of the shares of Common Stock then outstanding.

(ii) The Company may, at its option, at any time after the Stock Acquisition Date, upon resolution by the Board of Directors of the Company, exchange all or part of the then outstanding and exercisable Rights (which shall not include Rights that have become void pursuant to the provisions of Section 7(e) hereof) for Common Stock at an exchange ratio specified in the following sentence, as appropriately adjusted to reflect any stock split, stock dividend or similar transaction occurring after the date of this Agreement. Subject to such adjustment, each Right may be exchanged for that number of shares of Common Stock obtained by dividing the Adjustment Spread (as defined below) by the then Current Market Price (determined pursuant to Section 11(d) hereof) per share of Common Stock on the earlier of (i) the date on which any Person becomes an Acquiring Person or (ii) the date on which a tender or exchange offer by any Person (other than an Exempted Person, the Company, any Subsidiary of the Company, any employee benefit plan of the Company or of any Subsidiary of the Company, or any Person organized, appointed or established by the Company for or pursuant to the terms of any such plan) is first published or sent or given within the meaning of Rule 14d-4(a) of the General Rules and Regulations under the Exchange Act, if upon consummation thereof such Person would be the Beneficial Owner of 4.95% or more of the shares of Common Stock then outstanding (such exchange ratio being the Section 27(a)(ii) Exchange Ratio ). The Adjustment Spread shall equal (x) the aggregate market price on the date of such event of the number of Adjustment Shares determined pursuant to Section 11(a)(ii) minus (y) the Purchase Price.

(iii) Notwithstanding anything contained in this Section 27(a) to the contrary, the Company may not exchange any Rights pursuant to this Section 27(a) unless such exchange is approved by a majority of the members of the Board of Directors of the Company.

(b) Immediately upon the action of the Board of Directors of the Company ordering the exchange of any Rights pursuant to paragraph (a) of this Section 27 and without any further action and without any notice, the right to exercise such Rights shall terminate and the only right thereafter of a holder of such Rights shall be to receive that number of shares of Common Stock equal to the number of such Rights held by such holder multiplied by the Section 27(a)(i) Exchange Ratio or Section 27(a)(ii) Exchange Ratio, as the case may be. The Company shall promptly give public notice of any such exchange; provided, however, that the failure to give, or any defect in, such notice shall not affect the validity of such exchange. The Company promptly shall mail a notice of any such exchange to all of the holders of such Rights at their last addresses as they appear upon the registry books of the Rights Agent. Any notice which is mailed in the manner herein provided shall be deemed given, whether or not the holder receives the notice. Each such notice of exchange will state the method by which the exchange of the shares of Common Stock for Rights will be effected and, in the event of any partial exchange, the number of Rights which will be exchanged. Any partial exchange shall be effected pro rata based on the number of Rights (other than Rights which have become void pursuant to the provisions of Section 7(e) hereof) held by each holder of Rights.

(c) In the event that there shall not be sufficient shares of Common Stock issued but not outstanding or authorized but unissued to permit any exchange of Rights as contemplated in accordance with this Section 27, the Company shall make adequate provision to substitute, to the extent that there are insufficient shares of Common Stock available (1) cash, (2) other equity securities of the Company, (3) debt securities of the Company, (4) other assets or (5) any combination of the foregoing, having an aggregate value per Right equal to (x) in the case of an exchange pursuant to Section 27(a)(i), the then current per share market price (determined pursuant to Section 11(d) hereof) of the Common Stock multiplied by the Section 27(a)(i) Exchange Ratio and (y) in the case of an exchange pursuant to Section 27(a)(ii), the Adjustment Spread, where such aggregate value has been determined by a majority of the members of the Board of Directors of the Company, after receiving advice from a nationally recognized investment banking firm. To the extent that the Company determines that any such substitution must be made, the Company shall provide, subject to Section 7(e) hereof, that such substitution shall apply uniformly to all outstanding Rights.

(d) The Company shall not be required to issue fractions of shares of Common Stock or to distribute certificates which evidence fractional shares of Common Stock. In lieu of such fractional shares of Common Stock, the Company shall pay to the registered holders of the Rights Certificates with regard to which such fractional shares of Common Stock would otherwise be issuable an amount in cash equal to the same fraction of the current market value of a whole share of Common Stock. For the purposes of this paragraph (d), the current market value of a whole share of Common Stock shall be the closing price of a share of Common Stock (as determined pursuant to the second sentence of Section 11(d) hereof) for the Trading Day immediately prior to the date of the exchange pursuant to this Section 27.

**Section 28. Successors.** All the covenants and provisions of this Agreement by or for the benefit of the Company or the Rights Agent shall bind and inure to the benefit of their respective successors and assigns hereunder.

**Section 29. Determinations and Actions by the Board of Directors, etc.** For all purposes of this Agreement, any calculation of the number of shares of Common Stock outstanding at any particular time, including for purposes of determining the particular percentage of such outstanding shares of Common Stock of which any Person is the Beneficial Owner, shall be made in accordance with the last sentence of Rule 13d-3(d)(1)(i) of the General Rules and Regulations under the Exchange Act. The Board of Directors of the Company (with, where specifically provided for herein, the concurrence of a majority of the members of the Board of Directors of the Company) shall have the exclusive power and authority to administer this Agreement and to exercise all rights and powers specifically granted to the Board (with, where specifically provided for herein, the concurrence of a majority of the members of the Board of Directors of the Company) or to the Company, or as may be necessary or advisable in the administration of this Agreement, including, without limitation, the right and power to (i) interpret the provisions of this Agreement, and (ii) make all determinations deemed necessary or advisable for the administration of this Agreement (including a determination to redeem or not redeem the Rights or to amend the Agreement). All such actions, calculations, interpretations and determinations (including, for purposes of clause (y) below, all omissions with respect to the foregoing) which are done or made by the Board (with, where specifically provided for herein, the concurrence of a majority of the members of the Board of Directors of the Company) in good faith, shall (x) be final, conclusive and binding on the Company, the Rights Agent, the holders of the Rights and all other parties, and (y) not subject the Board to any liability to the holders of the Rights.

**Section 30. Benefits of this Agreement.** Nothing in this Agreement shall be construed to give to any Person other than the Company, the Rights Agent and the registered holders of the Rights Certificates (and, prior to the Distribution Date, registered holders of the Common Stock) any legal or equitable right, remedy or claim under this Agreement; but this Agreement shall be for the sole and exclusive benefit of the Company, the Rights Agent and the registered holders of the Rights Certificates (and, prior to the Distribution Date, registered holders of the Common Stock).

