

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
BEAZER HOMES USA, INC.**

BEAZER HOMES USA, INC., a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify as follows:

FIRST: The name of the Corporation is Beazer Homes USA, Inc. The original Certificate of Incorporation of the Corporation (the "Certificate of Incorporation") was filed on November 24, 1993 with the Secretary of State of the State of Delaware and a Certificate of Amendment of the Certificate of Incorporation was filed on December 2, 1993.

SECOND: This Amended and Restated Certificate of Incorporation restates, integrates and amends the Certificate of Incorporation, as heretofore amended, by further amending certain provisions thereof, including, without limitation, to provide for an increase in the number of authorized shares of capital stock of the Corporation and to authorize a class of preferred stock.

THIRD: This Amended and Restated Certificate of Incorporation was duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware.

FOURTH: The Certificate of Incorporation of the Corporation, as amended to this date, is hereby amended and restated in its entirety to read as follows:

ARTICLE ONE. The name of this corporation shall be:

BEAZER HOMES USA, INC.

ARTICLE TWO. Its registered office in the State of Delaware is to be located at 1209 Orange Street, Wilmington, County of New Castle, Delaware 19801, and its registered agent at such address is The Corporation Trust Company.

ARTICLE THREE. The purpose or purposes of this corporation shall be:

To engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

ARTICLE FOUR. The total number of shares of stock which this corporation is authorized to issue is:

(i) 30,000,000 shares of Common Stock, par value \$.01 per share; and

(ii) (a) 5,000,000 shares of Preferred Stock, par value \$.01, which may be issued, from time to time, in one or more series, each of such series to have such full or limited voting powers or no voting powers, and such designations, priorities, preferences, and relative, participating, optional or other special rights, and qualifications, limitations or restrictions with respect thereto as are stated and expressed herein, in any amendment or amendments to this Amended and Restated Certificate of Incorporation, or in any resolution or resolutions establishing such series as are adopted by the Board of Directors, as hereinafter provided, and as are acknowledged, filed and recorded in accordance with the laws of the State of Delaware and as are not inconsistent with this Article FOUR or any other provision of this Amended and Restated Certificate of Incorporation.

(b) Authority is hereby expressly granted to the Board of Directors, subject to the provisions of this Article FOUR, to authorize the issuance of one or more series of Preferred Stock and, with respect to each such series, to fix by resolution or resolutions providing for the issuance of such series:

(1) the distinctive designation of such series and the number of shares which shall constitute such series;

(2) the cumulative or noncumulative nature of the dividend, if any, to be paid on the shares of such series;

(3) the dividend rate or rates to which such shares shall be entitled and the restrictions, limitations and conditions upon the payment of such dividends, the date or dates from which such dividends, if declared, shall be payable, and whether arrearages on the payment of dividends will bear interest;

(4) whether any limitations or restrictions are to be imposed upon the declaration or payment of dividends on the Common Stock while any shares of such series of Preferred Stock are outstanding;

(5) whether or not the shares of such series shall be redeemable; the limitations and restrictions with respect to such redemptions (including whether or not the shares of such series shall be redeemable at the option of either the holder or this corporation or upon the happening of a specified event); the manner of selecting shares of such series for redemption if less than all the shares are to be redeemed; the amount, if any, in addition to any accrued dividends thereon which the holder of shares of such series shall be entitled to receive upon the redemption thereof, which amount may vary at different redemption dates, may be subject to adjustment and may be different with respect to shares redeemed

through the operation of any purchase, retirement or sinking fund and with respect to shares otherwise redeemed; and whether or not the shares of such series, if redeemable, shall be redeemable for cash, property, rights or other assets, including securities of this corporation or of any other corporation;

(6) whether shares of such series shall rank senior to shares of the Common Stock with respect to the payment of dividends and the distribution of assets upon the voluntary or involuntary liquidation, dissolution or winding-up of the affairs of this corporation, and the amount which the holders of shares of such series may be entitled to receive in addition to any accumulated dividends upon the voluntary or involuntary liquidation, dissolution or winding-up of the affairs of this corporation, which amount may vary depending upon whether such liquidation, dissolution or winding-up of the affairs is voluntary or involuntary and, if voluntary, may vary at different dates or otherwise;

(7) whether the shares of such series shall be subject to the operation of a purchase, retirement or sinking fund, and if so, whether such purchase, retirement or sinking fund shall be cumulative or noncumulative, and the extent to and the manner in which such funds shall be applied to the purchase or redemption of the shares of such series for retirement or for other purposes and the terms and provisions relative to the operation of said fund or funds;

(8) whether the shares of such series shall be convertible into, or exchangeable for, shares of stock of any other class or classes of capital stock, or of any other series of the same class of capital stock, and if so convertible or exchangeable, the price or prices or the rate or rates or the term or terms of conversion or exchange and the method, if any, of adjusting the same;

(9) the voting rights, if any, of such series, and whether such voting rights shall be contingent upon the happening of a specified event and whether such voting rights shall cease upon the happening of a specified event; and

(10) any other preferences, upon liquidation, dissolution, winding-up or otherwise and relative, participating, optional, or other special rights, and qualifications, limitations, or restrictions thereof not inconsistent with this Article FOUR or any other provision of this Amended and Restated Certificate of Incorporation.

(c) The Board of Directors also shall have authority to change the designation of shares, or the relative rights, preferences and limitations of the shares of any theretofore established series of Preferred Stock, no share of which has been issued or is subject to any then outstanding warrant, right, call, option or similar right, and further, the Board of Directors shall have authority to increase or decrease the number of shares of any series previously determined by it (provided, however, that the number of shares of any such series shall not be decreased to a number less than that of the shares of that series then outstanding).

ARTICLE FIVE. The name and address of the incorporator of this corporation is as follows:

Stephen Trent
Dorsey & Whitney
350 Park Avenue
New York, New York 10022

ARTICLE SIX. The Board of Directors shall have the power to adopt, amend or repeal the by-laws of this corporation.

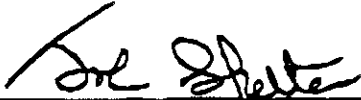
ARTICLE SEVEN. No director shall be personally liable to this corporation or its stockholders for monetary damages for any breach of fiduciary duty by such director as a director. Notwithstanding the foregoing sentence, a director shall be liable to the extent provided by applicable law: (i) for breach of the director's duty of loyalty to this corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to Section 174 of the General Corporation Law of the State of Delaware or (iv) for any transaction from which the director derived an improper personal benefit. No amendment to or repeal of this Article SEVEN shall apply to or have any effect on the liability or alleged liability of any director of this corporation for or with respect to any acts or omissions of such director occurring prior to such amendment.

IN WITNESS WHEREOF, I have signed this certificate on February 16, 1994 and I affirm the statements contained herein as true under penalties of perjury.



Ian J. McCarthy
President and Chief Executive Officer

ATTEST:



John Skelton
Secretary

CERTIFICATE OF DESIGNATIONS

OF

**SERIES A CUMULATIVE CONVERTIBLE
EXCHANGEABLE PREFERRED STOCK
\$.01 Par Value Per Share**

OF

BEAZER HOMES USA, INC.

**Pursuant to Section 151(g) of the General Corporation Law
of the State of Delaware**

The undersigned duly authorized officers of BEAZER HOMES USA, INC., a Delaware corporation (the "Corporation"), do hereby certify that the following resolution was duly adopted on August 1, 1995, by the Pricing Committee of the Board of Directors of the Corporation pursuant to authority conferred by the provisions of the Amended and Restated Certificate of Incorporation of the Corporation and in accordance with the provisions of the General Corporation Law of the State of Delaware:

RESOLVED, that pursuant to authority expressly granted to and vested in the Pricing Committee of the Board of Directors of the Corporation through authority conferred on the Board of Directors by the provisions of the Amended and Restated Certificate of Incorporation of the Corporation (the "Certificate of Incorporation"), the issuance of a series of preferred stock, \$.01 par value per share, of the Corporation (the "Preferred Stock"), which shall consist of 2,000,000 of the 5,000,000 shares of Preferred Stock which the Corporation presently has authority to issue, be, and the same hereby is, authorized, and this Pricing Committee of the Board of Directors hereby fixes the powers, designations, preferences and relative, participating, optional and other special rights of the shares of such series, and the qualifications, limitations and restrictions thereof (in addition to the powers, designations, preferences and relative, participating, optional or other special rights,

and the qualifications, limitations or restrictions thereof, set forth in the Certificate of Incorporation which may be applicable to the Preferred Stock) as follows:

1. Number of Shares and Designation. 2,000,000 shares of the Preferred Stock, \$.01 par value per share, of the Corporation are hereby constituted as a series of the Preferred Stock designated as Series A Cumulative Convertible Exchangeable Preferred Stock (the "Convertible Exchangeable Preferred Stock").

2. Definitions. For purposes of the Convertible Exchangeable Preferred Stock, the following terms shall have the meanings indicated:

"Board of Directors" shall mean the board of directors of the Corporation or any committee authorized by such Board of Directors to perform any of its responsibilities with respect to the Convertible Exchangeable Preferred Stock.

"Business Day" shall mean any day other than a Saturday, Sunday or a day on which banking institutions in The City of New York are authorized or obligated by law or executive order to close.

"Closing Price" of the Common Stock on any day shall mean on such day the reported last sales price, regular way, for the Common Stock or, in case no sale takes place on such day, the average of the reported closing bid and asked prices, regular way, for the Common Stock, in either case, as reported on the New York Stock Exchange or, if the Common Stock is not listed or admitted to trading on the New York Stock Exchange, on such other national securities exchange on which the Common Stock is listed or admitted to trading or, if the Common Stock is not listed or admitted to trading on any national securities exchange, on the National Market System of the National Association of Securities Dealers, Inc. Automated Quotation System ("Nasdaq National Market") or, if the Common Stock is not quoted on the Nasdaq National Market, the average of the closing bid and asked prices for the Common Stock on such day in the over-the-counter market as reported by NASDAQ or, if bid and asked prices for the Common Stock on each such date shall not have been reported by NASDAQ, the average of the bid and asked prices of the Common Stock for such day as furnished by any New York Stock Exchange member firm regularly making a market in the Common Stock selected for such purpose by the Board of Directors or, if no such quotations are available, the fair market value of the Common Stock furnished by any New York Stock Exchange member firm selected from time to time by the Board of Directors for that purpose.

"Common Stock" shall mean the common stock of the Corporation, \$.01 par value per share.

"Conversion Price" shall mean the conversion price per share of Common Stock into which the Convertible Exchangeable Preferred Stock is convertible, as such Conversion Price may be adjusted pursuant to Section 7 hereof. The initial Conversion Price will be \$19.05 (equivalent to the rate of 1.3123 shares of Common Stock for each share of Convertible Exchangeable Preferred Stock).

"Corporate Change" shall have the meaning set forth in Section 8 hereof.

"Current Market Price" per share of Common Stock on any date shall mean the average of the daily Closing Prices for the 30 consecutive Trading Dates commencing 45 Trading Dates before the date of determination.

"dividend payment date" shall have the meaning set forth in Section 3(a) hereof.

"dividend payment record date" shall have the meaning set forth in Section 3(a) hereof.

"Dividend Periods" shall mean quarterly dividend periods commencing on the first day of March, June, September and December, including the day preceding the first day of the next succeeding Dividend Period (other than the initial Dividend Period, which shall commence on the Issue Date and end on and include August 31, 1995).

"Issue Date" shall mean the first date on which shares of Convertible Exchangeable Preferred Stock are issued.

"Ownership Change" shall have the meaning set forth in Section 8 hereof.

"Person" shall mean any individual, firm, partnership, corporation or other entity, and shall include any successor (by merger or otherwise) of such entity.

"Trading Date" with respect to Common Stock means (i) if the Common Stock is listed or admitted for trading on the New York Stock Exchange or another national securities exchange, a day on which the New York Stock Exchange or such other national securities exchange is open for business, (ii) if the Common Stock is quoted on the NASDAQ National Market, or any similar system of automated dissemination of quotations of securities prices, a day on which trades may be made on such system, (iii) if

not quoted as described in clause (ii), days on which quotations are reported by the National Quotation Bureau Incorporated, or (iv) otherwise, any Business Day.

"Transaction" shall have the meaning set forth in Section 7(e) hereof.

