UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

In re BEAZER HOMES USA, INC. DERIVATIVE LITIGATION	)	Civil Action No. 1:07-CV-0842-CC
This Document Relates To: ALL ACTIONS	)	

STIPULATION OF SETTLEMENT

This Stipulation of Settlement dated as of October 30, 2009 (the "Stipulation") is made and entered into by and among the following parties to the above-entitled action: (i) Plaintiff Advantage Investors (the "Plaintiff"), on behalf of itself and derivatively on behalf of Beazer Homes U.S.A., Inc. ("Beazer" or the "Company"), by and through its counsel of record; (ii) the Individual Defendants (as defined in Section IV, ¶1.9) by and through their counsel of record; and (iii) Nominal Defendant Beazer, by and through its counsel of record (collectively, Plaintiff, the Individual Defendants, and Beazer are referred to herein as the "Settling Parties"). The Stipulation is intended by the Settling Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined in Section IV, ¶1.15), upon and subject to the terms and conditions hereof.

I. LITIGATION AND SETTLEMENT DISCUSSIONS

A. The Derivative Action

On April 16, 2007, Plaintiff, a Beazer shareholder, filed a shareholder derivative action on behalf of and for the benefit of Beazer in the United States District Court for the Northern District of Georgia (the "Court"), captioned *Advantage Investors v. McCarthy, et al.*, Case No. 1:07-cv-842-CC ("*Advantage Investors* Action"). On August 29, 2007, Al Ronick, also a Beazer shareholder, filed in this Court a shareholder derivative action on behalf of and for the benefit of Beazer captioned *Ronick v. McCarthy, et al.*, Case No. 1:07-CV-2100-CC ("*Ronick* Action").

On October 16, 2007, Plaintiff filed a Motion for Limited Discovery (the "Discovery Motion"). Plaintiff believed the Discovery Motion was necessary to effectively formulate a litigation strategy and to prevent the potential spoliation of potentially discoverable documents. The Individual Defendants and nominal defendant Beazer (collectively, the "Defendants") disagreed and filed oppositions to Plaintiff's Discovery Motion on November 2, 2007. On June 20, 2008, the Court denied Plaintiff's Discovery Motion. On August 21, 2008, upon stipulation by the parties and order of the Court, the *Advantage Investors* Action and the *Ronick* Action

were consolidated and captioned *In re Beazer Homes USA, Inc. Derivative Litigation,* No. 1:07-cv-842-CC (the "Derivative Action"). In addition, the Court appointed Advantage Investors as lead plaintiff, Robbins Umeda LLP (*f/k/a* Robbins, Umeda & Fink LLP) as lead counsel, and Cohen Cooper Estep & Mudder, LLC as liasion counsel.

Prior to and after filing the Derivative Action, Plaintiff's Counsel (as defined in Section IV, ¶1.13) conducted extensive research and investigation into the Individual Defendants' alleged misconduct and the corresponding alleged damage to the Company. Plaintiff's Counsel's research and investigation culminated in the filing of a [Corrected] Verified Consolidated Amended Shareholder Derivative Complaint (the "Consolidated Amended Complaint") on October 22, 2008.[1] Plaintiff alleged in the Consolidated Amended Complaint that the Individual Defendants engaged in improper lending practices, accounting manipulations, false and misleading public statements, lack of internal controls, and sustained and systematic failed efforts to hide the alleged known problems afflicting the Company.

On November 21, 2008, Defendants moved to dismiss the Derivative Action on the grounds that Plaintiff failed to adequately allege demand futility and failed to plead a cause of action. Plaintiff opposed Defendants' motions to dismiss and argued that the Consolidated Amended Complaint adequately alleged the futility of demand upon Beazer's board of directors and sufficiently pled the causes of actions. Defendants' motions to dismiss are currently pending before the Court.

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[1] Plaintiff's Counsel filed a Verified Consolidated Amended Shareholder Derivative Complaint on October 2, 2009, and, as discussed above, subsequently filed the corrected Consolidated Amended Complaint.