**Section 31. Severability.** If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated; provided, however, that notwithstanding anything in this Agreement to the contrary, if any such term, provision, covenant or restriction is held by such court or authority to be invalid, void or unenforceable and the Board of Directors of the Company determines in its good faith judgment that severing the invalid language from this Agreement would adversely affect the purpose or effect of this Agreement, the right of redemption set forth in Section 23 hereof shall be reinstated and shall not expire until the close of business on the twentieth day following the date of such determination by the Board of Directors.

**Section 32. Governing Law.** This Agreement, each Right and each Rights Certificate issued hereunder shall be deemed to be a contract made under the laws of the State of New York and for all purposes shall be governed by and construed in accordance with the laws of such state applicable to contracts made and to be performed entirely within such state.

**Section 33. Counterparts.** This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

**Section 34. Descriptive Headings.** Descriptive headings of the several sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof and the words herein, hereof, hereby, hereto, hereunder and words of similar import are references to this Agreement as a whole and not to any particular section or other provision hereof.

[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and their respective corporate seals to be hereunto affixed and attested, all as of the day and year first above written.

Attest: BEAZER HOMES USA, INC.

By: By:  
Name: Name:  
Title: Title:

Attest: AMERICAN STOCK TRANSFER & TRUST  
COMPANY, LLC

By: By:  
Name: Name:  
Title: Title:

EXHIBIT A

**Form of Designations, Preferences and Rights of Series A Junior Participating Preferred Stock of Beazer Homes USA, Inc.**

**Section 1. Designation and Amount.** The shares of such series shall be designated as Series A Junior Participating Preferred Stock and the number of shares constituting such series shall be 180,000.

**Section 2. Dividends and Distributions.**

(a) The holders of shares of Series A Junior Participating Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available for the purpose, quarterly dividends payable in cash on the last day of March, June, September and December in each year (each such date being referred to herein as a Quarterly Dividend Payment Date ), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of Series A Junior Participating Preferred Stock, in an amount per share (rounded to the nearest cent) equal to the greater of (a) \$1.00 or (b) subject to the provision for adjustment hereinafter set forth, 1,000 times the aggregate per share amount of all cash dividends, and 1,000 times the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions other than a dividend payable in shares of Common Stock or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise), declared on the Common Stock, par value \$0.001 per share, of the Corporation (the Common Stock ) since the immediately preceding Quarterly Dividend Payment Date, or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any share or fraction of a share of Series A Junior Participating Preferred Stock. In the event the Corporation shall at any time after November 12, 2010 (the Rights Declaration Date ) (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock, or (iii) combine the outstanding Common Stock into a smaller number of shares, then in each such case the amount to which holders of shares of Series A Junior Participating Preferred Stock were entitled immediately prior to such event under clause (b) of the preceding sentence shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(b) The Corporation shall declare a dividend or distribution on the outstanding shares of Series A Junior Participating Preferred Stock as provided in Paragraph (A) above immediately after it declares a dividend or distribution on the Common Stock (other than a dividend payable in shares of Common Stock); provided that, in the event no dividend or distribution shall have been declared on the Common Stock during the period between any Quarterly Dividend Payment Date and the next subsequent Quarterly Dividend Payment Date, a dividend of \$1.00 per share on the outstanding shares of Series A Junior Participating Preferred Stock shall nevertheless be payable on such subsequent Quarterly Dividend Payment Date.

(c) Dividends shall begin to accrue and be cumulative on outstanding shares of Series A Junior Participating Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such shares of Series A Junior Participating Preferred Stock, unless the date of issue of such shares is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such shares shall begin to accrue from the date of issue of such shares, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Series A Junior Participating Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on the shares of Series A Junior Participating Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board of Directors may fix a record date for the determination of holders of shares of Series A Junior Participating Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be no more than thirty (30) days prior to the date fixed for the payment thereof.

**Section 3. Voting Rights.** The holders of shares of Series A Junior Participating Preferred Stock shall have the following voting rights:

(a) Subject to the provision for adjustment hereinafter set forth, each share of Series A Junior Participating Preferred Stock shall entitle the holder thereof to 1,000 votes on all matters submitted to a vote of the stockholders of the Corporation. In the event the Corporation shall at any time after the Rights Declaration Date (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock, or (iii) combine the outstanding Common Stock into a smaller number of shares, then in each such case the number of votes per share to which holders of shares of Series A Junior Participating Preferred Stock were entitled immediately prior to such event shall be adjusted by multiplying such number by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(b) Except as otherwise provided herein or by law, the holders of shares of Series A Junior Participating Preferred Stock and the holders of shares of Common Stock shall vote together as one class on all matters submitted to a vote of stockholders of the Corporation.

(c)(i) If at any time dividends on any Series A Junior Participating Preferred Stock shall be in arrears in an amount equal to six (6) quarterly dividends thereon, the occurrence of such contingency shall mark the beginning of a period (herein called a default period ) which shall extend until such time when all accrued and unpaid dividends for all previous quarterly dividend periods and for the current quarterly dividend period on all shares of Series A Junior Participating Preferred Stock then outstanding shall have been declared and paid or set apart for payment. During each default period, all holders of Preferred Stock (including holders of the Series A Junior Participating Preferred Stock) with dividends in arrears in an amount equal to six (6) quarterly dividends thereon, voting as a class, irrespective of series, shall have the right to elect two (2) Directors.

(ii) During any default period, such voting right of the holders of Series A Junior Participating Preferred Stock may be exercised initially at a special meeting called pursuant to subparagraph (iii) of this Section 3(c) or at any annual meeting of stockholders, and thereafter at annual meetings of stockholders, provided that such voting right shall not be exercised unless the holders of ten percent (10%) in number of shares of Preferred Stock outstanding shall be present in person or by proxy. The absence of a quorum of the holders of Common Stock shall not affect the exercise by the holders of Preferred Stock of such voting right. At any meeting at which the holders of Preferred Stock shall exercise such voting right initially during an existing default period, they shall have the right, voting as a class, to elect Directors to fill such vacancies, if any, in the Board of Directors as may then exist up to two (2) Directors or, if such right is exercised at an annual meeting, to elect two (2) Directors. If the number which may be so elected at any special meeting does not amount to the required number, the holders of the Preferred Stock shall have the right to make such increase in the number of Directors as shall be necessary to permit the election by them of the required number. After the holders of the Preferred Stock shall have exercised their right to elect Directors in any default period and during the continuance of such period, the number of Directors shall not be increased or decreased except by vote of the holders of Preferred Stock as herein provided or pursuant to the rights of any equity securities ranking senior to or pari passu with the Series A Junior Participating Preferred Stock.