"Transfer Agent" means Chemical Bank or such other agent or agents of the Corporation as may be designated by the Board of Directors from time to time as the transfer agent for the Convertible Exchangeable Preferred Stock.

3. Dividends. (a) The holders of shares of the Convertible Exchangeable Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available therefor, cumulative cash dividends at an annual rate of 8% of the liquidation preference per share (an amount equivalent to \$2.00 per annum per annum per share) of Convertible Exchangeable Preferred Stock. Such dividends shall be cumulative from the Issue Date, whether or not in any Dividend Period or Periods there shall be funds of the Corporation legally available for the payment of such dividends and whether or not such dividends are declared, and shall be payable quarterly, when, as and if declared by the Board of Directors, on March 1, June 1, September 1, and December 1 in each year (each a "dividend payment date"), commencing on September 1, 1995. If September 1, 1995 or any other dividend payment date shall be on a day other than a Business Day, then the dividend payment date shall be on the next succeeding Business Day. Each such dividend shall be payable in arrears to the holders of record of shares of the Convertible Exchangeable Preferred Stock, as they appear on the stock records of the Corporation at the close of business on those dates (each such date, a "dividend payment record date"), not less than 10 days nor more than 60 days preceding the dividend payment dates thereof, as shall be fixed by the Board of Directors. Dividends on the Convertible Exchangeable Preferred Stock shall accrue (whether or not declared) on a daily basis from the Issue Date and accrued dividends for each Dividend Period shall accumulate to the extent not paid on the dividend payment date first following the Dividend Period for which they accrue. As used herein, the term "accrued" with respect to dividends includes both accrued and accumulated dividends. Accrued and unpaid dividends for any past Dividend Periods may be declared and paid at any time, without reference to any regular dividend payment date, to holders of record on a record date, not less than 10 nor more than 60 days preceding the payment date thereof, as may be fixed by the Board of Directors.

(b) The amount of dividends payable for each full Dividend Period for the Convertible Exchangeable Preferred Stock shall be computed by dividing the annual dividend rate by four (rounded down to the nearest cent). The amount of dividends payable for the initial Dividend Period on the Convertible Exchangeable Preferred Stock, or any other period shorter or longer than a full Dividend Period on the Convertible Exchangeable Preferred Stock, shall be computed on the basis of a

360-day year consisting of twelve 30-day months. Holders of shares of Convertible Exchangeable Preferred Stock called for redemption on a redemption date falling between the close of business on a dividend payment record date and the close of business on the corresponding dividend payment date shall, in lieu of receiving such dividend on the dividend payment date fixed therefor, receive such dividend payment together with all other accrued and unpaid dividends to the date fixed for redemption (unless such holder converts such shares in accordance with Section 7 hereof). Holders of shares of Convertible Exchangeable Preferred Stock shall not be entitled to any dividends, whether payable in cash, property or securities, in excess of cumulative dividends, as herein provided, on the Convertible Exchangeable Preferred Stock. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments on the Convertible Exchangeable Preferred Stock which are in arrears.

(c) So long as any shares of the Convertible Exchangeable Preferred Stock are outstanding, no dividends, except as described in the next succeeding sentence, shall be declared or paid or set apart for payment on any class or series of stock of the Corporation ranking, as to dividends, on a parity with the Convertible Exchangeable Preferred Stock, for any period unless full cumulative dividends have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof is set apart for such payment on the Convertible Exchangeable Preferred Stock for all Dividend Periods terminating on or prior to the date of payment, or setting apart for payment, of such dividends on such parity stock. When dividends are not paid in full or a sum sufficient for such payment is not set apart, as aforesaid, upon the shares of the Convertible Exchangeable Preferred Stock and any other class or series of stock ranking on a parity as to dividends with the Convertible Exchangeable Preferred Stock, all dividends declared upon shares of the Convertible Exchangeable Preferred Stock and all dividends declared upon such other stock shall be declared pro rata so that the amounts of dividends per share declared on the Convertible Exchangeable Preferred Stock and such other stock shall in all cases bear to each other the same ratio that accrued dividends per share on the shares of the Convertible Exchangeable Preferred Stock and on such other stock bear to each other.

(d) So long as any shares of the Convertible Exchangeable Preferred Stock are outstanding, no other stock of the Corporation ranking on a parity with the Convertible Exchangeable Preferred Stock as to dividends or upon liquidation, dissolution or winding up shall be redeemed, purchased or otherwise acquired for any consideration (or any moneys be paid to or made available for a sinking fund or otherwise for the purchase or redemption of any shares of any such stock) by the Corporation (except by conversion into or exchange for stock of the Corporation ranking junior to the Convertible Exchangeable Preferred Stock as to dividends and upon liquidation, dissolution or winding up) unless (i) the full cumulative dividends, if any, accrued on all outstanding shares of the Convertible Exchangeable

Preferred Stock shall have been paid or set apart for payment for all past Dividend Periods and (ii) sufficient funds shall have been set apart for the payment of the dividend for the current Dividend Period with respect to the Convertible Exchangeable Preferred Stock.

(e) So long as any shares of the Convertible Exchangeable Preferred Stock are outstanding, no dividends (other than dividends or distributions paid in shares of, or options, warrants or rights to subscribe for or purchase shares of, Common Stock or other stock ranking junior to the Convertible Exchangeable Preferred Stock as to dividends and upon liquidation, dissolution or winding up) shall be declared or paid or set apart for payment and no other distribution shall be declared or made or set apart for payment, in each case, upon the Common Stock or any other stock of the Corporation ranking junior to the Convertible Exchangeable Preferred Stock as to dividends or upon liquidation, dissolution or winding up, nor shall any Common Stock nor any other such stock of the Corporation ranking junior to the Convertible Exchangeable Preferred Stock as to dividends or upon liquidation, dissolution or winding up be redeemed, purchased or otherwise acquired for any consideration (or any moneys be paid to or made available for a sinking fund or otherwise for the purchase or redemption of any shares of any such stock) by the Corporation (except by conversion into or exchange for stock of the Corporation ranking junior to the Convertible Exchangeable Preferred Stock as to dividends and upon liquidation, dissolution or winding up) unless, in each case (i) the full cumulative dividends, if any, accrued on all outstanding shares of the Convertible Exchangeable Preferred Stock and any other stock of the Corporation ranking on a parity with the Convertible Exchangeable Preferred Stock as to dividends shall have been paid or set apart for payment for all past Dividend Periods and all past dividend periods with respect to such other stock and (ii) sufficient funds shall have been set apart for the payment of the dividend for the current Dividend Period with respect to the Convertible Exchangeable Preferred Stock and for the current dividend period with respect to any other stock of the Corporation ranking on a parity with the Convertible Exchangeable Preferred Stock as to dividends.

4. Liquidation Preference. (a) In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the holders of the shares of Convertible Exchangeable Preferred Stock shall be entitled to receive out of assets of the Corporation available for distribution to stockholders \$25.00 per share plus an amount per share equal to all dividends (whether or not earned or declared) accrued and unpaid thereon to the date of final distribution to such holders before any payment or distribution of the assets of the Corporation (whether capital or surplus) shall be made to or set apart for the holders of Common Stock or any other series or class or classes of stock of the Corporation ranking junior to the Convertible Exchangeable Preferred Stock upon liquidation, dissolution or winding up. No payment on account of any liquidation, dissolution or winding up of the

Corporation shall be made to the holders of any class or series of stock ranking on a parity with the Convertible Exchangeable Preferred Stock in respect of the distribution of assets upon dissolution, liquidation or winding up unless there shall likewise be paid at the same time to the holders of the Convertible Exchangeable Preferred Stock like proportionate amounts determined ratably in proportion to the full amounts to which the holders of all outstanding shares of Convertible Exchangeable Preferred Stock and the holders of all outstanding shares of such parity stock are respectively entitled with respect to such distribution. If, upon any liquidation, dissolution or winding up of the Corporation, the assets of the Corporation, or proceeds thereof, distributable among the holders of the shares of Convertible Exchangeable Preferred Stock shall be insufficient to pay in full the preferential amount aforesaid and liquidating payments on any other shares of stock ranking, as to liquidation, dissolution or winding up, on a parity with the Convertible Exchangeable Preferred Stock, then such assets, or the proceeds thereof, shall be distributed among the holders of shares of Convertible Exchangeable Preferred Stock and any such other stock ratably in accordance with the respective amounts which would be payable on such shares of Convertible Exchangeable Preferred Stock and any such other stock if all amounts payable thereon were paid in full. For the purposes of this Section 4, (i) a consolidation or merger of the Corporation with one or more corporations or other entities, (ii) a sale, lease, exchange or transfer of all or any part of the Corporation's assets or (iii) a statutory share exchange shall not be deemed to be a liquidation, dissolution or winding up of the Corporation, voluntary or involuntary.

(b) Subject to the rights of the holders of shares of any series or class or classes of stock ranking on a parity with or prior to the Convertible Exchangeable Preferred Stock upon liquidation, dissolution or winding up, upon any liquidation, dissolution or winding up of the Corporation, after payment shall have been made in full to the holders of Convertible Exchangeable Preferred Stock, as provided in this Section 4, any other series or class or classes of stock ranking junior to the Convertible Exchangeable Preferred Stock upon liquidation, dissolution or winding up shall, subject to the respective terms and provisions (if any) applying thereto, be entitled to receive any and all assets remaining to be paid or distributed, and the holders of Convertible Exchangeable Preferred Stock shall not be entitled to share therein.

(c) Written notice of any liquidation, dissolution or winding up of the Corporation, stating the payment date or dates when and the place or places where the amounts distributable in such circumstances shall be payable, shall be given by first class mail, postage prepaid, not less than 30 days prior to any payment date stated therein, to the holders of record of the Convertible Exchangeable Preferred Stock at their respective addresses as the same shall appear on the books of the Transfer Agent.

5. Redemption at the Option of the Corporation. (a) The shares of Convertible Exchangeable Preferred Stock may not be redeemed by the Corporation prior to September 1, 1998, on or after which the Corporation, at its option, may redeem the shares of Convertible Exchangeable Preferred Stock, in whole or in part, at any time or from time to time out of funds legally available therefor, subject to the notice provisions and provisions for partial redemption described below, during the twelve-month periods beginning on September 1 in each of the following years at the following redemption prices per share plus an amount equal to accrued and unpaid dividends, if any, to (and including) the date fixed for redemption, whether or not earned or declared.

| <u>Year</u> | <u>Redemption Price</u> (As a percentage of liquidation preference) |
|---------------------|--|
| 1998 | 105.000% |
| 1999 | 104.000% |
| 2000 | 103.000% |
| 2001 | 102.000% |
| 2002 | 101.000% |
| 2003 and thereafter | 100.000% |

(b) In the event the Corporation shall redeem shares of Convertible Exchangeable Preferred Stock, notice of such redemption shall be given by mail, postage prepaid, mailed not less than 30 nor more than 60 days prior to the redemption date, to each holder of record of the shares to be redeemed, at such holder's address as the same appears on the stock records of the Corporation. Each such notice shall state: (i) the redemption date; (ii) the number of shares of Convertible Exchangeable Preferred Stock to be redeemed and, if less than all the shares held by such holder are to be redeemed, the number of such shares to be redeemed from such holder; (iii) the redemption price; (iv) the place or places where certificates for such shares are to be surrendered for payment of the redemption price; (v) the then current conversion price; and (vi) that dividends on the shares to be redeemed shall cease to accrue on such redemption date. Notice having been mailed as aforesaid, from and after the redemption date, unless the Corporation shall be in default in providing money for the payment of the redemption price (including any accrued and unpaid dividends to (and including) the date fixed for redemption), (i) dividends on the shares of the Convertible Exchangeable Preferred Stock so called for redemption shall cease to accrue, (ii) said shares shall be deemed no longer outstanding, and (iii) all rights of the holders thereof as stockholders of the Corporation (except the right to receive from the Corporation the moneys payable upon redemption without interest thereon) shall cease. The Corporation's obligation to provide moneys in accordance with the preceding sentence shall be

deemed fulfilled if, on or before the redemption date, the Corporation shall deposit with a bank or trust company having an office in the Borough of Manhattan, City of New York, and having a capital and surplus of at least \$50,000,000, funds necessary for such redemption, in trust for the account of the holders of the shares to be redeemed (and so as to be and continue to be available therefor), with irrevocable instructions and authority to such bank or trust company that such funds be applied to the redemption of the shares of Convertible Exchangeable Preferred Stock so called for redemption. Any interest accrued on such funds shall be paid to the Corporation from time to time. Any funds so deposited and unclaimed at the end of three years from such redemption date shall be released or repaid to the Corporation, after which, subject to any applicable laws relating to escheat or unclaimed property, the holder or holders of such shares of Convertible Exchangeable Preferred Stock so called for redemption shall look only to the Corporation for payment of the redemption price.