On April 6 and 7, 2009, the Settling Parties and the parties in the related federal Securities Class Action[2] participated in a mediation under the auspices of the Honorable Daniel Weinstein (Ret.). At the mediation, the parties discussed a potential settlement of the Derivative Action, including certain proposed corporate governance changes and remedial measures in place at Beazer, or to be adopted and/or implemented by Beazer. Although the Settling Parties did not reach a settlement of the Derivative Action at the mediation, the Settling Parties continued to work in good faith towards reaching a resolution of the Derivative Action.

On July 9, 2009, after engaging in multiple arm's-length, good faith settlement discussions, the Settling Parties reached an agreement in principle to settle the Derivative Action. After further negotiations, the Settling Parties executed this Stipulation.

B. Related Actions

Prior to and after Plaintiff filed its original complaint on April 16, 2007, three related actions were filed. First, the Securities Class Action was filed on March 29, 2007 and alleged violations of the Securities Exchange Act of 1934, including Section 10(b), Rule 10b-5, and Section 20(a), against Beazer and/or certain of its officers and directors. On May 5, 2009, Beazer announced that the parties in the Securities Class Action reached an agreement to settle the Securities Class Action. The terms of the settlement provide, in part, that the Securities Class Action defendants shall pay, or cause their insurers to pay, $30.5 million to fund the settlement. On May 12, 2009, the Court granted preliminary approval of the settlement. On September 15, 2009, the Court granted final approval of the settlement of the Securities Class Action and entered a judgment.

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[2] The term "Securities Class Action" refers to *In re Beazer Homes USA, Inc. Securities Litigation*, No. 1:07-cv-725-CC, filed on March 29, 2007, in this Court.

Second, on April 30, 2007, another putative class action complaint, *In re Beazer Homes USA, Inc. ERISA Litigation,* No. 1:07-cv-00952, (the "ERISA Action"), was filed on behalf of a class consisting of present and former participants and beneficiaries of Beazer's 401(k) Plan in the Court. The ERISA Action alleges breach of fiduciary duties against certain officers and directors and the Company as a result of the loss of retirement monies held by the 401(k) Plan in Beazer at a time when participants were not provided timely, accurate, and complete information concerning Beazer. On October 10, 2008, the Company and the other defendants filed a motion to dismiss the ERISA Action. The motion to dismiss has been fully briefed by the parties, and is currently pending.

Lastly, five months after the Derivative Action was filed, another shareholder derivative action against many of the same defendants and alleging similar facts, captioned *Sheet Metal Workers' National Pension Fund v. McCarthy, et al.*, Case No. 3225-VCL, was filed in the Court of Chancery of the State of Delaware on September 12, 2007 (the "Delaware Action"). On January 30, 2008, the defendants moved to dismiss the Delaware Action or, alternatively, to stay the Delaware Action in favor of the Derivative Action. The Delaware Action was subsequently dismissed on August 26, 2008, pursuant to a stipulation.

II. PLAINTIFF'S CLAIMS AND THE BENEFITS OF SETTLEMENT

Plaintiff believes that the claims asserted in the Derivative Action have merit. However, Plaintiff's Counsel recognize and acknowledge the risk, expense, and length of continued proceedings necessary to prosecute the Derivative Action against the Individual Defendants through trial and, potentially, through appeals. Plaintiff's Counsel also have taken into account the uncertain outcome inherent in any litigation, especially in complex actions such as this Derivative Action, as well as the difficulties and delays of such litigation. Plaintiff's Counsel are mindful of the inherent problems of proof under, and possible defenses to, the claims asserted in the Derivative Action. Plaintiff's Counsel believe that the proposed settlement set forth in this Stipulation

confers substantial benefits upon Beazer. Based on a thorough investigation and evaluation of the facts and analysis of applicable law, Plaintiff's Counsel have determined that the proposed settlement is fair, reasonable, and adequate, and in the best interests of Beazer and Beazer's stockholders.