(iii) Unless the holders of Preferred Stock shall, during an existing default period, have previously exercised their right to elect Directors, the Board of Directors may order, or any stockholder or stockholders owning in the aggregate not less than ten percent (10%) of the total number of shares of Preferred Stock outstanding, irrespective of series, may request, the calling of a special meeting of the holders of Preferred Stock, which meeting shall thereupon be called by the President, a Vice-President or the Secretary of the Corporation. Notice of such meeting and of any annual meeting at which holders of Preferred Stock are entitled to vote pursuant to this Paragraph (c)(iii) shall be given to each holder of record of Preferred Stock by mailing a copy of such notice to such holder at such holder's last address as the same appears on the books of the Corporation. Such meeting shall be called for a time not earlier than twenty (20) days and not

later than sixty (60) days after such order or request, or in default of the calling of such meeting within sixty (60) days after such order or request, such meeting may be called on similar notice by any stockholder or stockholders owning in the aggregate not less than ten percent (10%) of the total number of shares of Preferred Stock outstanding. Notwithstanding the provisions of this Paragraph (c)(iii), no such special meeting shall be called during the period within sixty (60) days immediately preceding the date fixed for the next annual meeting of the stockholders.

(iv) In any default period, the holders of Common Stock, and other classes of stock of the Corporation if applicable, shall continue to be entitled to elect the whole number of Directors until the holders of Preferred Stock shall have exercised their right to elect two (2) Directors voting as a class, after the exercise of which right (x) the Directors so elected by the holders of Preferred Stock shall continue in office until their successors shall have been elected by such holders or until the expiration of the default period, and (y) any vacancy in the Board of Directors may (except as provided in Paragraph (c)(ii) of this Section 3) be filled by vote of a majority of the remaining Directors theretofore elected by the holders of the class of stock which elected the Director whose office shall have become vacant. References in this Paragraph (c) to Directors elected by the holders of a particular class of stock shall include Directors elected by such Directors to fill vacancies as provided in clause (y) of the foregoing sentence.

(v) Immediately upon the expiration of a default period, (x) the right of the holders of Preferred Stock as a class to elect Directors shall cease, (y) the term of any Directors elected by the holders of Preferred Stock as a class shall terminate, and (z) the number of Directors shall be such number as may be provided for in the certificate of incorporation or by-laws of the Corporation irrespective of any increase made pursuant to the provisions of Paragraph (c)(ii) of this Section 3 (such number being subject, however, to change thereafter in any manner provided by law or in the certificate of incorporation or by-laws of the Corporation). Any vacancies in the Board of Directors effected by the provisions of clauses (y) and (z) in the preceding sentence may be filled by a majority of the remaining Directors.

(d) Except as set forth herein, holders of Series A Junior Participating Preferred Stock shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Common Stock as set forth herein) for taking any corporate action.

#### **Section 4. Certain Restrictions.**

(a) Whenever quarterly dividends or other dividends or distributions payable on the Series A Junior Participating Preferred Stock as provided in Section 2 hereof are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Series A Junior Participating Preferred Stock outstanding shall have been paid in full, the Corporation shall not:

(i) declare or pay dividends on, make any other distributions on, or redeem or purchase or otherwise acquire for consideration any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Junior Participating Preferred Stock;

(ii) declare or pay dividends on or make any other distributions on any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Junior Participating Preferred Stock, except dividends paid ratably on the Series A Junior Participating Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled;

(iii) redeem or purchase or otherwise acquire for consideration shares of any stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Junior Participating Preferred Stock, provided that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such parity stock in exchange for shares of any stock of the Corporation ranking junior (either as to dividends or upon dissolution, liquidation or winding up) to the Series A Junior Participating Preferred Stock; or

(iv) purchase or otherwise acquire for consideration any shares of Series A Junior Participating Preferred Stock, or any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Junior Participating Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board of Directors) to all holders of such shares upon such terms as the Board of Directors, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

(b) The Corporation shall not permit any subsidiary of the Corporation to purchase or otherwise acquire for consideration any shares of stock of the Corporation unless the Corporation could, under Paragraph (a) of this Section 4, purchase or otherwise acquire such shares at such time and in such manner.

**Section 5. Reacquired Shares.** Any shares of Series A Junior Participating Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and canceled promptly after the acquisition thereof. All such shares shall upon their cancellation become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock to be created by resolution or resolutions of the Board of Directors, subject to the conditions and restrictions on issuance set forth herein.

**Section 6. Liquidation, Dissolution or Winding Up.**

(a) Upon any liquidation (voluntary or otherwise), dissolution or winding up of the Corporation, no distribution shall be made to the holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Junior Participating Preferred Stock unless, prior thereto, the holders of shares of Series A Junior Participating Preferred Stock shall have received an amount equal to \$1,000 per share of Series A Junior Participating Preferred Stock, plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment (the Series A Liquidation Preference ). Following the payment of the full amount of the Series A Liquidation Preference, no additional distributions shall be made to the holders of shares of Series A Junior Participating Preferred Stock unless, prior thereto, the holders of shares of Common Stock shall have received an amount per share (the Common Adjustment ) equal to the quotient obtained by dividing (i) the Series A Liquidation Preference by (ii) 1,000 (as appropriately adjusted as set forth in subparagraph (c) below to reflect such events as stock splits, stock dividends and recapitalizations with respect to the Common Stock) (such number in clause (ii), the Adjustment Number ). Following the payment of the full amount of the Series A Liquidation Preference and the Common Adjustment in respect of all outstanding shares of Series A Junior Participating Preferred Stock and Common Stock, respectively, holders of Series A Junior Participating Preferred Stock and holders of shares of Common Stock shall receive their ratable and proportionate share of the remaining assets to be distributed in the ratio of the Adjustment Number to 1 with respect to such Preferred Stock and Common Stock, on a per share basis, respectively.