Upon surrender in accordance with said notice of the certificates for any such shares so redeemed (properly endorsed or assigned for transfer, if the Board of Directors shall so require and the notice shall so state), such shares shall be redeemed by the Corporation at the applicable redemption price aforesaid. If fewer than all the outstanding shares of Convertible Exchangeable Preferred Stock are to be redeemed, shares to be redeemed shall be selected by the Corporation from outstanding shares of Convertible Exchangeable Preferred Stock not previously called for redemption by lot or pro rata (as near as may be) or by any other method determined by the Corporation in its sole discretion to be equitable. If fewer than all the shares represented by any certificate are redeemed, a new certificate shall be issued representing the unredeemed shares without cost to the holder thereof.

Notwithstanding the foregoing, if notice of redemption has been given pursuant to this Section 5 and any holder of shares of Convertible Exchangeable Preferred Stock shall, prior to the close of business on the redemption date, give written notice to the Corporation pursuant to Section 7(b) hereof of the conversion of any or all of the shares to be redeemed held by such holder (accompanied by a certificate or certificates for such shares, duly endorsed or assigned to the Corporation), then the conversion of such shares to be redeemed shall become effective as provided in Section 7.

6. Shares to be Retired. All shares of Convertible Exchangeable Preferred Stock purchased, redeemed, exchanged or converted by the Corporation shall be retired and canceled and shall be restored to the status of authorized but unissued shares of Preferred Stock, without designation as to series, and may thereafter be reissued.

7. **Conversion.** Holders of shares of Convertible Exchangeable Preferred Stock shall have the right to convert all or a portion of such shares (including fractions of such shares) into shares of Common Stock, as follows:

(a) Subject to and upon compliance with the provisions of this Section 7, a holder of shares of Convertible Exchangeable Preferred Stock shall have the right, at such holder's option, at any time (except that, with respect to any shares called for redemption or exchange, such right shall terminate, except as provided in the third paragraph of Section 7(b), at the close of business on the date fixed for redemption or exchange of such shares) to convert any of such shares (or fractions thereof) into the number of fully paid and nonassessable shares of Common Stock (as such shares shall then be constituted) obtained by dividing the aggregate liquidation preference of the shares to be converted by the Conversion Price and by surrender of such shares, such surrender to be made in the manner provided in Section 7(b); provided, however, that the right to convert shares after a written notice of exchange is delivered by the Corporation pursuant to Section 11 hereof shall terminate at the close of business on the date fixed for such exchange, unless the Corporation shall default in making payment of the amount payable upon such exchange. Subject to the following provisions of this Section 7(a), any share of Convertible Exchangeable Preferred Stock may be converted, at the option of its holder, in part into Common Stock under the procedures set forth above. If a part of a share of Convertible Exchangeable Preferred Stock is converted, then the Corporation will convert such share into the appropriate number of shares of Common Stock (subject to Section 7(c)) and issue a fractional share of Convertible Exchangeable Preferred Stock evidencing the remaining interest of such holder.

(b) In order to exercise the conversion right, the holder of each share of Convertible Exchangeable Preferred Stock (or fraction thereof) to be converted shall surrender the certificate representing such share, duly endorsed or assigned to the Corporation or in blank, at the office of the Transfer Agent in the Borough of Manhattan, City of New York, accompanied by funds, if any, required by the last paragraph of this Section 7(b), and shall give written notice to the Corporation in the form set forth on the reverse of the stock certificates for the Convertible Exchangeable Preferred Stock that the holder thereof elects to convert such Convertible Exchangeable Preferred Stock or a specified portion thereof. Such notice shall also state the name or names (with address) in which the certificate or certificates for shares of Common Stock which shall be issuable upon such conversion shall be issued, and shall be accompanied by funds in an amount sufficient to pay any transfer or similar tax. Each share surrendered for conversion shall, unless the shares issuable on conversion are to be issued in the same name as the name in which such share of Convertible Exchangeable Preferred Stock is registered, be duly endorsed by, or be accompanied by instruments of transfer (in each case, in form satisfactory to the Corporation), duly executed by the holder or such holder's duly authorized attorney.

As promptly as practicable after the surrender of certificates for shares of Convertible Exchangeable Preferred Stock for conversion and the receipt of such notice and funds, if any, as aforesaid, the Corporation shall issue and shall deliver at such office to such holder, or on such holder's written order, a certificate or certificates for the number of full shares of Common Stock issuable upon the conversion of such shares of Convertible Exchangeable Preferred Stock in accordance with the provisions of this Section 7, and a check or cash in respect of any fractional interest in respect of a share of Common Stock arising upon such conversion, as provided in Section 7(c).

Each conversion shall be deemed to have been effected immediately prior to the close of business on the date on which the certificates for shares of Convertible Exchangeable Preferred Stock shall have been surrendered (accompanied by the funds, if any, required by the last paragraph of this Section 7(b)) and such notice shall have been received by the Corporation as aforesaid, and the person or persons in whose name or names any certificate or certificates for shares of Common Stock shall be issuable upon such conversion shall be deemed to have become on said date the holder or holders of record of the shares represented thereby; provided, however, that any surrender on any date when the stock transfer books of the Corporation shall be closed shall cause the person or persons in whose name the certificates are to be issued to become the holder or holders of record thereof for all purposes on the next succeeding day on which such stock transfer books are open, but such conversion shall be at the Conversion Price in effect on the date upon which such shares shall have been surrendered. All shares of Common Stock delivered upon conversion of the Convertible Exchangeable Preferred Stock will, upon delivery, be duly and validly issued, fully paid and nonassessable, free from all taxes, liens and charges with respect to the issue thereof.

If a Holder shall surrender a share of Convertible Exchangeable Preferred Stock for conversion during the period from the close of business on any dividend payment record date to the close of business on the following dividend payment date, such holder shall nevertheless be entitled to receive the dividend payable on such shares on such dividend payment date notwithstanding the conversion thereof following the close of business on such dividend payment record date and prior to the close of business on such dividend payment date. However, shares of Convertible Exchangeable Preferred Stock surrendered for conversion during the period between the close of business on any dividend payment record date and the close of business on the corresponding dividend payment date (except shares called for redemption or exchange on a redemption date or exchange date during such period) must be accompanied by payment of an amount equal to the dividend payment with respect to such shares of Convertible Exchangeable Preferred Stock presented for conversion on such dividend payment date; provided, however, that no such payment need be made if, at the time of

conversion, dividends payable on the shares of Convertible Exchangeable Preferred Stock outstanding shall be in arrears for more than 30 days beyond the previous dividend payment date. The dividend payment with respect to shares of Convertible Exchangeable Preferred Stock which are called for redemption on a redemption date during the period from the close of business on a dividend payment record date to the close of business on the corresponding dividend payment date shall be payable on such dividend payment date to the holder of record of such shares on the books of the Corporation at the close of business on the dividend payment record date notwithstanding the conversion of such shares during the period between the close of business on such dividend payment record date and the close of business on such dividend payment date, and the holder of such shares need not make a payment equal to the dividend payment amount upon surrender of such shares for conversion. A holder of shares of Convertible Exchangeable Preferred Stock on a dividend payment record date who converts such shares after the close of business on the corresponding dividend payment date will receive the dividend payable by the Corporation on such shares of Convertible Exchangeable Preferred Stock on such dividend payment date and need not include payment in the amount of such dividend upon surrender of such shares of Convertible Exchangeable Preferred Stock for conversion. Except as provided above, the Corporation shall make no payment or allowance for unpaid dividends, whether or not in arrears, on converted shares or for dividends on the shares of Common Stock issued upon such conversion.

(c) In connection with the conversion of any shares of Convertible Exchangeable Preferred Stock, fractions of such shares may be converted; however, no fractional shares or scrip representing fractions of shares of Common Stock shall be issued upon conversion of the Convertible Exchangeable Preferred Stock. If more than one share (or fraction thereof) shall be surrendered for conversion at one time by the same holder, the number of full shares of Common Stock issuable upon conversion thereof shall be computed on the basis of the aggregate number of shares of Convertible Exchangeable Preferred Stock so surrendered. If any fractional share of Common Stock would otherwise be issuable upon the conversion of a share of Convertible Exchangeable Preferred Stock (or fraction thereof), the Corporation shall make an adjustment therefor in cash (computed to the nearest cent) equal to the Closing Price of Common Stock on the Trading Date immediately preceding the date of conversion multiplied by the fraction of a share of Common Stock otherwise issuable.

(d) The Conversion Price shall be adjusted from time to time by the Corporation as follows:

(i) In case the Corporation shall after the Issue Date (A) pay a dividend or make a distribution on its Common Stock in shares of its Common Stock, (B) subdivide or split its outstanding Common Stock into a

greater number of shares, (C) combine its outstanding Common Stock into a smaller number of shares or (D) issue any shares of capital stock by reclassification of its Common Stock, the Conversion Price in effect immediately prior thereto shall be adjusted so that the holder of any share of Convertible Exchangeable Preferred Stock thereafter surrendered for conversion shall be entitled to receive the number of shares of Common Stock of the Corporation which such holder would have owned or have been entitled to receive after the occurrence of any of the events described above had such share of Convertible Exchangeable Preferred Stock been surrendered for conversion immediately prior to the occurrence of such event or the record date therefor, whichever is earlier. An adjustment made pursuant to this subparagraph (i) shall become effective immediately after the close of business on the record date for determination of stockholders entitled to receive such dividend or distribution in the case of a dividend or distribution (except as provided in paragraph (h) below) and shall become effective immediately after the close of business on the effective date in the case of a subdivision, split, combination or reclassification. Any shares of Common Stock issuable in payment of a dividend shall be deemed to have been issued immediately prior to the close of business on the record date for such dividend for purposes of calculating the number of outstanding shares of Common Stock under clauses (ii) and (iii) below.

(ii) In case the Corporation shall issue after the Issue Date rights or warrants to all holders of Common Stock entitling them (for a period expiring within 45 days after the issuance date) to subscribe for or purchase Common Stock at a price per share less than the Current Market Price per share of Common Stock at the record date for the determination of stockholders entitled to receive such rights or warrants, then the Conversion Price in effect immediately prior thereto shall be adjusted to equal the price determined by multiplying (A) the Conversion Price in effect immediately prior to the date of issuance of such rights or warrants by (B) a fraction, the numerator of which shall be the sum of (1) the number of shares of Common Stock outstanding on the date of issuance of such rights or warrants (without giving effect to any such issuance) and (2) the number of shares of Common Stock which the aggregate proceeds from the exercise of such rights or warrants for Common Stock would purchase at such Current Market Price, and the denominator of which shall be the sum of (1) the number of shares of Common Stock outstanding on the date of issuance of such rights or warrants (without giving effect to any such issuance) and (2) the number of additional shares of Common Stock offered for subscription or purchase. Such adjustment shall be made successively whenever any such rights or warrants are issued, and shall become effective immediately after such record date. In determining whether any rights or warrants entitle the holder of Common Stock to subscribe for or purchase shares of Common Stock at less than such

Current Market Price, there shall be taken into account any consideration received by the Corporation upon issuance and upon exercise of such rights or warrants, the value of such consideration, if other than cash, to be determined by the Board of Directors.

(iii) In case the Corporation shall pay a dividend or make a distribution to all holders of its Common Stock after the Issue Date of any shares of capital stock of the Corporation or its subsidiaries (other than Common Stock) or evidences of its indebtedness of the Corporation or its subsidiaries or assets (including securities, but excluding those rights, warrants, dividends and distributions referred to in subparagraph (ii) of this Section 7(d), excluding dividends or distributions in connection with the liquidation, dissolution or winding up of the Corporation and excluding cash dividends referred to in subparagraph (v) of this Section 7(d)) then in each such case, the Conversion Price shall be adjusted so that it shall equal the price determined by multiplying (A) the Conversion Price in effect on the record date mentioned below by (B) a fraction, the numerator of which shall be the Current Market Price per share of the Common Stock on the record date mentioned below less the then fair market value (as determined by the Board of Directors, whose determination shall, if made in good faith, be conclusive) as of such record date of the portion of the capital stock or evidences of indebtedness or assets so distributed or of such rights or warrants applicable to one share of Common Stock, and the denominator of which shall be the Current Market Price per share of the Common Stock on such record date. Such adjustment shall become effective immediately, except as provided in Section 7(h) below, after the record date for the determination of stockholders entitled to receive such distribution.