III. DEFENDANTS' DENIALS OF WRONGDOING AND LIABILITY

The Individual Defendants deny any liability in connection with the Derivative Action and the claims asserted by Plaintiff in the Consolidated Amended Complaint. Nonetheless, the Defendants have concluded that further litigation of the Derivative Action would be protracted and expensive, and that it is desirable that the Derivative Action be fully and finally settled in the manner and upon the terms and conditions set forth in this Stipulation. The Defendants also have taken into account the uncertainty and risks inherent in any litigation, especially in complex cases such as the Derivative Action. The Defendants have, therefore, determined that it is desirable and beneficial for them that the Derivative Action be settled in the manner and upon the terms and conditions set forth in this Stipulation. Moreover, the Defendants believe the proposed settlement is in the best interests of Beazer and its shareholders. By agreeing to the settlement and entering into this Stipulation, the Defendants do not admit or concede any alleged fact, wrongdoing, liability, and/or violations of any laws.

IV. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among Plaintiff, for itself, and derivatively on behalf of Beazer, the Individual Defendants, and nominal defendant Beazer, by and through their respective counsel of record, that, subject to the approval of the Court, the Derivative Action and the Released Claims (as defined in Section IV, ¶1.15) shall be finally and fully compromised, settled, and released, and the Derivative Action shall be dismissed with prejudice, as to all Settling Parties, upon and subject to the terms and conditions of the Stipulation, as follows.

1. Definitions

As used in the Stipulation the following terms have the meanings specified below:

1.1 "Beazer" or the "Company" means nominal defendant Beazer Homes U.S.A., Inc.

1.2 "Court" means United States District Court for the Northern District of Georgia.

1.3 "Current Beazer Shareholder" means persons who owned Beazer common stock as of October 30, 2009, and who continue to hold their Beazer common stock as of the date of the Settlement Hearing as defined in Section IV, ¶1.18, excluding the Individual Defendants, the officers and directors of Beazer, members of their immediate families and their legal representatives, heirs, successors, or assigns, and any entity in which Individual Defendants have or had a controlling interest.

1.4 "Defendants" means, collectively, nominal defendant Beazer and the Individual Defendants as defined in Section IV, ¶1.9.

1.5 "Defendants' Counsel" means, collectively, Cravath, Swaine & Moore LLP and Troutman Sanders LLP for nominal defendant Beazer and all Individual Defendants other than Rand and Furlow; Rogers & Hardin LLP for Defendant Rand; Covington & Burling LLP and Hartman, Simons, Spielman & Wood LLP for Defendant Furlow; and any successors to said counsel.

1.6 "Derivative Action" means the consolidated shareholder derivative action captioned *In re Beazer Homes USA, Inc. Derivative Litigation,* No. 1:07-cv-842-CC.

1.7 "Effective Date" means the first date by which all of the events and conditions specified in Section IV, ¶5.1 herein have been met and have occurred.

1.8 "Final" means the later of: (a) the date of final affirmance on an appeal of the Judgment (as defined in Section IV, ¶1.10), the expiration of the time for a petition to review the Judgment and, if any such writ or petition is granted, the date of final

affirmance of the Judgment following review pursuant to that grant; or (b) the date of final, non-appealable dismissal of any appeal from the Judgment or the final, non-appealable dismissal of any proceeding on petition for review of the Judgment; or (c) if no appeal is filed, the expiration date of the time for the filing or noticing of any appeal from the Court's Judgment approving the Stipulation.

1.9 "Individual Defendants" means, collectively, Katie J. Bayne, Stephen P. Zelnak, Jr., Peter G. Leemputte, James O'Leary, Maureen E. O'Connell, Ian J. McCarthy, Laurent Alpert, Brian C. Beazer, Larry T. Solari, Michael T. Rand, and Michael H. Furlow.

1.10 "Judgment" means the judgment to be rendered by the Court, substantially in the form attached hereto as Exhibit A, or as modified pursuant to the agreement of the Settling Parties.

1.11 "Person" means an individual, corporation, limited liability corporation, professional corporation, partnership, limited partnership, limited liability partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assignees.

1.12 "Plaintiff" means Advantage Investors, for itself and derivatively on behalf of Beazer.