(b) In the event, however, that there are not sufficient assets available to permit payment in full of the Series A Liquidation Preference and the liquidation preferences of all other series of Preferred Stock, if any, which rank on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Junior Participating Preferred Stock, then such remaining assets shall be distributed ratably to the holders of such parity shares in proportion to their respective liquidation preferences. In the event, however, that there are not sufficient assets available to permit payment in full of the Common Adjustment, then such remaining assets shall be distributed ratably to the holders of Common Stock.

(c) In the event the Corporation shall at any time after the Rights Declaration Date (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock, or (iii) combine the outstanding Common Stock into a smaller number of shares, then in each such case the Adjustment Number in effect immediately prior to such event shall be adjusted by multiplying such Adjustment Number by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

**Section 7. Consolidation, Merger, etc.** In case the Corporation shall enter into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property, then in any such case the shares of Series A Junior Participating Preferred Stock shall at the same time be similarly exchanged or changed in an amount per share (subject to the provision for adjustment hereinafter set forth) equal to 1,000 times the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each share of Common Stock is changed or exchanged. In the event the Corporation shall at any time after the Rights Declaration Date (i) declare any dividend on Common Stock payable in shares of Common Stock, (ii) subdivide the outstanding Common Stock, or (iii) combine the outstanding Common Stock into a smaller number of shares, then in each such case the amount set forth in the preceding sentence with respect to the exchange or change of shares of Series A Junior Participating Preferred Stock shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

**Section 8. No Redemption.** The shares of Series A Junior Participating Preferred Stock shall not be redeemable.

**Section 9. Amendment.** The certificate of incorporation of the Corporation shall not be further amended in any manner which would materially alter or change the powers, preferences or special rights of the Series A Junior Participating Preferred Stock so as to affect them adversely without the affirmative vote of the holders of a majority or more of the outstanding shares of Series A Junior Participating Preferred Stock, voting separately as a class.

**Section 10. Fractional Shares.** Series A Junior Participating Preferred Stock may be issued in fractions of a share which shall entitle the holder, in proportion to such holder's fractional shares, to exercise voting rights, receive dividends, participate in distributions and to have the benefit of all other rights of holders of Series A Junior Participating Preferred Stock.

**Exhibit B**

**[Form of Rights Certificate]**

Certificate No. R- Rights  
NOT EXERCISABLE AFTER NOVEMBER 12, 2013 OR EARLIER IF REDEEMED BY THE COMPANY. THE RIGHTS ARE SUBJECT TO REDEMPTION, AT THE OPTION OF THE COMPANY, AT \$0.001 PER RIGHT ON THE TERMS SET FORTH IN THE RIGHTS AGREEMENT. UNDER CERTAIN CIRCUMSTANCES, RIGHTS BENEFICIALLY OWNED BY AN ACQUIRING PERSON (AS SUCH TERM IS DEFINED IN THE RIGHTS AGREEMENT) AND ANY SUBSEQUENT HOLDER OF SUCH RIGHTS MAY BECOME NULL AND VOID. [THE RIGHTS REPRESENTED BY THIS RIGHTS CERTIFICATE ARE OR WERE BENEFICIALLY OWNED BY A PERSON WHO WAS OR BECAME AN ACQUIRING PERSON OR AN AFFILIATE OR ASSOCIATE OF AN ACQUIRING PERSON (AS SUCH TERMS ARE DEFINED IN THE RIGHTS AGREEMENT). ACCORDINGLY, THIS RIGHTS CERTIFICATE AND THE RIGHTS REPRESENTED HEREBY MAY BECOME NULL AND VOID IN THE CIRCUMSTANCES SPECIFIED IN SECTION 7(e) OF SUCH AGREEMENT.]

Rights Certificate

**BEAZER HOMES USA, INC.**

This certifies that [ ], or registered assigns, is the registered owner of the number of Rights set forth above, each of which entitles the owner thereof, subject to the terms, provisions and conditions of the Section 382 Rights Agreement, dated as of November 12, 2010, as amended (the Rights Agreement ), between Beazer Homes USA, Inc., a Delaware corporation (the Company ), and American Stock Transfer & Trust Company, LLC, a New York limited liability company (the Rights Agent ), to purchase from the Company at any time prior to 5:00 P.M. (New York City time) on November 12, 2013 at the office or offices of the Rights Agent designated for such purpose, or its successors as Rights Agent, one one-thousandth of a fully paid, non-assessable share of Series A Junior Participating Preferred Stock (the Preferred Stock ) of the Company, at a purchase price of \$50.00 per one one-thousandth of a share (the Purchase Price ), upon presentation and surrender of this Rights Certificate with the Form of Election to Purchase and related Certificate duly executed. The number of Rights evidenced by this Rights Certificate (and the number of shares which may be purchased upon exercise thereof) set forth above, and the Purchase Price per share set forth above, are the number and Purchase Price as of November 12, 2010 based on the Preferred Stock as constituted at such date. The Company reserves the right to require prior to the occurrence of a Triggering Event (as such term is defined in the Rights Agreement) that a number of Rights be exercised so that only whole shares of Preferred Stock will be issued.

Upon the occurrence of a Section 11(a)(ii) Event (as such term is defined in the Rights Agreement), if the Rights evidenced by this Rights Certificate are beneficially owned by (i) an Acquiring Person or an Affiliate or Associate of any such Acquiring Person (as such terms are defined in the Rights Agreement), (ii) a transferee of any such Acquiring Person, Associate or Affiliate, or (iii) under certain circumstances specified in the Rights Agreement, a transferee of a person who, after such transfer, became an Acquiring Person, or an Affiliate or Associate of an Acquiring Person, such Rights shall become null and void and no holder hereof shall have any right with respect to such Rights from and after the occurrence of such Section 11(a)(ii) Event.

As provided in the Rights Agreement, the Purchase Price and the number and kind of shares of Preferred Stock or other securities, which may be purchased upon the exercise of the Rights evidenced by this Rights Certificate are subject to modification and adjustment upon the happening of certain events, including Triggering Events.

This Rights Certificate is subject to all of the terms, provisions and conditions of the Rights Agreement, which terms, provisions and conditions are hereby incorporated herein by reference and made a part hereof and to which Rights Agreement reference is hereby made for a full description of the rights, limitations of rights,

obligations, duties and immunities hereunder of the Rights Agent, the Company and the holders of the Rights Certificates, which limitations of rights include the temporary suspension of the exercisability of such Rights under the specific circumstances set forth in the Rights Agreement. Copies of the Rights Agreement are on file at the above-mentioned office of the Rights Agent and are also available upon written request to the Rights Agent.