(iv) Notwithstanding anything in subparagraphs (ii) and (iii) of this Section 7(d), if such rights or warrants shall by their terms provide for an increase or increases with the passage of time or otherwise in the price payable to the Corporation upon the exercise thereof, the Conversion Price upon any such increase becoming effective shall forthwith be readjusted (but to no greater extent than originally adjusted by reason of such issuance or sale) to reflect the same. Upon the expiration or termination of such rights or warrants, if any such rights or warrants shall not have been exercised, then the Conversion Price shall forthwith be readjusted and thereafter be the rate which it would have been had an adjustment been made on the basis that (A) the only rights or warrants so issued or sold were those so exercised and they were issued or sold for the consideration actually received by the Corporation for the granting of all such options, rights or warrants whether or not exercised and (B) the Corporation issued and sold a number of shares of Common Stock equal to those actually issued upon exercise of such rights, and such shares were issued and sold for a consideration equal to the

aggregate exercise price in effect under the exercise rights actually exercised at the respective dates of their exercise. For purposes of subparagraphs (ii) and (iii) of this Section 7(d), the aggregate consideration received by the Corporation in connection with the issuance of shares of Common Stock or of rights or warrants shall be deemed to be equal to the sum of the aggregate offering price (before deduction of underwriting discounts or commissions and expenses payable to third parties) of all such securities plus the minimum aggregate amount, if any, payable upon the exercise of such rights or warrants into shares of Common Stock.

(v) In case the Corporation shall, by dividend or otherwise, at any time distribute to all holders of the Common Stock cash (excluding any cash that is distributed as part of a distribution referred to in subparagraph (iii) of this Section 7(d) or in connection with a transaction to which Section 7(e) applies) in an aggregate amount that, together with (A) the aggregate amount of any other distributions to all holders of the Common Stock made exclusively in cash within the 12 months preceding the date fixed for the determination of stockholders entitled to such distribution and in respect of which no Conversion Price adjustment has been made previously and (B) the aggregate amount of any cash plus the fair market value (as determined by the Board of Directors, whose determination shall, if made in good faith, be conclusive) as of such date of determination of any other consideration payable in respect of any tender or exchange offer by the Corporation or a subsidiary of the Corporation for all or any portion of the Common Stock consummated within 12 months preceding such date of determination and in respect of which no Conversion Price adjustment has been made previously, exceeds 12.5% of the product of the Current Market Price per share of Common Stock on such date of determination times the number of shares of Common Stock outstanding on such date, then in each such case the Conversion Price shall be reduced (but not increased) so that it shall equal the price obtained by multiplying the Conversion Price in effect immediately prior to the close of business on such date of determination by a fraction of which the numerator shall be (x) the product of the Current Market Price per share of Common Stock on such date, multiplied by the number of shares of Common Stock outstanding on such date, less (y) the sum of (i) the aggregate amount of cash to be distributed at such time, (ii) the aggregate amount of any other distributions to holders of Common Stock made exclusively in cash within the preceding 12 months, in respect of which no Conversion Price adjustment has been made previously, and (iii) the aggregate amount of any cash plus the fair market value (determined as aforesaid) of any other consideration payable in respect of any tender or exchange offer by the Corporation or a subsidiary of the Corporation for all or any portion of the Common Stock within the preceding 12 months, in respect of which no Conversion Price adjustment has been made previously; and the

denominator shall be the product of such Current Market Price, multiplied by the number of shares of Common Stock outstanding on such date. Such reduction shall become effective immediately prior to the opening of business on the date after such date of determination.

(vi) In case a tender or exchange offer made by the Corporation or any subsidiary of the Corporation for all or any portion of the Common Stock shall be consummated and such tender or exchange offer shall involve an aggregate consideration having a fair market value (as determined by the Board of Directors, whose determination shall, if made in good faith, be conclusive) as of the last time (the "Expiration Time") that tenders or exchanges may be made pursuant to such tender or exchange offer (as it shall have been amended) that, together with (A) the aggregate amount of the cash plus the fair market value (as determined by the Board of Directors, whose determination shall, if made in good faith, be conclusive) as of the Expiration Time of any other consideration paid in respect of any other tender or exchange offer by the Corporation or a subsidiary of the Corporation for all or any portion of the Common Stock consummated within the 12 months preceding the Expiration Time and in respect of which no Conversion Price adjustment has been made previously and (B) the aggregate amount of any distributions to all holders of the Common Stock made exclusively in cash within the 12 months preceding the Expiration Time and in respect of which no Conversion Price adjustment has been made previously, exceeds 12.5% of the product of the Current Market Price per share of Common Stock immediately prior to the Expiration Time times the number of shares of Common Stock outstanding (including any tendered or exchanged shares) at the Expiration Time, then in each such case the Conversion Price shall be reduced (but not increased) so that it shall equal the price obtained by multiplying the Conversion Price in effect immediately prior to the Expiration Time by a fraction of which the numerator shall be (x) the product of the Current Market Price per share of Common Stock immediately prior to the Expiration Time, multiplied by the number of shares of Common Stock outstanding (including any tendered or exchanged shares) at the Expiration Time less (y) the sum of (i) the aggregate amount of cash plus the fair market value (determined as aforesaid) of any other consideration payable in respect of such tender or exchange offer, (ii) the aggregate amount of any distributions to holders of Common Stock made exclusively in cash within the preceding 12 months, in respect of which no Conversion Price adjustment has been made previously, and (iii) the aggregate amount of any cash plus the fair market value (determined as aforesaid) of any other consideration payable in respect of any other tender or exchange offer by the Corporation or a subsidiary of the Corporation for all or any portion of the Common Stock within the preceding 12 months, in respect of which no Conversion Price adjustment has been made previously; and the denominator shall be the

product of such Current Market Price, multiplied by the number of shares of Common Stock outstanding (excluding any tendered or exchanged shares) at the Expiration Time. Such reduction shall become effective immediately prior to the opening of business on the date following the Expiration Time; provided, however, that if the number of tendered or exchanged shares or the aggregate consideration payable therefor has not been finally determined by such opening of business, the adjustment required by this subparagraph (vi) shall, pending such final determination, be made based upon the preliminarily announced results of such tender or exchange offer, and, after such final determination shall have been made, the adjustment required by this subparagraph (vi) shall be made based upon the number of tendered or exchanged shares and the aggregate consideration payable therefor as so finally determined.

(vii) No adjustment in the Conversion Price shall be required unless such adjustment would require an increase or decrease of at least 1% in such price; provided, however, that any adjustments which by reason of this subparagraph (vii) are not required to be made shall be carried forward and taken into account in any subsequent adjustment; and provided, further, that any adjustment shall be required and shall be made in accordance with the provisions of this Section 7 (other than this subparagraph (vii)) not later than such time as may be required in order to preserve the tax-free nature of a distribution to the holders of shares of Common Stock. All calculations under this Section 7 shall be made to the nearest cent (with \$.005 being rounded upward) or the nearest 1/100th of a share (with .005 of a share being rounded upward), as the case may be. Anything in this Section 7(d) to the contrary notwithstanding, the Corporation shall be entitled, to the extent permitted by law, to make such reductions in the Conversion Price, in addition to those required by this Section 7(d), as it in its discretion shall determine to be advisable in order that any stock dividends, subdivision or combination of shares, distribution of capital stock or rights or warrants to purchase stock or securities, distribution of evidences of indebtedness or assets or any other transaction which could be treated as any of the foregoing transactions pursuant to Section 305 of the Internal Revenue Code of 1986, as amended (and any successor provision), hereafter made by the Corporation to its stockholders shall not be taxable to such stockholders.

(e) In case the Corporation shall be a party to any transaction (including without limitation a merger, consolidation, sale of all or substantially all of the Corporation's assets, or recapitalization of the Common Stock and excluding any transaction as to which paragraph (d)(i) of this Section 7 applies) (each of the foregoing being referred to as a "Transaction"), in each case as a result of which shares of Common Stock shall be converted into the right to receive stock, securities or other property (including cash or any combination thereof), then the Convertible

Exchangeable Preferred Stock will thereafter no longer be subject to conversion into Common Stock pursuant to Section 7, but instead shall be convertible into the kind and amount of shares of stock and other securities and property receivable (including cash) upon the consummation of such Transaction by a holder of that number of shares or fraction thereof of Common Stock into which one share of Convertible Exchangeable Preferred Stock was convertible immediately prior to such Transaction. The Corporation shall not be a party to any Transaction unless the terms of such Transaction are consistent with the provisions of this Section 7(e) and it shall not consent or agree to the occurrence of any Transaction until the Corporation has entered into an agreement with the successor or purchasing entity, as the case may be, for the benefit of the holders of the Convertible Exchangeable Preferred Stock which will contain provisions enabling the holders of the Convertible Exchangeable Preferred Stock which remains outstanding after such Transaction to convert into the kind and amount of stock, securities or other property (including cash or any combination thereof) which such holder would have been entitled to receive if such holder had held the Common Stock issuable upon conversion of such Convertible Exchangeable Preferred Stock immediately prior to such Transaction. In the event that at any time, as a result of an adjustment made pursuant to this Section 7, the Convertible Exchangeable Preferred Stock shall become subject to conversion into any securities other than shares of Common Stock, thereafter the number of such other securities so issuable) upon conversion of the shares of Convertible Exchangeable Preferred Stock 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 shares of Convertible Exchangeable Preferred Stock contained in this Section 7. The provisions of this Section 7(e) shall similarly apply to successive Transactions.

(f) If:

(i) The Company shall take any action which would require an adjustment in the conversion price pursuant to Section 7(d); or

(ii) the Corporation shall authorize the granting to the holders of its Common Stock generally of rights or warrants to subscribe for or purchase any shares of any class or any other rights or warrants; or

(iii) there shall be any reclassification or change of the Common Stock (other than a subdivision or combination of its outstanding Common Stock or a change in par value) or any consolidation, merger or statutory share exchange to which the Corporation is a party and for which approval of any stockholders of the Corporation is required, or the sale or transfer of all or substantially all of the assets of the Corporation or any Corporate Change or Ownership Change (each as defined in Section 8 below); or

(iv) there shall be a voluntary or involuntary dissolution, liquidation or winding up of the Corporation;

then, except as provided otherwise in Section 8, the Corporation shall cause to be filed with the Transfer Agent and shall cause to be mailed to the holders of shares of the Convertible Exchangeable Preferred Stock at their addresses as shown on the stock records of the Corporation, as promptly as possible, but at least 30 days prior to the applicable date hereinafter specified, a notice stating (A) the date on which a record is to be taken for the purpose of such dividend, distribution or granting of rights or warrants, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution or rights or warrants are to be determined or (B) the date on which such reclassification, change, consolidation, merger, statutory share exchange, sale, Corporate Change, Ownership Change, transfer, dissolution, liquidation or winding up is expected to become effective or occur, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities or other property deliverable upon such reclassification, change, consolidation, merger, statutory share exchange, sale, Corporate Change, Ownership Change, transfer, dissolution, liquidation or winding up. Failure to give such notice or any defect therein shall not affect the legality or validity of the proceedings described in this Section 7(f).

(g) Whenever the Conversion Price is adjusted as herein provided, the Corporation shall promptly file with the Transfer Agent an officers' certificate signed by the President or a Vice President and the Chief Financial Officer or the Treasurer setting forth the Conversion Price after such adjustment, the method of calculation thereof and setting forth a brief statement of the facts requiring such adjustment and upon which such adjustments are based. Promptly after delivery of such certificate, the Corporation shall prepare a notice of such adjustment of the Conversion Price setting forth the adjusted Conversion Price, the facts requiring such adjustment and upon which such adjustments are based and the date on which such adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Price to the holder of each share of Convertible Exchangeable Preferred Stock at such holder's last address as shown on the stock records of the Corporation.