1.13 "Plaintiff's Counsel" means, collectively, Robbins Umeda LLP (*f/k/a* Robbins, Umeda & Fink LLP), Cohen Cooper Estep & Whiteman LLC, Roy Jacobs & Associates, and The Weiser Law Firm, P.C., and any successors to said counsel.

1.14 "Related Persons" means any of a Defendant's past, present, and future direct or indirect parent companies, subsidiaries, subcontractors, divisions, affiliates, predecessors, successors, partners, principals, members, managers, attorneys, administrators, auditors, investment advisors, officers, directors, trusts, accountants, employees, stockholders, owners, agents, subrogees, insurers, reinsurers, servants,

representatives, heirs, executors, personal representatives, legal representatives, transferees and assignees, and successors in interest of assigns.

1.15 "Released Claims" means any and all claims, rights or causes of action or liabilities whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule or regulation (whether foreign or domestic) by Beazer, or derivatively on behalf of Beazer, that are alleged in the Derivative Action and that arise out of, in connection with, or relate to any of the acts, matters, allegations, or transactions referred to in the Derivative Action, including, without limitation, Unknown Claims (as defined in Section IV, ¶1.20) against the Released Persons.

1.16 "Released Persons" means, collectively, each and all of the Defendants and their Related Persons.

1.17 "Settlement" means the proposed settlement contemplated by this Stipulation.

1.18 "Settlement Hearing" means the hearing on final approval of the proposed settlement contemplated by this Stipulation, made upon noticed motion of the Settling Parties (as defined in Section IV, ¶1.19), at which the Settling Parties will seek entry of the Judgment (as defined in Section IV, ¶1.10).

1.19 "Settling Parties" means, collectively, the Individual Defendants, Beazer, and Plaintiff, for itself and derivatively on behalf of Beazer.

1.20 "Unknown Claims" means any and all settled claims which any Settling Party or Released Person does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Persons, which if known by him, her, or it might have affected his, her, or its decision not to object to the Settlement. With respect to any and all claims, the Settling Parties stipulate and agree that upon the Effective Date, the Settling Parties each shall be deemed to have, and by operation of the Judgment, shall have, expressly waived any and all provisions, rights, and benefits of California Civil Code Section 1542 which provides:

> ***A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the***

release, which if known by him or her must have materially affected his or her settlement with the debtor.

The Settling Parties each shall expressly waive, and by operation of the Judgment shall have, expressly waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to California Civil Code Section 1542. The Settling Parties each may hereafter discover facts in addition to or different from those that he, she, or it now knows or believes to be true with respect to the subject matter of the Released Claims, but, upon the Effective Date, the Settling Parties each shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released any and all Released Claims without regard to the subsequent discovery or existence of such different or additional facts. The Settling Parties each acknowledge that the foregoing waiver was separately bargained for and a key element of the settlement of which this release is a part.

2. Settlement of the Derivative Claims; Notice; Preliminary Approval Hearing; and Settlement Hearing

2.1 ***Corporate Governance***. Beazer acknowledges that the commencement, prosecution, and settlement of the Derivative Action were material contributing factors in causing the Company to agree to adopt and/or implement the corporate governance reforms and remedial measures described in the Corporate Governance Term Sheet attached hereto as Exhibit B. Beazer has agreed to maintain these corporate governance reforms and remedial measures in place for a period of five (5) years after the Effective Date.

2.2 ***Notice***. Plaintiff will move the Court to approve the form and content of notice to Current Beazer Shareholders. Specifically, Plaintiff seeks approval of the Notice of Pendency and Proposed Settlement of Derivative Action ("Notice"), substantially in the form attached hereto as Exhibit C, and the Summary Notice of Proposed Settlement of Derivative Action ("Summary Notice"), substantially in the form attached hereto as Exhibit D. The Summary Notice shall be published by Beazer

in a national publication, such as *Investor's Business Daily*, and shall refer shareholders to a website that Beazer will create and maintain and to the website of Robbins Umeda LLP to view the Stipulation as well as the more detailed Notice. Beazer shall pay any reasonable expenses incurred in publishing the Summary Notice. In addition, Beazer shall announce the settlement, with a link to the website that Beazer will create, in a press release, and/or in a Form 8-K filed with the U.S. Securities and Exchange Commission.