This Rights Certificate, with or without other Rights Certificates, upon surrender at the principal office or offices of the Rights Agent designated for such purpose, may be exchanged for another Rights Certificate or Rights Certificates of like tenor and date evidencing Rights entitling the holder to purchase a like aggregate number of one one-thousandths of a share of Preferred Stock as the Rights evidenced by the Rights Certificate or Rights Certificates surrendered shall have entitled such holder to purchase. If this Rights Certificate shall be exercised in part, the holder shall be entitled to receive upon surrender hereof another Rights Certificate or Rights Certificates for the number of whole Rights not exercised.

Subject to the provisions of the Rights Agreement, the Rights evidenced by this Certificate may be redeemed by the Company at its option at a redemption price of \$0.001 per Right at any time prior to the earlier of the close of business on (i) the tenth day following the Stock Acquisition Date (as such time period may be extended pursuant to the Rights Agreement), and (ii) the Final Expiration Date. In addition, the Rights may be exchanged, in whole or in part, for shares of the Common Stock, or shares of preferred stock of the Company having essentially the same value or economic rights as such shares. Immediately upon the action of the Board of Directors of the Company authorizing any such exchange, and without any further action or any notice, the Rights (other than Rights which are not subject to such exchange) will terminate and the Rights will only enable holders to receive the shares issuable upon such exchange. Under certain circumstances set forth in the Rights Agreement, the decision to redeem the Rights shall require the concurrence of a majority of the members of the Board of Directors of the Company.

No fractional shares of Preferred Stock will be issued upon the exercise of any Right or Rights evidenced hereby (other than fractions which are integral multiples of one one-thousandth of a share of Preferred Stock, which may, at the election of the Company, be evidenced by depositary receipts), but in lieu thereof a cash payment will be made, as provided in the Rights Agreement.

No holder of this Rights Certificate shall be entitled to vote or receive dividends or be deemed for any purpose the holder of shares of Preferred Stock or of any other securities of the Company which may at any time be issuable on the exercise hereof, nor shall anything contained in the Rights Agreement or herein be construed to confer upon the holder hereof, as such, any of the rights of a stockholder of the Company or any right to vote for the election of directors or upon any matter submitted to stockholders at any meeting thereof, or to give consent to or withhold consent from any corporate action, or, to receive notice of meetings or other actions affecting stockholders (except as provided in the Rights Agreement), or to receive dividends or subscription rights, or otherwise, until the Right or Rights evidenced by this Rights Certificate shall have been exercised as provided in the Rights Agreement.

This Rights Certificate shall not be valid or obligatory for any purpose until it shall have been countersigned by the Rights Agent.

WITNESS the facsimile signature of the proper officers of the Company and its corporate seal.

Dated as of \_\_\_\_\_

Attest: BEAZER HOMES USA, INC.

By: Name:  
Title: By: Name:  
Title:

Countersigned:

Attest: AMERICAN STOCK TRANSFER & TRUST COMPANY, LLC

By: Authorized Signature Name:  
Title: By: Name:  
Title:

B-3

[Form of Reverse Side of Rights Certificate]

**FORM OF ASSIGNMENT**

(To be executed by the registered holder if such holder desires to transfer the Rights Certificate.)

FOR VALUE RECEIVED \_\_\_\_\_ hereby sells, assigns and transfers unto \_\_\_\_\_ (Please print name and address of transferee) this Rights Certificate, together with all right, title and interest therein, and does hereby irrevocably constitute and appoint Attorney, to transfer the within Rights Certificate on the books of the within-named Company, with full power of substitution.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature Guaranteed:

Certificate

The undersigned hereby certifies by checking the appropriate boxes that:

- (1) this Rights Certificate [ ] is [ ] is not being sold, assigned and transferred by or on behalf of a Person who is or was an Acquiring Person or an Affiliate or Associate of any such Acquiring Person (as such terms are defined pursuant to the Rights Agreement);
  
- (2) after due inquiry and to the best knowledge of the undersigned, it [ ] did [ ] did not acquire the Rights evidenced by this Rights Certificate from any Person who is, was or subsequently became an Acquiring Person or an Affiliate or Associate of an Acquiring Person.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature Guaranteed:

NOTICE

The signature to the foregoing Assignment and Certificate must correspond to the name as written upon the face of this Rights Certificate in every particular, without alteration or enlargement or any change whatsoever.

**FORM OF ELECTION TO PURCHASE**

(To be executed if holder desires to exercise Rights represented by the Rights Certificate.)

To: BEAZER HOMES USA, INC.:

The undersigned hereby irrevocably elects to exercise \_\_\_\_\_ Rights represented by this Rights Certificate to purchase the shares of Preferred Stock issuable upon the exercise of the Rights (or such other securities of the Company or of any other person which may be issuable upon the exercise of the Rights) and requests that certificates for such shares be issued in the name of and delivered to:

Please insert social security or other identifying number \_\_\_\_\_

(Please print name and address):

If such number of Rights shall not be all the Rights evidenced by this Rights Certificate, a new Rights Certificate for the balance of such Rights shall be registered in the name of and delivered to:

Please insert social security or other identifying number \_\_\_\_\_

(Please print name and address):

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature Guaranteed:

Certificate

The undersigned hereby certifies by checking the appropriate boxes that:

- (1) the Rights evidenced by this Rights Certificate [ ] are [ ] are not being exercised by or on behalf of a Person who is or was an Acquiring Person or an Affiliate or Associate of any such Acquiring Person (as such terms are defined pursuant to the Rights Agreement);
  
- (2) after due inquiry and to the best knowledge of the undersigned, it [ ] did [ ] did not acquire the Rights evidenced by this Rights Certificate from any Person who is, was or became an Acquiring Person or an Affiliate or Associate of an Acquiring Person.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature Guaranteed:

NOTICE

The signature to the foregoing Election to Purchase and Certificate must correspond to the name as written upon the face of this Rights Certificate in every particular, without alteration or enlargement or any change whatsoever.