(h) In any case in which Section 7(d) provides that an adjustment shall become effective immediately after a record date for an event and the date fixed for such adjustment pursuant to Section 7 occurs after such record date but before the occurrence of such event, the Corporation may defer until the actual occurrence of such event (i) issuing to the holder of any shares of Convertible Exchangeable Preferred Stock converted after such record date and before the occurrence of such event the additional shares of Common Stock issuable upon

such conversion by reason of the adjustment required by such event over and above the Common Stock issuable upon such conversion before giving effect to such adjustment and (ii) paying to such holder any amount in cash in lieu of any fraction pursuant to Section 7(c).

(i) For purposes of this Section 7, the number of shares of Common Stock at any time outstanding shall not include any shares of Common Stock then owned or held by or for the account of the Corporation or any corporation controlled by the Corporation.

(j) Notwithstanding any other provision herein to the contrary, the issuance of any shares of Common Stock pursuant to any plan providing for the reinvestment of dividends or interest payable on securities of the Corporation and the investment of additional optional amounts of shares of Common Stock under any such plan shall not be deemed to constitute an issuance of Common Stock. There shall be no adjustment of the Conversion Price in case of the issuance of any stock of the Corporation in a reorganization, acquisition or other similar transaction except as specifically set forth in this Section 7. If any action or transaction would require adjustment of the Conversion Price pursuant to more than one paragraph of this Section 7, only one adjustment shall be made and such adjustment shall be the amount of adjustment which has the highest absolute value.

(k) In case the Corporation shall take any action affecting the Common Stock, other than actions described in this Section 7, which in the opinion of the Board of Directors would materially adversely affect the conversion right of the holders of the shares of Convertible Exchangeable Preferred Stock, the Conversion Price for the Convertible Exchangeable Preferred Stock may be adjusted, to the extent permitted by law, in such manner, if any, and at such time, as the Board of Directors may determine to be equitable in the circumstances; provided, however, that in no event shall the Board of Directors be required to take any such action.

(l) The Corporation shall at all times reserve and keep available, free from preemptive rights, out of its authorized but unissued shares of Common Stock, or its issued shares of Common Stock held in its treasury, or both, sufficient shares of Common Stock to provide for the conversion of the Convertible Exchangeable Preferred Stock from time to time as such Convertible Exchangeable Preferred Stock is presented for conversion. For purposes of this Section 7(l), the number of shares of Common Stock which shall be deliverable upon the conversion of all outstanding shares of Convertible Exchangeable Preferred Stock shall be computed as if at the time of computation all such outstanding shares were held by a single holder.

Before taking any action which would cause an adjustment reducing the Conversion Price below the then par value of the shares of Common Stock deliverable upon conversion of the Convertible Exchangeable Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of Common Stock at such adjusted Conversion Price.

The Corporation will endeavor to list the shares of Common Stock required to be delivered upon conversion of the Convertible Exchangeable Preferred Stock, prior to delivery, upon each national securities exchange, the Nasdaq National Market or any similar system of automated dissemination of securities prices, if any, upon which the Common Stock is listed at the time of delivery.

Prior to the delivery of any securities which the Corporation shall be obligated to deliver upon conversion of the Convertible Exchangeable Preferred Stock, the Corporation will endeavor to comply with all federal and state laws and regulations thereunder requiring the registration of such securities with, or any approval of or consent to the delivery thereof by, any governmental authority.

(m) The Corporation will pay any and all documentary stamp or similar issue or transfer taxes payable in respect of the issue or delivery of the shares of Convertible Exchangeable Preferred Stock (or any other securities issued on account of the Convertible Exchangeable Preferred Stock pursuant hereto) or shares of Common Stock issued upon conversion of the Convertible Exchangeable Preferred Stock pursuant hereto; provided, however, that the Corporation shall not be required to pay any tax which may be payable in respect of any transfer involved in the issue or delivery of shares of Convertible Exchangeable Preferred Stock (or any other securities issued on account of the Convertible Exchangeable Preferred Stock pursuant hereto) or shares of Common Stock in a name other than the name in which the shares of Convertible Exchangeable Preferred Stock with respect to which such shares of Common Stock are issued were registered and the Corporation shall not be required to make any issue or delivery unless and until the person requesting such issue or delivery has paid to the Corporation the amount of any such tax or has established, to the reasonable satisfaction of the Corporation, that such tax has been paid or is not required to be paid.

8. Special Conversion Rights Upon Corporate Change or Ownership Change. (a) If a Corporate Change (as defined below) should occur with respect to the Corporation, each holder of shares of the Convertible Exchangeable Preferred Stock shall have the right, at the holder's option, for a period of 45 days after the mailing of notice by the Corporation that a Corporate Change has occurred, to convert all, but not less than all, of such holder's shares of the Convertible Exchangeable Preferred Stock into the kind and amount of cash, securities, property or other assets receivable upon such Corporate Change by a holder of the number of

shares of Common Stock into which such holder's Convertible Exchangeable Preferred Stock would have been convertible immediately prior to the Corporate Change at an adjusted conversion price equal to the Special Conversion Price (as defined below). The Corporation or successor corporation, as the case may be, may at its option, in lieu of providing such consideration upon any such conversion, provide the holders who have elected to convert under this Section 8(a) with cash equal to the Market Value (as defined below) of the Common Stock multiplied by the number of shares of Common Stock into which such holder's Convertible Exchangeable Preferred Stock would have been convertible immediately prior to the Corporate Change at an adjusted conversion price equal to the Special Conversion Price, but only if the Corporation, in its notice to the holder that a Corporate Change has occurred, has notified such holder of the Corporation's election to provide such holder with cash in lieu of such consideration; provided, however, that any such election by the Corporation shall apply to all shares of the Convertible Exchangeable Preferred Stock for which the special conversion was elected by the holders thereof. Shares of the Convertible Exchangeable Preferred Stock that are not converted as provided above will remain convertible into the kind and amount of cash, securities, property or other assets that the holders of the shares of the Convertible Exchangeable Preferred Stock would have owned immediately after the Corporate Change if the holders had converted the shares of the Convertible Exchangeable Preferred Stock immediately before the effective date of the Corporate Change. The Corporation will notify the holders of the Convertible Exchangeable Preferred Stock of any pending Corporate Change as soon as practicable and in any event at least 30 days in advance of the effective date of such Corporate Change. In the event of a pending Corporate Change, the Corporation (or any successor corporation) shall, unless it has determined to provide the holders who have elected to convert under this Section 8(a) with cash as provided above, take all action necessary to provide for sufficient amounts of cash, securities, property or other assets for the conversion of the Convertible Exchangeable Preferred Stock as provided herein.

(b) If an Ownership Change (as defined below) should occur with respect to the Corporation, each holder of a share of the Convertible Exchangeable Preferred Stock shall have the right, at the holder's option, for a period of 45 days after the mailing of a notice by the Corporation that an Ownership Change has occurred, to convert all, but not less than all, of such holder's shares of the Convertible Exchangeable Preferred Stock into Common Stock at an adjusted conversion price per share equal to the Special Conversion Price. The Corporation may, at its option, in lieu of providing Common Stock upon any such conversion, provide the holders who have elected to convert under this Section 8(b) with cash equal to the Market Value of the Common Stock multiplied by the number of shares of Common Stock into which such shares of Convertible Exchangeable Preferred Stock would have been convertible immediately prior to such Ownership Change at an adjusted conversion price equal to the Special Conversion Price, but only if the Corporation, in its notice to the holder that an Ownership Change has

occurred, has notified such holder of the Corporation's election to provide such holder with cash in lieu of such Common Stock; provided, however, that any such election by the Corporation shall apply to all shares of the Convertible Exchangeable Preferred Stock for which the special conversion was elected by the holders thereof.

(c) The Special Conversion Price provided in this Section 8 arising upon an Ownership Change will only be applicable with respect to the first Ownership Change that occurs after the Issue Date.

(d) If a Corporate Change or an Ownership Change shall occur, then, as soon as practicable and in any event within 30 days after the occurrence of such Corporate Change or Ownership Change, the Corporation shall mail to each registered holder of a share of Convertible Exchangeable Preferred Stock a notice (the "Special Conversion Notice") setting forth details regarding the special conversion right of the holders to convert their shares of Convertible Exchangeable Preferred Stock as a result of such Corporate Change or Ownership Change, as the case may be, including, if applicable, notice of the Corporation's or the successor corporation's election to provide such holder with cash in lieu of Common Stock or other consideration. A holder of a share of Convertible Exchangeable Preferred Stock must exercise such conversion right within the 45-day period after the mailing of the Special Conversion Notice by the Corporation or such special right shall expire. The conversion date for shares so converted shall be the 45th day after the mailing of the Special Conversion Notice. Within five Business Days following the conversion date, the Corporation shall deliver a certificate for the Common Stock together with a check for any fractional shares issuable or the cash, securities, property or other assets receivable by a holder. Exercise of such conversion right to the extent permitted by law (including, if applicable, Rule 13d-3 under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) shall be irrevocable and no dividend on the shares of Convertible Exchangeable Preferred Stock tendered for conversion shall accrue from and after the conversion date.

(e) The Special Conversion Notice shall state:

(i) the event constituting the Corporate Change or Ownership Change;

(ii) the last date upon which holders may submit shares of Convertible Exchangeable Preferred Stock for conversion;

(iii) the Special Conversion Price;

(iv) the Conversion Price then in effect under Section 7 and the continuing conversion rights, if any, under Section 7;

(v) the name and address of any paying agent and conversion agent;

(vi) that holders who wish to convert shares of Convertible Exchangeable Preferred Stock must satisfy the requirements of Section 7 and must exercise such conversion right within the 45-day period after the mailing of such notice by the Corporation;

(vii) that exercise of such conversion right shall be irrevocable and no dividends on shares of Convertible Exchangeable Preferred Stock tendered for conversion shall accrue from and after the conversion date;

(viii) whether or not the Corporation has elected to exercise its option to pay cash (specifying the amount thereof, per share) for all shares of Convertible Exchangeable Preferred Stock tendered for conversion; and

(ix) that the consideration to be received shall be delivered within five Business Days after the last date upon which holders may submit Convertible Exchangeable Preferred Stock for conversion.

(f) (i) As used herein, a "Corporate Change" with respect to the Corporation shall be deemed to have occurred at such time as the Corporation is a party to a business combination, including a merger or consolidation or the sale of all or substantially all of its assets and, as a result of such business combination, the Convertible Exchangeable Preferred Stock or the Common Stock thereafter is not listed on the New York Stock Exchange or the American Stock Exchange, or approved for quotation on the Nasdaq National Market. A Corporate Change will not, however, be deemed to occur with respect to any transaction in which the consideration received by the holders of Common Stock of the Corporation consists solely of Marketable Stock (as defined below).

(ii) As used herein, an "Ownership Change" with respect to the Corporation shall be deemed to have occurred at such time as any person becomes the beneficial owner, directly or indirectly, of more than 50% of the outstanding Common Stock pursuant to a transaction that does not constitute a Corporate Change with respect to the Corporation.

(iii) As used herein, a person shall be deemed to have "beneficial ownership" with respect to, and shall be deemed to "beneficially own," any securities of the Corporation in accordance with the definitions of such terms in Section 13 of the Exchange Act and the rules and regulations (including Rule 13d-3, Rule 13d-5, and any successor rules) promulgated by the Securities and Exchange Commission thereunder; provided, however,

that a person shall be deemed to have beneficial ownership of all securities that any such person has a right to acquire whether such right is exercisable immediately or only after the passage of time and without regard to the 60-day limitation referred to in Rule 13d-3.

(iv) As used herein, the "Market Value" of a share of the Common Stock, or a share of any other Marketable Stock, shall be the average of the Closing Prices of the Common Stock or such other Marketable Stock for the five Trading Days ending on the last Trading Day preceding the date of the Corporate Change or Ownership Change, as the case may be.

(v) As used herein, the term "Marketable Stock" shall mean Common Stock or common stock of any corporation that is the successor to all or substantially all of the business or assets of the Corporation as a result of a Corporate Change that is (or will, upon distribution thereof, be) listed on the New York Stock Exchange or the American Stock Exchange, or approved for quotation on the Nasdaq National Market.

(vi) As used herein, the "Special Conversion Price" shall mean the higher of the Market Value of the Common Stock or \$10.58 per share (which amount will, each time the Conversion Price is adjusted, be adjusted so that the ratio of such amount to the Conversion Price, after giving effect to such adjustment, shall always be the same as the ratio of \$10.58 to the initial Conversion Price, without giving effect to any such adjustment).