2.3 ***Preliminary Approval Order.*** Within a reasonable time after execution of the Stipulation, Plaintiff shall submit the Stipulation together with its exhibits to the Court and shall apply for entry of [Proposed] Order Preliminarily Approving Derivative Settlement and Providing for Notice (the "Preliminary Approval Order"), substantially in the form attached hereto as Exhibit E, seeking: (i) preliminary approval of the Settlement as set forth in the Stipulation; (ii) approval of the form and content of the Summary Notice and the Notice; and (iii) a date for the Settlement Hearing (as defined in Section IV, ¶1.18).

2.4 ***Settlement Hearing.*** Plaintiff's Counsel shall request that the Court hold the Settlement Hearing after due and sufficient notice is given to Current Beazer Shareholders and finally approve the Settlement. At the Settlement Hearing, Plaintiff's Counsel also will request that the Court approve the agreed-to Fee and Expense Award to Plaintiff's Counsel, as defined in Section IV, ¶4.1.

3. Releases

3.1 Upon the entry of the Judgment, as defined in Section IV, ¶1.10, Plaintiff, on its own behalf and derivatively on behalf of Beazer, Plaintiff's Counsel, and Beazer shall have, and by operation of the Judgment shall be deemed to have, with respect to each and every Released Claim (including Unknown Claims), released and forever discharged, and shall forever be barred and enjoined from initiating, continuing, filing, or otherwise prosecuting, any Released Claims against any of the Released Persons.

Nothing herein shall, however, bar any action or claim to enforce the terms of this Stipulation or the Final Judgment and Order.

3.2 Upon the entry of the Judgment, Beazer, each of the Individual Defendants, and their Related Persons shall have, and by operation of the Judgment shall be deemed to have fully, finally, and forever released, relinquished, and discharged Plaintiff and Plaintiff's Counsel from all claims arising out of, relating to, or in connection with their institution, prosecution, assertion, or resolution of the Derivative Action. Nothing contained herein shall, however, bar any action or claim to enforce the terms of this Stipulation or the Final Judgment and Order.

3.3 The Settling Parties will seek entry of the Judgment by Court, dismissing the Derivative Action with prejudice and barring any claims that have been or might have been brought in any court or forum by Beazer or any Beazer stockholder on Beazer's behalf relating to or arising out of allegations in the complaints filed in the Derivative Action.

4. Plaintiff's Counsel's Attorneys' Fees and Reimbursement of Expenses

4.1 In recognition of the substantial benefit conferred on Beazer through the adoption and/or implementation of the corporate governance measures set forth in Exhibit B, Beazer and the Individual Defendants shall pay, or cause their insurers to pay, upon Court approval, an aggregate amount of $950,000 to Plaintiff's Counsel for their attorneys' fees and reimbursement of expenses (the "Fee and Expense Award") within thirty (30) days of the Court's Order granting final approval of this Settlement; provided that if all of the conditions to the Effective Date set forth in Section IV, ¶5.1 are not met or the Stipulation is otherwise terminated for any reason, Plaintiff's Counsel and their law firms (or their successors) shall refund the Fee and Expense Award, if paid, to the payor within ten (10) business days. Plaintiff's Counsel accepting any such Fee and Expense Award agrees by such acceptance to be subject to the jurisdiction of the Court to enforce their repayment obligations hereunder.

4.2 Payment of the Fee and Expense Award shall constitute final and complete payment for Plaintiff's attorneys' fees and reimbursement of expenses that have been incurred or will be incurred in connection with the Derivative Action and resolution of the derivative claims asserted in the Derivative Action. Defendants shall have no responsibility for the allocation of the fees, costs, and expenses awards among Plaintiff's Counsel in the Derivative Action. The obligation to make appropriate refund or repayment may be enforced by summary orders of this Court.