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**Exhibit C****SUMMARY OF RIGHTS TO PURCHASE SERIES A JUNIOR PARTICIPATING PREFERRED STOCK**

On November 12, 2010 the Board of Directors of Beazer Homes USA, Inc. (the Company) approved the execution of a Section 382 Rights Agreement (the Rights Agreement) between the Company and American Stock Transfer & Trust Company, LLC (the Rights Agent) and on December \_\_, 2010, approved an amendment thereto. The Rights Agreement provides for a distribution of one preferred stock purchase right (a Right) for each share of Common Stock, par value \$0.001 per share, of the Company (the Common Stock) outstanding to stockholders of record at the close of business on November 22, 2010 (the Record Date). Each Right entitles the registered holder to purchase from the Company a unit (a Unit) consisting of one one-thousandth of a share of Series A Junior Participating Preferred Stock, par value \$0.01 per share (the Preferred Stock), at a Purchase Price of \$50.00 per Unit (the Purchase Price), subject to adjustment. The description and terms of the Rights are set forth in the Rights Agreement.

The Board of Directors of the Company adopted the Rights Agreement in an effort to protect stockholder value by attempting to protect against a possible limitation on the Company's ability to use its net operating loss carryforwards (the NOLs) to reduce potential future federal income tax obligations. The Company has experienced and continues to experience substantial operating losses, and under the Internal Revenue Code of 1986, as amended (the Code), and rules promulgated by the Internal Revenue Service, the Company may carry forward these losses in certain circumstances to offset any current and future earnings and thus reduce the Company's federal income tax liability, subject to certain requirements and restrictions. To the extent that the NOLs do not otherwise become limited, the Company believes that it will be able to carry forward a significant amount of NOLs, and therefore these NOLs could be a substantial asset to the Company. However, if the Company experiences an Ownership Change, as defined in Section 382 of the Code, its ability to use the NOLs will be substantially limited, and the timing of the usage of the NOLs could be substantially delayed, which could therefore significantly impair the value of that asset.

A copy of the Rights Agreement is being filed with the Securities and Exchange Commission as an Exhibit to a Registration Statement on Form 8-A. A copy of the Rights Agreement is available free of charge from the Company. This Summary of Rights does not purport to be complete and is qualified in its entirety by reference to the Rights Agreement, which is incorporated herein by reference.

***Distribution Date; Acquiring Persons; Transfer of Rights.*** Initially, the Rights will be attached to all Common Stock certificates representing shares then outstanding, and no separate Rights Certificates will be distributed. Subject to certain exceptions specified in the Rights Agreement, the Rights will separate from the Common Stock and a Distribution Date will occur upon the earlier of (i) ten (10) days following a public announcement that a person or group of affiliated or associated persons (an Acquiring Person) has acquired, or obtained the right to acquire, beneficial ownership of 4.95% or more of the outstanding shares of Common Stock (the Stock Acquisition Date) or (ii) ten (10) business days following the commencement of a tender offer or exchange offer that would result in a person or group beneficially owning 4.95% or more of the outstanding shares of Common Stock. The definition of Acquiring Person excludes any Exempted Person (as defined below) and any person who would become an Acquiring Person solely as a result of an Exempted Transaction (as defined below) or the consummation of a Qualified Offer (as defined in the Rights Agreement). Until the Distribution Date, (i) the Rights will be evidenced by the Common Stock certificates and will be transferred with and only with such Common Stock certificates, (ii) new Common Stock certificates after the Record Date will contain a notation incorporating the Rights Agreement by reference and (iii) the surrender for transfer of any certificates for Common Stock outstanding will also constitute the transfer of the Rights associated with the Common Stock represented by such certificate.

As soon as practicable after the Distribution Date, Rights Certificates will be mailed to holders of record of the Common Stock as of the close of business on the Distribution Date. Thereafter, the separate Rights Certificates alone will represent the Rights. Except as otherwise determined by the Board of Directors, only shares of Common Stock issued prior to the Distribution Date will be issued with Rights.

**Exempted Persons.** The following persons shall be Exempted Persons under the Rights Agreement:

(i) Any person who, together with all affiliates and associates of such person, is the beneficial owner of Common Stock, options and/or warrants exercisable for shares of Common Stock representing 4.95% or more of the shares of Common Stock outstanding on November 12, 2010, will be an Exempted Person. However, any such person will no longer be deemed to be an Exempted Person and shall be deemed an Acquiring Person if such person, together with all affiliates and associates of such person, becomes the beneficial owner of securities representing a percentage of Common Stock that exceeds by one-half of one percent (0.5%) or more the lowest percentage of Common Stock that such person had at any time since November 12, 2010, except solely (x) pursuant to equity compensation awards granted to such person by the Company or as a result of an adjustment to the number of shares of Common Stock represented by such equity compensation award pursuant to the terms thereof or (y) as a result of a redemption of shares of Common Stock by the Company.

(ii) In addition, any person who, together with all affiliates and associates of such person, becomes the beneficial owner of Common Stock, options and/or warrants exercisable for shares of Common Stock representing 4.95% or more of the shares of Common Stock then outstanding as a result of a purchase by the Company or any of its subsidiaries of shares of Common Stock will also be an Exempted Person. However, any such person will no longer be deemed to be an Exempted Person and will be deemed to be an Acquiring Person if such person, together with all affiliates and associates of such person, becomes the beneficial owner, at any time after the date such person became the beneficial owner of 4.95% or more of the then outstanding shares of Common Stock, of securities representing a percentage of Common Stock that exceeds by one-half of one percent (0.5%) or more the lowest percentage of Beneficial Ownership of Common Stock that such person had at any time since the date such person first became the beneficial owner of 4.95% or more of the then outstanding shares of Common Stock, except solely (x) pursuant to equity compensation awards granted to such person by the Company or as a result of an adjustment to the number of shares of Common Stock represented by such equity compensation award pursuant to the terms thereof or (y) as a result of a redemption of shares of Common Stock by the Company.

(iii) In addition, any person who, together with all affiliates and associates of such person, is the beneficial owner of Common Stock, options and/or warrants exercisable for shares of Common Stock representing 4.95% or more of the shares of Common Stock outstanding, and whose beneficial ownership, as determined by the Board of Directors of the Company in its sole discretion, (x) would not jeopardize or endanger the availability of the Company of its NOLs or (y) is otherwise in the best interests of the Company, will be an Exempted Person. However, any such person will cease to be an Exempted Person if (A) such person ceases to beneficially own 4.95% or more of the shares of the then outstanding Common Stock, or (B) after the date of such determination by the Board of Directors of the Company, such person, together with all affiliates and associates of such person, becomes the beneficial owner of securities representing a percentage of Common Stock that exceeds by one-half of one percent (0.5%) or more the lowest percentage of Beneficial Ownership of Common Stock that such person had at any time since the date such person first became the beneficial owner of 4.95% or more of the then outstanding shares of Common Stock, except solely (I) pursuant to equity compensation awards granted to such person by the Company or as a result of an adjustment to the number of shares of Common Stock represented by such equity compensation award pursuant to the terms thereof or (II) as a result of a redemption of shares of Common Stock by the Company, or (C) the Board of Directors of the Company, in its sole discretion, makes a contrary determination with respect to the effect of such person's beneficial ownership (together with all affiliates and associates of such person) with respect to the availability to the Company of its NOLs.