9. Ranking. Any class or classes of stock of the Corporation shall be deemed to rank:

(i) prior to the Convertible Exchangeable Preferred Stock, as to dividends or as to the distribution of assets upon liquidation, dissolution or winding up, if the holders of such class shall be entitled to the receipt of dividends or of amounts distributable upon liquidation, dissolution or winding up, as the case may be, in preference or priority to the holders of Convertible Exchangeable Preferred Stock.

(ii) on a parity with the Convertible Exchangeable Preferred Stock, as to dividends or as to the distribution of assets upon liquidation, dissolution or winding up, whether or not the dividend rates, dividend payment dates or redemption or liquidation prices per share thereof be different from those of the Convertible Exchangeable Preferred Stock, if the holders of such class of stock and the Convertible Exchangeable Preferred Stock shall be entitled to the receipt of dividends or of amounts distributable upon liquidation, dissolution or winding up, as the case may be, in proportion to their respective amounts of accrued and unpaid dividends per

share or liquidation prices, without preference or priority of one over the other; and

(iii) junior to the Convertible Exchangeable Preferred Stock, as to dividends or as to the distribution of assets upon liquidation, dissolution or winding up, if such stock shall be Common Stock or if the holders of Convertible Exchangeable Preferred Stock shall be entitled to receipt of dividends or of amounts distributable upon liquidation, dissolution or winding up, as the case may be, in preference or priority to the holders of shares of such stock.

10. Voting. (a) Except as herein provided or as otherwise from time to time required by law, holders of Convertible Exchangeable Preferred Stock shall have no voting rights. Whenever, at any time or times, dividends payable on the shares of Convertible Exchangeable Preferred Stock or dividends payable on any series of Preferred Stock ranking, as to dividends, on a parity with the Convertible Exchangeable Preferred Stock, at the time outstanding shall be cumulatively in arrears in an amount equal to (i) the amount payable in respect of six complete Dividend Periods (with respect to the Convertible Exchangeable Preferred Stock) or (ii) the amount payable in respect of such number of dividend periods on such parity Preferred Stock which shall in the aggregate contain not less than 540 days (with respect to such parity Preferred Stock); the holders of Convertible Exchangeable Preferred Stock shall have the exclusive right, voting separately as a class with holders of shares of any such parity Preferred Stock upon which like voting rights have been conferred and are exercisable (the Convertible Exchangeable Preferred Stock and any such other Preferred Stock, collectively for purposes of this Section 10, the "Defaulted Preferred Stock"), to elect two directors of the Corporation at the Corporation's next annual meeting of stockholders and at each subsequent annual meeting of stockholders; provided, however, that if such voting rights shall become vested more than 90 days or less than 20 days before the date prescribed for the annual meeting of stockholders, thereupon the holders of the shares of Defaulted Preferred Stock shall be entitled to exercise their voting rights at a special meeting of the holders of shares of Defaulted Preferred Stock as set forth in paragraphs (b) and (c) of this Section 10. At elections for such directors, each holder of Convertible Exchangeable Preferred Stock shall be entitled to one vote for each share held (the holders of shares of any other series of Defaulted Preferred Stock ranking on such a parity being entitled to such number of votes, if any, for each share of stock held as may be granted to them). Upon the vesting of such right of the holders of Defaulted Preferred Stock, the maximum authorized number of members of the Board of Directors shall automatically be increased by two and the two vacancies so created shall be filled by vote of the holders of outstanding Defaulted Preferred Stock as hereinabove set forth. The right of holders of Defaulted Preferred Stock, voting separately as a class, to elect members of the Board of Directors as aforesaid shall continue until such time as all dividends accumulated

on Defaulted Preferred Stock shall have been paid, or declared and funds set aside for payment in full, at which time such right shall terminate, except as herein or by law expressly provided, subject to revesting in the event of each and every subsequent default of the character above mentioned.

(b) Whenever such voting right shall have vested, such right may be exercised initially either, as provided in Section 10(a), at a special meeting of the holders of shares of Defaulted Preferred Stock called as hereinafter provided, or at any annual meeting of stockholders held for the purpose of electing directors, and thereafter at such meetings or by the written consent of such holders pursuant to Section 228 of the General Corporation Law of the State of Delaware.

(c) At any time when such voting right shall have vested in the holders of shares of Defaulted Preferred Stock entitled to vote thereon, and if such right shall not already have been initially exercised, an officer of the Corporation shall, upon the written request of holders of record of 10%, in the aggregate, of shares of such Defaulted Preferred Stock then outstanding, addressed to the Chief Financial Officer of the Corporation, call a special meeting of holders of shares of such Defaulted Preferred Stock. Such meeting shall be held at the earliest practicable date upon the notice required for annual meetings of stockholders at the place for holding annual meetings of stockholders of the Corporation or, if none, at a place designated by the Chief Financial Officer of the Corporation. If such meeting shall not be called by the proper officers of the Corporation within 30 days after the personal service of such written request upon the Chief Financial Officer of the Corporation, or within 30 days after mailing the same within the United States, by registered mail, addressed to the Chief Financial Officer of the Corporation at its principal office (such mailing to be evidenced by the registry receipt issued by the postal authorities), then the holders of record of 10% of the shares of Defaulted Preferred Stock then outstanding may designate in writing any person to call such meeting at the expense of the Corporation, and such meeting may be called by such person so designated upon the notice required for annual meetings of stockholders and shall be held at the same place as is elsewhere provided in this paragraph. Any holder of shares of Defaulted Preferred Stock then outstanding that would be entitled to vote at such meeting shall have access to the stock record books of the Corporation for the purpose of causing a meeting of stockholders to be called pursuant to the provisions of this paragraph. Notwithstanding the provisions of this paragraph, however, no such special meeting shall be called or held during a period within 45 days immediately preceding the date fixed for the next annual meeting of stockholders.

(d) The directors elected pursuant to this Section 10 shall serve until the next annual meeting or until their respective successors shall be elected and shall qualify. Any director elected by the holders of Defaulted Preferred Stock may be removed by, and shall not be removed otherwise than by, the vote of the holders

of a majority of the outstanding shares of the Defaulted Preferred Stock who were entitled to participate in such election of directors, voting as a separate class, at a meeting called for such purpose or by written consent as permitted by law and the Certificate of Incorporation and By-laws of the Corporation. If the office of any director elected by the holders of Defaulted Preferred Stock, voting as a class, becomes vacant by reason of death, resignation, retirement, disqualification or removal from office or otherwise, the remaining director elected by the holders of Defaulted Preferred Stock, voting as a class, may choose a successor who shall hold office for the unexpired term in respect of which such vacancy occurred. Upon any termination of the right of the holders of Defaulted Preferred Stock to vote for directors as herein provided, the term of office of all directors then in office elected by the holders of Defaulted Preferred Stock, voting as a class, shall terminate immediately. Whenever the terms of office of the directors elected by the holders of Defaulted Preferred Stock, voting as a class, shall so terminate and the special voting powers vested in the holders of Defaulted Preferred Stock shall have expired, the number of directors shall be such number as may be provided for pursuant to the By-laws of the Corporation irrespective of any increase made pursuant to the provisions of this Section 10.

(e) So long as any shares of the Convertible Exchangeable Preferred Stock remain outstanding, the consent of the holders of at least two-thirds of the shares of Convertible Exchangeable Preferred Stock outstanding at the time, given in person or by proxy either in writing (as permitted by law and the Certificate of Incorporation and By-laws of the Corporation) or at any special or annual meeting, shall be necessary to permit, effect or validate any one or more of the following:

(i) the authorization, creation or issuance, or any increase in the authorized or issued amount of any class or series of stock, or any security convertible into stock of such class or series, ranking prior to the Convertible Exchangeable Preferred Stock as to dividends or the distribution of assets upon liquidation, dissolution or winding up;

(ii) the amendment, alteration or repeal, whether by merger, consolidation or otherwise, of any of the provisions of the Certificate of Incorporation (including this Certificate) or the Bylaws of the Corporation which would adversely affect any right, preference, privilege or voting power of the Convertible Exchangeable Preferred Stock or of the holders thereof; provided, however, that any increase in the amount of authorized Preferred Stock or the creation and issuance of other series of Preferred Stock, or any increase in the amount of authorized shares of such series or of any other series of Preferred Stock, in each case ranking on a parity with or junior to the Convertible Exchangeable Preferred Stock with respect to the payment of dividends and the distribution of assets upon liquidation, dissolution or

winding up, shall not be deemed to adversely affect such rights, preferences, privileges or voting powers; or

(iii) the authorization of any reclassification of the Convertible Exchangeable Preferred Stock.

The foregoing voting provisions shall not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding shares of Convertible Exchangeable Preferred Stock shall have been redeemed or sufficient funds shall have been deposited in trust to effect such redemption, scheduled to be consummated within three months after such time.

11. Exchange. (a) The Convertible Exchangeable Preferred Stock shall be exchangeable, in whole but not in part, at the option of the Corporation on any dividend payment date beginning September 1, 1997, for the Corporation's 8% Convertible Subordinated Debentures due 2005 (the "Debentures") as described in the Corporation's Registration Statement on Form S-3, Registration No. 33-92892, as filed with the Securities and Exchange Commission on June 15, 1995 and as subsequently amended (the "Registration Statement"). Holders of outstanding shares of Convertible Exchangeable Preferred Stock will be entitled to receive \$25.00 principal amount of Debentures in exchange for each share of Convertible Exchangeable Preferred Stock held by them at the time of exchange; provided, however, that the Debentures will be issuable only in denominations of \$1,000 and integral multiples thereof. If the exchange results in an amount of Debentures that is not an integral multiple of \$1,000, the amount of excess of the closest integral multiple of \$1,000 will be paid in cash by the Corporation.

(b) The Corporation will mail to each record holder of the Convertible Exchangeable Preferred Stock written notice of its intention to exchange the Convertible Exchangeable Preferred Stock for the Debentures no less than 30 nor more than 60 days prior to the date of the exchange (the "Exchange Date"). The notice shall specify the effective date of the exchange and the place where certificates for shares of Convertible Exchangeable Preferred Stock are to be surrendered for Debentures and shall state that dividends on Convertible Exchangeable Preferred Stock will cease to accrue on the Exchange Date.

Prior to giving notice of intention to exchange, the Corporation shall execute and deliver to a bank or trust company selected by the Corporation to act as trustee with respect to the Debentures (which may but need not be the institution named in the Registration Statement referred to above) an indenture substantially in the form on file with the Company, with such changes as may be required by law, New York Stock Exchange or other stock exchange rule, Nasdaq National Market rule or customary usage.

(c) The Corporation will cause the Debentures to be authenticated on or before the Exchange Date. On the Exchange Date, assuming the Corporation's compliance with the provisions of this Section 11, any shares of Convertible Exchangeable Preferred Stock that have not been surrendered for exchange shall cease to accrue dividends and, at the close of business on the Exchange Date, the holders of the Convertible Exchangeable Preferred Stock shall cease to be stockholders with respect to the Convertible Exchangeable Preferred Stock and shall have no interest in or other claims against the Corporation by virtue thereof and shall have no voting or other rights with respect to the Convertible Exchangeable Preferred Stock, except the right to receive the Debentures issuable upon such exchange and the right to accumulated and unpaid dividends, without interest thereon, upon surrender (and endorsement, if required by the Corporation) of their certificates, and the shares evidenced thereby shall no longer be deemed outstanding for any purpose.

(d) Notwithstanding the foregoing, if notice of exchange has been given pursuant to this Section 11 and any holder of shares of Convertible Exchangeable Preferred Stock shall, prior to the close of business on the Exchange Date, give written notice to the Corporation pursuant to Section 7 above of the conversion of any or all of the shares held by the holder (accompanied by a certificate or certificates for such shares, duly endorsed or assigned to the Corporation), then the exchange shall not become effective as to the shares to be converted and the conversion shall become effective as provided in Section 7 above.

(e) The Debentures will be delivered to the persons entitled thereto upon surrender to the Corporation or its agent appointed for that purpose of the certificates for the shares of Convertible Exchangeable Preferred Stock being exchanged therefor.