A purchaser, assignee or transferee of the shares of Common Stock (or options or warrants exercisable for Common Stock) from an Exempted Person will not thereby become an Exempted Person, except that a transferee from the estate of an Exempted Person who receives Common Stock as a bequest or inheritance from an Exempted Person shall be an Exempted Person so long as such transferee continues to be the beneficial owner of 4.95% or more of the then outstanding shares of Common Stock.

**Exempted Transactions.** The following transactions shall be Exempted Transactions under the Rights Agreement: any transaction that the Board of Directors of the Company determines, in its sole discretion, is exempt from the Rights Agreement, which determination shall be made in the sole and absolute discretion of the Board of Directors prior to the date of such transaction, including, without limitation, if the Board of Directors determines that (i) neither the beneficial ownership of shares of Common Stock by any person, directly or indirectly, as a result of such transaction nor any other aspect of such transaction would jeopardize or endanger the availability to the Company of the Company's tax benefits or (ii) such transaction is otherwise in the best interests of the Company. In granting an exemption for an Exempted Transaction, the Board of Directors of the Company may require any person who would otherwise be an Acquiring Person to make certain representations or undertakings or to agree that any violation or attempted violation of such representations or undertakings will result in such consequences and subject to such conditions as the Board of Directors of the Company may determine in its sole discretion, including that any such violation shall result in such person becoming an Acquiring Person.

**Exercisability; Expiration.** The Rights are not exercisable until the Distribution Date and will expire on the earliest of (i) the close of business on November 12, 2013, (ii) the time at which the Rights are redeemed pursuant to the Rights Agreement, (iii) the time at which the Rights are exchanged pursuant to the Rights Agreement, (iv) the repeal of Section 382 of the Code or any successor statute if the Board of Directors of the Company determines that the Rights Agreement is no longer necessary or desirable for the preservation of certain tax benefits, (v) the beginning of a taxable year of the Company to which the Board of Directors of the Company determines that certain tax benefits may not be carried forward, or (vi) the earlier of (A) the date on which shareholders vote on and do not approve of this Agreement (if any) or (B) the first anniversary of adoption of the Rights Agreement if shareholder approval of the Rights Agreement has not been received by or on such date. At no time will the Rights have any voting power.

In the event that an Acquiring Person becomes the beneficial owner of 4.95% or more of the then outstanding shares of Common Stock, each holder of a Right will thereafter have the right to receive, upon exercise, Common Stock (or, in certain circumstances, cash, property or other securities of the Company), having a value equal to two times the exercise price of the Right. The exercise price is the Purchase Price times the number of Units associated with each Right (initially, one). Notwithstanding any of the foregoing, following the occurrence of an Acquiring Person becoming such (a Flip-In Event), all Rights that are, or (under certain circumstances specified in the Rights Agreement) were, beneficially owned by any Acquiring Person will be null and void. However, Rights are not exercisable following the occurrence of a Flip-In Event until such time as the Rights are no longer redeemable by the Company as set forth below.

For example, at an exercise price of \$50.00 per Right, each Right not owned by an Acquiring Person (or by certain related parties) following an event set forth in the preceding paragraph would entitle its holder to purchase \$100.00 worth of Common Stock (or other consideration, as noted above) for \$50.00. If the Common Stock at the time of exercise had a market value per share of \$5.00, the holder of each valid Right would be entitled to purchase twenty (20) shares of Common Stock for \$50.00.

In the event that, at any time following the Stock Acquisition Date, (i) the Company engages in a merger or other business combination transaction in which the Company is not the surviving corporation; (ii) the Company engages in a merger or other business combination transaction in which the Company is the surviving corporation and the Common Stock is changed or exchanged; or (iii) 50% or more of the Company's assets, cash flow or earning power is sold or transferred, each holder of a Right (except Rights which have previously been voided as set forth above) shall thereafter have the right to receive, upon exercise of the Right, common stock of the acquiring company having a value equal to two times the exercise price of the Right. The events set forth in this paragraph (a Flip-Over Event) and in the second preceding paragraph are referred to as the Triggering Events.

Until a Right is exercised, the holder thereof, as such, will have no rights as a shareholder of the Company, including, without limitation, the right to vote or to receive dividends. While the distribution of the Rights will not be taxable to shareholders or to the Company, shareholders may, depending upon the circumstances, recognize taxable income in the event that the Rights become exercisable for Common Stock (or other consideration) of the Company as set forth above or in the event the Rights are redeemed.

**Anti-Dilution Provisions.** The Purchase Price payable, and the number of Units of Preferred Stock or other securities or property issuable, upon exercise of the Rights are subject to adjustment from time to time to prevent dilution (i) in the event of a stock dividend on, or a subdivision, combination or reclassification of, the Preferred Stock, (ii) if holders of the Preferred Stock are granted certain rights or warrants to subscribe for Preferred Stock or convertible securities at less than the current market price of the Preferred Stock, or (iii) upon the distribution to holders of the Preferred Stock of evidences of indebtedness or assets (excluding regular quarterly cash dividends) or of subscription rights or warrants (other than those referred to above).

With certain exceptions, no adjustments in the Purchase Price will be required until cumulative adjustments amount to at least 1% of the Purchase Price. No fractional Units will be issued and, in lieu thereof, an adjustment in cash will be made based on the market price of the Preferred Stock on the last trading date prior to the date of exercise.

**Exchange.** At any time after the Stock Acquisition Date, the Board of Directors of the Company may exchange the Rights (other than Rights owned by an Acquiring Person), in whole or in part, at an exchange ratio equal to (i) a number of shares of Common Stock per Right with a value equal to the spread between the value of the number of shares of Common Stock for which the Rights may then be exercised and the Purchase Price or (ii) if prior to the acquisition by the Acquiring Person of 50% or more of the then outstanding shares of Common Stock, one share of Common Stock per Right (subject to adjustment).

**Redemption.** At any time until ten (10) days following the Stock Acquisition Date, the Company may redeem the Rights in whole, but not in part, at a price of \$0.001 per Right. Immediately upon the action of the Board of Directors ordering redemption of the Rights, the Rights will terminate and the only right of the holders of Rights will be to receive the \$0.001 redemption price.

**Amendments.** Other than those provisions relating to the principal economic terms of the Rights, any of the provisions of the Rights Agreement may be amended by the Board of Directors of the Company prior to the Distribution Date. After the Distribution Date, the provisions of the Rights Agreement may be amended by the Board in order to cure any ambiguity, to make changes which do not adversely affect the interests of holders of Rights (excluding the interests of any Acquiring Person), or to shorten or lengthen any time period under the Rights Agreement; provided, however, that no amendment to adjust the time period governing redemption shall be made at such time as the Rights are not redeemable.

**VOTE BY INTERNET - [www.proxyvote.com](http://www.proxyvote.com)**

Use the Internet to transmit your voting instructions and for electronic delivery of information up until 11:59 P.M. Eastern Time the day before the cut-off date or meeting date. Have your proxy card in hand when you access the web site and follow the instructions to obtain your records and to create an electronic voting instruction form.

**BEAZER HOMES USA, INC.**

**1000 ABERNATHY ROAD**

**SUITE 1200**

**ATLANTA, GA 30328**

**ELECTRONIC DELIVERY OF FUTURE PROXY MATERIALS**

If you would like to reduce the costs incurred by our company in mailing proxy materials, you can consent to receiving all future proxy statements, proxy cards and annual reports electronically via e-mail or the Internet. To sign up for electronic delivery, please follow the instructions above to vote using the Internet and, when prompted, indicate that you agree to receive or access proxy materials electronically in future years.

**VOTE BY PHONE - 1-800-690-6903**

Use any touch-tone telephone to transmit your voting instructions up until 11:59 P.M. Eastern Time the day before the cut-off date or meeting date. Have your proxy card in hand when you call and then follow the instructions.

**VOTE BY MAIL**

Mark, sign and date your proxy card and return it in the postage-paid envelope we have provided or return it to Vote Processing, c/o Broadridge, 51 Mercedes Way, Edgewood, NY 11717.

TO VOTE, MARK BLOCKS BELOW IN BLUE OR BLACK INK AS FOLLOWS:

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KEEP THIS PORTION FOR YOUR RECORDS

**THIS PROXY CARD IS VALID ONLY WHEN SIGNED AND DATED.**

**DETACH AND RETURN THIS PORTION ONLY**

**BEAZER HOMES USA, INC.**

**The Board of Directors recommends you vote**

**FOR the following proposals:**

**Vote on Directors**

1. Election of Directors

Nominees:	For	Against	Abstain		For	Against	Abstain
1a. Laurent Alpert	..	..	..	3.	..	..	..
1b. Brian C. Beazer	..	..	..	Approval of an advisory proposal regarding the Company's executive compensation programs (the Say on Pay proposals).			
1c. Peter G. Leemputte	..	..	..				

**The Board of Directors recommends Say on Pay proposals**

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1d. Ian J. McCarthy	..	..	..	<b>be held every year:</b>				
				4. An advisory vote to establish the frequency of submission to stockholders of Pay proposals.	<b>1 yr</b>	<b>2 yrs</b>	<b>3 yrs</b>	<b>Abstain</b>
1e. Norma A. Provencio	..	..	..		..	..	..	..
1f. Larry T. Solari	..	..	..					
				5. Approval of a protective amendment to the Company's Certificate of Incorporation to help preserve certain tax benefits primarily associated with the Company's net operating losses.		<b>For</b>	<b>Against</b>	<b>Abstain</b>
1g. Stephen P. Zelnak, Jr.	..	..	..			..	..	..
2. Ratification of the appointment of Deloitte & Touche LLP by the Audit Committee of the Board of Directors to serve as Beazer Homes USA, Inc.'s independent registered public accounting firm for the fiscal year ending September 30, 2011.	..	..	..	6. Approval of a Section 382 Rights Agreement to further help protect the tax benefits primarily associated with the Company's net operating losses.		..	..	..

For address changes and/or comments, please check this box and write them on the back where indicated. ..

**NOTE:** Such other business as may properly come before the meeting or any adjournment thereof.

Please sign exactly as your name(s) appear(s) hereon. When signing as attorney, executor, administrator, or other fiduciary, please give full title as such. Joint owners should each sign personally. All holders must sign. If a corporation or partnership, please sign in full corporate or partnership name by authorized officer.

Signature [PLEASE SIGN WITHIN BOX]

Date

Signature (Joint Owners)

Date

ANNUAL MEETING OF STOCKHOLDERS OF

**BEAZER HOMES USA, INC.**

February 2, 2011

Please date, sign and mail your proxy card in the  
envelope provided as soon as possible.

**Important Notice Regarding the Availability of Proxy Materials for the Annual Meeting:**

The Notice and Proxy Statement and Annual Report are available at [www.proxyvote.com](http://www.proxyvote.com).

Please detach along perforated line and mail in the envelope provided.

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**BEAZER HOMES USA, INC.**

**1000 Abernathy Road**

**Suite 1200**

**Atlanta, Georgia 30328**

**THIS PROXY IS SOLICITED ON BEHALF OF THE BOARD OF DIRECTORS**

The undersigned, having duly received the Notice of Annual Meeting and Proxy Statement of Beazer Homes USA, Inc., dated December \_\_, hereby appoints Ian J. McCarthy and Kenneth F. Khoury (each with full power to act alone and with power of substitution and revocation), to represent the undersigned and to vote, as designated on the reverse side, all shares of common stock of Beazer Homes USA, Inc., par value \$.001, which the undersigned is entitled to vote at the Annual Meeting of Stockholders of Beazer Homes USA, Inc. to be held at 11:00 a.m. on Tuesday, February 2, 2011 at Beazer Homes USA, Inc. s offices at 1000 Abernathy Road, Suite 260, Atlanta, Georgia 30328 and at any adjournments or postponements thereof.

**Address Changes/Comments:**

(If you noted any Address Changes/Comments above, please mark corresponding box on the reverse side.)

**(Continued and to be signed on the reverse side)**