(f) Notwithstanding the other provisions of this Section 11, if on the Exchange Date the Corporation has not paid full cumulative dividends on the Convertible Exchangeable Preferred Stock (or set aside a sum therefor), the Corporation may not exchange the Convertible Exchangeable Preferred Stock for the Debentures and any notice previously given pursuant to this Section 11 shall be of no effect.

(g) The Corporation will endeavor to list the Debentures, prior to delivery, upon each national securities exchange or the Nasdaq National Market or any similar system of automated dissemination of securities prices, if any, upon which the Common Stock is listed at the time of delivery. In addition, prior to the effective date of the exchange, the Corporation will arrange for the qualification of the Debentures under the applicable securities and blue sky laws.


12. **Record Holders.** The Corporation and the Transfer Agent may deem and treat the record holder of any shares of Convertible Exchangeable Preferred Stock as the true and lawful owner thereof for all purposes, and neither the Corporation nor the Transfer Agent shall be affected by any notice to the contrary.

13. **Notice.** Except as may otherwise be provided for herein, all notices referred to herein shall be in writing, and all notices hereunder shall be deemed to have been given upon receipt, in the case of a notice of conversion given to the Corporation as contemplated in Section 7(b) hereof, or, in all other cases, upon the earlier of receipt of such notice or three Business Days after the mailing of such notice if sent by registered mail (unless first-class mail shall be specifically permitted for such notice under the terms of this Certificate) with postage prepaid, addressed: if to the Corporation, to its offices at 5775 Peachtree Dunwoody Road, Suite C-550, Atlanta, Georgia 30342, Attention: Chief Financial Officer, or other agent of the Corporation designated as permitted by this Certificate, or, if to any holder of the Convertible Exchangeable Preferred Stock, to such holder at the address of such holder of the Convertible Exchangeable Preferred Stock as listed in the stock record books of the Corporation (which may include the records of any Transfer Agent for the Convertible Exchangeable Preferred Stock); or to such other address as the Corporation or holder, as the case may be, shall have designated by notice similarly given.

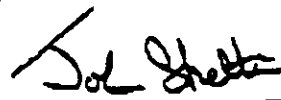
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IN WITNESS WHEREOF, this Certificate has been signed by the President and Chief Executive Officer of the Corporation and attested to by the Secretary of the Corporation, all as of the 2nd day of August, 1995.

BEAZER HOMES USA, INC.

By: 
Ian J. McCarthy
President and Chief Executive
Officer

Attest:

By: 
John Skelton
Secretary

MEL/Beazer/UST/
Certof.Designations v.6

CERTIFICATE OF DESIGNATIONS

of

SERIES B JUNIOR PARTICIPATING PREFERRED STOCK

of

BEAZER HOMES USA, INC.

(Pursuant to Section 151 of the
Delaware General Corporation Law)

Beazer Homes USA, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (hereinafter called the "Corporation"), hereby certifies that the following resolution was adopted by the Board of Directors of the Corporation as required by Section 151 of the General Corporation Law at a meeting duly called and held on June 11, 1996:

RESOLVED, that pursuant to the authority granted to and vested in the Board of Directors of this Corporation (hereinafter called the "Board of Directors" or the "Board") in accordance with the provisions of the Certificate of Incorporation, the Board of Directors hereby creates a series of Preferred Stock, par value \$0.01 per share (the "Preferred Stock"), of the Corporation and hereby states the designation and number of shares, and fixes the relative rights, preferences, and limitations thereof as follows:

Series B Junior Participating Preferred Stock:

Section I. Designation and Amount. The shares of such series shall be designated as "Series B Junior Participating Preferred Stock" (the "Series B Preferred Stock") and the number of shares constituting the Series B Preferred Stock shall be 300,000. Such number of shares may be increased or decreased by resolution of the Board of Directors; provided that no decrease shall reduce the number of shares of Series B Preferred Stock to a number less than the number of shares then outstanding plus the number of shares reserved for issuance upon the exercise of outstanding options, rights or warrants or upon the conversion of any outstanding securities issued by the Corporation convertible into Series B Preferred Stock.

Section II. Dividends and Distributions.

A. Subject to the rights of the holders of any shares of any series of Preferred Stock (or any similar stock) ranking prior and superior to the Series B Preferred Stock with respect to dividends, the holders of shares of Series B Preferred Stock, in preference to the holders of Common Stock, par value \$0.01 per share (the "Common Stock"), of the Corporation, and of any other junior 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 first 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 B Preferred Stock, in an amount per share (rounded to the nearest cent) equal to the greater of (a) \$1 or (b) subject to the provision for adjustment hereinafter set forth, 100 times the aggregate per share amount of all cash dividends, and 100 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 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 B Preferred Stock. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the amount to which holders of shares of Series B 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 Series B Preferred Stock as provided in paragraph (A) of this Section 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 per share on the Series B 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 B Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such shares, 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 B 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 B 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 B Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be not more than 60 days prior to the date fixed for the payment thereof.

Section III. Voting Rights. The holders of shares of Series B Preferred Stock shall have the following voting rights:

A. Subject to the provision for adjustment hereinafter set forth, each share of Series B Preferred Stock shall entitle the holder thereof to 100 votes on all matters submitted to a vote of the stockholders of the Corporation. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the number of votes per share to which holders of shares of Series B 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, in any other Certificate of Designations creating a series of Preferred Stock or any similar stock, or by law, the holders of shares of Series B Preferred Stock and the holders of shares of Common Stock and any other capital stock of the Corporation having general voting rights shall vote together as one class on all matters submitted to a vote of stockholders of the Corporation.

C. Except as set forth herein, or as otherwise provided by law, holders of Series B 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 IV. Certain Restrictions.

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

1. declare or pay dividends, or make any other distributions, on any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series B Preferred Stock;

2. declare or pay dividends, 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 B Preferred Stock, except dividends paid ratably on the Series B 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;

3. redeem or purchase or otherwise acquire for consideration shares of any stock ranking

junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series B Preferred Stock, provided that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such junior 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 B Preferred Stock; or

4. redeem or purchase or otherwise acquire for consideration any shares of Series B Preferred Stock, or any shares of stock ranking on a parity with the Series B 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 V. Reacquired Shares. Any shares of Series B Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and cancelled 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 subject to the conditions and restrictions on issuance set forth herein, in the Certificate of Incorporation, or in any other Certificate of Designations creating a series of Preferred Stock or any similar stock or as otherwise required by law.

Section VI. Liquidation, Dissolution or Winding Up. Upon any liquidation, dissolution or winding up of the Corporation, no distribution shall be made (1) to the holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series B Preferred Stock unless, prior thereto, the holders of shares of Series B Preferred Stock shall have

received \$100 per share, plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment, provided that the holders of shares of Series B Preferred Stock shall be entitled to receive an aggregate amount per share, subject to the provision for adjustment hereinafter set forth, equal to 100 times the aggregate amount to be distributed per share to holders of shares of Common Stock, or (2) to the holders of shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series B Preferred Stock, except distributions made ratably on the Series B Preferred Stock and all such parity stock in proportion to the total amounts to which the holders of all such shares are entitled upon such liquidation, dissolution or winding up. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the aggregate amount to which holders of shares of Series B Preferred Stock were entitled immediately prior to such event under the proviso in clause (1) 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.

Section VII. 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 each share of Series B Preferred Stock shall at the same time be similarly exchanged or changed into an amount per share, subject to the provision for adjustment hereinafter set forth, equal to 100 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 declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the amount

set forth in the preceding sentence with respect to the exchange or change of shares of Series B 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 VIII. No Redemption. The shares of Series B Preferred Stock shall not be redeemable.

Section IX. Rank. The Series B Preferred Stock shall rank, with respect to the payment of dividends and the distribution of assets, junior to all series of any other class of the Corporation's Preferred Stock.

Section X. Amendment. The Certificate of Incorporation of the Corporation shall not be amended in any manner which would materially alter or change the powers, preferences or special rights of the Series B Preferred Stock so as to affect them adversely without the affirmative vote of the holders of at least two-thirds of the outstanding shares of Series B Preferred Stock, voting together as a single class.

IN WITNESS WHEREOF, this Certificate of Designations is executed on behalf of the Corporation by its Executive Vice President this 21st day of June, 1996.



Executive Vice President


David S. Weiss

CERTIFICATE OF CHANGE OF LOCATION OF REGISTERED OFFICE
AND OF REGISTERED AGENT

It is hereby certified that:

1. The name of the corporation (hereinafter called the "corporation") is
BEAZER HOMES USA, INC.
2. The registered office of the corporation within the State of Delaware is hereby
changed to 2711 Centerville Road, Suite 400, City of Wilmington 19808, County of New Castle.
3. The registered agent of the corporation within the State of Delaware is hereby
changed to Corporation Service Company, the business office of which is identical with the
registered office of the corporation as hereby changed.
4. The corporation has authorized the changes hereinbefore set forth by resolution
of its Board of Directors.

Signed on 5/21/02



TERESA DIETZ, ~~SECRETARY~~
ASST. SECRETARY

**CERTIFICATE OF AMENDMENT
TO THE
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
BEAZER HOMES USA, INC.**

1.

The name of the corporation is "Beazer Homes USA, Inc."

2.

The Amended and Restated Certificate of Incorporation of the corporation is amended by striking Section (i) of the existing Article Four in its entirety and inserting in lieu and instead thereof the following:

- (i) 80,000,000 shares of Common Stock, par value \$.001 per share; and

3.

The foregoing amendment to the Amended and Restated Certificate of Incorporation of the corporation was duly adopted by the Board of Directors of the corporation on November 4, 2004 and recommended to the shareholders of the corporation in accordance with the provisions of Sections 141 and 242 of the Delaware General Corporation Law (the "Delaware Law"). The above amendment was adopted by the shareholders of the corporation on February 3, 2005 in accordance with the provisions of Sections 228 and 242 of the Delaware Law.

IN WITNESS WHEREOF, Beazer Homes USA, Inc. has caused this Certificate of Amendment to the Amended and Restated Certificate of Incorporation of the corporation to be executed by its duly authorized representative, as of the 4th day of February, 2005.

BEAZER HOMES USA, INC.

By: 

Ian J. McCarthy
President & CEO

**CERTIFICATE OF AMENDMENT
TO THE
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
BEAZER HOMES USA, INC.**

I.

The name of the corporation is "Beazer Homes USA, Inc." (hereinafter referred to as the "Corporation").

II.

The Amended and Restated Certificate of Incorporation of the Corporation is amended by deleting Section (i) of the existing Article Four in its entirety and inserting in lieu thereof the following:

"(i) 180,000,000 shares of Common Stock, par value \$.001 per shares; and"

III.

In accordance with the provisions of Section 242 of the Delaware General Corporation Law ("DGCL"), the Board of Directors of the Corporation duly adopted the above amendment to the Amended and Restated Certificate of Incorporation (the "Amendment"), deemed the Amendment advisable and directed that the Amendment be considered by the Corporation's stockholders. Notice of the Amendment was duly given to the stockholders of the Corporation in accordance with Section 222 of the DGCL. The Amendment was adopted by the Corporation's stockholders on April 13, 2010 in accordance Section 242 of the DGCL.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment to the Amended and Restated Articles of Incorporation of the Corporation this 13th day of April, 2010.

BEAZER HOMES USA, INC.

By: 

Name: Ian J. McCarthy

Title: President and Chief Executive Officer

Certificate of Designations

of

Series A Junior Participating Preferred Stock

of

Beazer Homes USA, Inc.

(Pursuant to Section 151 of the Delaware General Corporation Law)

Beazer Homes USA, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (hereinafter called the "Corporation"), hereby certifies that, as required by Section 151 of the General Corporation Law, the following resolution was adopted on July 31, 2009.

RESOLVED, that pursuant to the authority granted to and vested in the Board of Directors of the Corporation in accordance with the provisions of its Amended and Restated Certificate of Incorporation, the Board of Directors hereby creates a series of Preferred Stock, par value \$0.01 per share, of the Corporation and hereby states the designation and number of shares, and fixes the relative rights, preferences and limitations thereof (in addition to the provisions set forth in the Amended and Restated Certificate of Incorporation of the Corporation, which are applicable to the Preferred Stock of all classes and series), as follows:

Series A Junior Participating Preferred Stock:

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 Di-

rector 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.

22nd IN WITNESS WHEREOF, the undersigned has executed this Certificate of Designations this day of November, 2010.

BEAZER HOMES/USA, INC.

By: _____

Name: John F. McCarthy

Title: President and Chief Executive Officer

[Certificate of Designations]

**CERTIFICATE OF AMENDMENT
TO THE
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
BEAZER HOMES USA, INC.**

I.

The name of the corporation is "Beazer Homes USA, Inc." (hereinafter referred to as the "Corporation").

II.

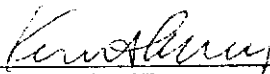
The Amended and Restated Certificate of Incorporation of the Corporation is hereby amended by inserting the new Article Eight attached hereto as Annex A immediately following the existing Article Seven of the Amended and Restated Certificate of Incorporation.

III.

In accordance with the provisions of Section 242 of the Delaware General Corporation Law ("DGCL"), the Board of Directors of the Corporation duly adopted the above amendment to the Amended and Restated Certificate of Incorporation (the "Amendment"), deemed the Amendment advisable and directed that the Amendment be considered by the Corporation's stockholders. Notice of the Amendment was duly given to the stockholders of the Corporation in accordance with Section 222 of the DGCL. The Amendment was adopted by the Corporation's stockholders on February 2, 2011, in accordance Section 242 of the DGCL.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment to the Amended and Restated Articles of Incorporation of the Corporation this 2nd day of February, 2011.

BEAZER HOMES USA, INC.

By: 
Name: Kenneth F. Khoury
Title: Executive Vice President, General Counsel and Corporate Secretary

**AMENDMENT TO THE
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
BEAZER HOMES USA, INC.**

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.

(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.

**CERTIFICATE OF AMENDMENT
TO THE
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
BEAZER HOMES USA, INC.**

Beazer Homes USA, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), pursuant to the General Corporation Law of the State of Delaware (the "DGCL"), DOES HEREBY CERTIFY as follows:

1. Article Four of the Amended and Restated Certificate of Incorporation of the Corporation, as amended, is hereby amended by replacing Section (i) of the existing Article Four in its entirety with the following:

“(i) 100,000,000 shares of Common Stock, par value \$.001 per share; and”

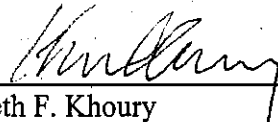
2. The Amended and Restated Certificate of Incorporation of the Corporation, as amended, is hereby amended by adding the following Article Nine:

“ARTICLE NINE. Effective at 4:15 p.m., Eastern time, on October 11, 2012 (the “Effective Time”), every five (5) shares of Common Stock of the Corporation issued and outstanding or held as treasury shares shall thereupon, without any action on the part of the holder thereof or the Corporation, be reclassified and combined into one (1) share of validly issued, fully paid and non-assessable share of Common Stock having a par value per share of \$.001 per share, subject to the treatment of fractional share interests as described below (the “Reverse Stock Split”). No certificates representing fractional shares of Common Stock shall be issued in connection with the Reverse Stock Split. Stockholders who would otherwise be entitled to receive fractional shares of Common Stock shall be entitled to receive cash (without interest) from the Corporation’s transfer agent in lieu of such fractional share interests upon the submission of a transmittal letter by a stockholder holding the shares in book-entry form and, where shares are held in certificated form, upon the surrender of the stockholder’s Old Certificates (as defined below), in an amount equal to the proceeds attributable to the sale of such fractional shares (after customary brokerage commissions and other expenses) following the aggregation and sale by the Corporation’s transfer agent of all fractional shares otherwise issuable. Each certificate that immediately prior to the Effective Time represented shares of common stock (“Old Certificates”), shall thereafter represent that number of shares of common stock into which the shares of common stock represented by the Old Certificate shall have been combined, subject to the elimination of fractional share interests as described above.”


3. This amendment has been duly adopted in accordance with the provisions of Section 242 of the DGCL.

IN WITNESS WHEREOF, the Corporation has caused its duly authorized officer to execute this Certificate of Amendment on this 11th day of October, 2012.

BEAZER HOMES USA, INC.

By: 
Kenneth F. Khoury
EVP, General Counsel & Chief Administrative Officer

Attest:


Jeffrey Hoza
VP & Treasurer

**CERTIFICATE OF AMENDMENT
TO THE
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
BEAZER HOMES USA, INC.**

Beazer Homes USA, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), pursuant to the General Corporation Law of the State of Delaware (the "DGCL"), DOES HEREBY CERTIFY as follows:

1. Article FOUR of the Amended and Restated Certificate of Incorporation of the Corporation, as amended, is hereby amended by replacing Section (i) of the existing Article FOUR in its entirety with the following:

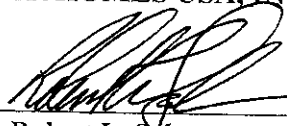
“(i) 63,000,000 shares of Common Stock, par value \$.001 per share; and”

2. In accordance with the provisions of Section 242 of the DGCL, the Board of Directors of the Corporation duly adopted the above amendment to the Amended and Restated Certificate of Incorporation (the "Amendment"), deemed the Amendment advisable and directed that the Amendment be considered by the Corporation's stockholders. Notice of the Amendment was duly given to the stockholders of the Corporation in accordance with Section 222 of the DGCL. The Amendment was adopted by the Corporation's stockholders on February 1, 2013 in accordance Section 242 of the DGCL.


[Signature page follows.]

IN WITNESS WHEREOF, the Corporation has caused its duly authorized officer to execute this Certificate of Amendment on this 1st day of February, 2013.

BEAZER HOMES USA, INC.

By: 
Name: Robert L. Salomon
Title: Executive Vice President and Chief
Financial Officer

Attest:


Name: Lisa S. Stockard
Title: Assistant Secretary

**CERTIFICATE OF AMENDMENT
TO THE
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
BEAZER HOMES USA, INC.**

Beazer Homes USA, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), pursuant to the General Corporation Law of the State of Delaware (the "DGCL"), DOES HEREBY CERTIFY as follows:

1. Article EIGHT of the Amended and Restated Certificate of Incorporation of the Corporation, as amended (the "Amended and Restated Certificate of Incorporation"), is hereby amended by replacing paragraph (i) of the existing Article EIGHT in its entirety with the following:

"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, 2016."

2. In accordance with the provisions of Section 242 of the DGCL, the Board of Directors of the Corporation duly adopted the above amendment to the Amended and Restated Certificate of Incorporation (the "Amendment"), deemed the Amendment advisable and directed that the Amendment be considered by the Corporation's stockholders. Notice of the Amendment was duly given to the stockholders of the Corporation in accordance with Section 222 of the DGCL. The Amendment was adopted by the Corporation's stockholders on February 1, 2013 in accordance Section 242 of the DGCL.
3. Pursuant to Sections 103 and 242 of the DGCL, the Amendment shall become effective at 5:00 p.m., New York City time, on Tuesday, November 12, 2013.

[Signature page follows.]

IN WITNESS WHEREOF, the Corporation has caused its duly authorized officer to execute this Certificate of Amendment on this 6th day of November, 2013.

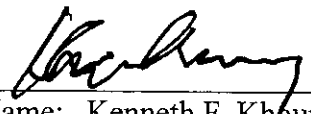
BEAZER HOMES USA, INC.

By: 

Name: Robert L. Salomon

Title: Executive Vice President, Chief Financial
Officer

Attest:



Name: Kenneth F. Khoury

Title: Executive Vice President, General
Counsel and Chief Administrative Officer

**CERTIFICATE OF AMENDMENT
TO THE
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
BEAZER HOMES USA, INC.**

Beazer Homes USA, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), pursuant to the General Corporation Law of the State of Delaware (the "DGCL"), DOES HEREBY CERTIFY as follows:

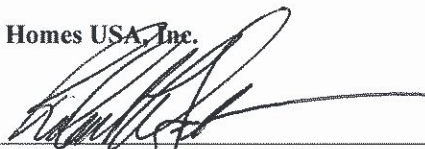
1. Article EIGHT of the Amended and Restated Certificate of Incorporation of the Corporation, as amended (the "Amended and Restated Certificate of Incorporation"), is hereby amended by replacing paragraph (i) of the existing Article EIGHT in its entirety with the following:

"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, 2019."

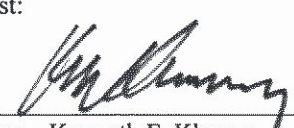
2. In accordance with the provisions of Section 242 of the DGCL, the Board of Directors of the Corporation duly adopted the above amendment to the Amended and Restated Certificate of Incorporation (the "Amendment"), deemed the Amendment advisable and directed that the Amendment be considered by the Corporation's stockholders. Notice of the Amendment was duly given to the stockholders of the Corporation in accordance with Section 222 of the DGCL. The Amendment was adopted by the Corporation's stockholders on February 2, 2016 in accordance with Section 242 of the DGCL.
3. Pursuant to Sections 103 and 242 of the DGCL, the Amendment shall become effective at 12:00 a.m., New York City time, on Saturday, November 12, 2016.

IN WITNESS WHEREOF, the Corporation has caused its duly authorized officer to execute this Certificate of Amendment on this 8th day of November, 2016.

Beazer Homes USA, Inc.

By: 
Name: Robert L. Salomon
Title: Executive Vice President and Chief Financial Officer

Attest:


Name: Kenneth F. Khoury
Title: Executive Vice President, General Counsel, Chief Administrative Officer and Corporate Secretary

**CERTIFICATE OF AMENDMENT
TO THE
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
BEAZER HOMES USA, INC.**

Beazer Homes USA, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), pursuant to the General Corporation Law of the State of Delaware (the "DGCL"), DOES HEREBY CERTIFY as follows:

1. Article EIGHT of the Amended and Restated Certificate of Incorporation of the Corporation, as amended (the "Amended and Restated Certificate of Incorporation"), is hereby amended by replacing paragraph (i) of the existing Article EIGHT in its entirety with the following:

"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, 2022."

2. In accordance with the provisions of Section 242 of the DGCL, the Board of Directors of the Corporation duly adopted the above amendment to the Amended and Restated Certificate of Incorporation (the "Amendment"), deemed the Amendment advisable and directed that the Amendment be considered by the Corporation's stockholders. Notice of the Amendment was duly given to the stockholders of the Corporation in accordance with Section 222 of the DGCL. The Amendment was adopted by the Corporation's stockholders on February 6, 2019 in accordance with Section 242 of the DGCL.
3. Pursuant to Sections 103 and 242 of the DGCL, the Amendment shall become effective at 12:00 a.m., New York City time, on Tuesday, November 12, 2019.

IN WITNESS WHEREOF, the Corporation has caused its duly authorized officer to execute this Certificate of Amendment on this 8th day of November 2019.

Beazer Homes USA, Inc.

By: _____

Name: Robert L. Salomon
Title: Executive Vice President and Chief Financial Officer

Attest:

Name: Keith L. Belknap
Title: Executive Vice President and General Counsel

**CERTIFICATE OF AMENDMENT
TO THE
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
BEAZER HOMES USA, INC.**

Beazer Homes USA, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), pursuant to the General Corporation Law of the State of Delaware (the "DGCL"), DOES HEREBY CERTIFY as follows:

1. Article EIGHT of the Amended and Restated Certificate of Incorporation of the Corporation, as amended (the "Amended and Restated Certificate of Incorporation"), is hereby amended by replacing paragraph (i) of the existing Article EIGHT in its entirety with the following:

"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, 2025."

2. In accordance with the provisions of Section 242 of the DGCL, the Board of Directors of the Corporation duly adopted the above amendment to the Amended and Restated Certificate of Incorporation (the "Amendment"), deemed the Amendment advisable and directed that the Amendment be considered by the Corporation's stockholders. Notice of the Amendment was duly given to the stockholders of the Corporation in accordance with Section 222 of the DGCL. The Amendment was adopted by the Corporation's stockholders on February 2, 2022 in accordance with Section 242 of the DGCL.
3. Pursuant to Sections 103 and 242 of the DGCL, the Amendment shall become effective at 12:00 a.m., New York City time, on Saturday, November 12, 2022.

IN WITNESS WHEREOF, the Corporation has caused its duly authorized officer to execute this Certificate of Amendment on this 9th day of November 2022.

Beazer Homes USA, Inc.

By: _____

Name: David I. Goldberg

Title: Senior Vice President and Chief Financial Officer

Attest:

Name: Keith L. Belknap

Title: Executive Vice President and General Counsel