5. Conditions of Settlement, Effect of Disapproval, Cancellation, or Termination

5.1 The Effective Date of the Stipulation shall be conditioned on the occurrence of all of the following events:

1. entry by the Court of the Preliminary Approval Order;

2. final Court approval of the Settlement following notice to Current Beazer Shareholders and the final Settlement Hearing;

3. dismissal with prejudice of the Derivative Action;

4. entry of the Judgment;

5. the Judgment becoming Final, as defined in Section IV, ¶1.8; and

6. the payment of the Fee and Expense Award in accordance with Section IV, ¶4.1.

5.2 If all of the conditions specified in Section IV, ¶5.1 are not met, then the Stipulation shall be cancelled and terminated in accordance with the procedure in Section IV, ¶5.3, unless Plaintiff's Counsel and Defendants' Counsel mutually agree in writing to proceed with the Stipulation.

5.3 In the event that all of the conditions to the Effective Date are not met, or the Stipulation is not approved, or is otherwise terminated for any reason:

(a) the parties shall be restored to their respective positions in the Derivative Action as of the date before this Stipulation was fully executed;

(b) the refund provided for in Section IV, ¶4.1 shall be made in accordance with the terms of Section IV, ¶4.1; and

(c) this Stipulation and any related settlement documents shall be null and void, of no force and effect, and nothing herein shall be deemed to prejudice the position of any of the parties or any Released Persons with respect to the Derivative Action or otherwise, and neither the existence of this Stipulation nor the facts of its existence nor any of the terms thereof, shall be admissible in evidence or shall be referred to for any purpose in the Derivative Action or in any other litigation or the issuance of an order.

6. Bankruptcy

6.1 In the event that a case is commenced in respect to any Individual Defendant or Beazer under Title 11 of the United States Code (Bankruptcy), or a trustee, receiver, or conservator is appointed under any similar law, the Settling Parties agree to use their reasonable best efforts to obtain all necessary orders, consents, releases, and approvals for effectuation of this Stipulation in a timely and expeditious manner. By way of example only, the Settling Parties agree to cooperate in making applications and motions to the bankruptcy court for relief from any stay, approval of the settlement, authority to release funds, authority for Beazer's insurer to disburse insurance proceeds consistent with this Stipulation, authority to release claims and indemnify officers and directors, and authority for the Court to enter all necessary orders and judgments, and any other actions reasonably necessary to effectuate the terms of this Stipulation.

6.2 In the event that a case is commenced in respect to any Individual Defendant or Beazer under Title 11 of the United States Code (Bankruptcy), or a trustee, receiver, or conservator is appointed under any similar law, the Settling Parties agree that all dates and deadlines set forth herein will be extended for such periods of time as are necessary to obtain necessary orders, consents, releases and approvals from the bankruptcy court for effectuation of this Stipulation.

7. Miscellaneous Provisions

7.1 The Settling Parties: (a) acknowledge that it is their intent to consummate this agreement; and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of the Stipulation and to exercise their best efforts to accomplish the foregoing terms and conditions of the Stipulation.

7.2 The Settling Parties intend this Settlement to be a final and complete resolution of all disputes between them with respect to the Derivative Action. The Settlement compromises claims which are contested and shall not be deemed an admission by any Settling Party as to the merits of any claim, allegation, or defense. While retaining their right to deny that the claims advanced in the Derivative Action were meritorious, Defendants agree that the Derivative Action was filed in good faith and in accordance with Rule 11 of the Federal Rules of Civil Procedure ("Rule 11") and are being settled voluntarily after consultation with competent legal counsel. The Judgment will contain a statement that during the course of the Derivative Action, the parties and their respective counsel at all times complied with the requirements of Rule 11.

7.3 The Stipulation shall be deemed drafted equally by all Settling Parties.

7.4 Neither the Stipulation nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the Individual Defendants, or the Related Persons; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Individual Defendants, or the Related Persons in any proceeding of any nature. Beazer, any Individual Defendant, or Related Person may file the Stipulation and/or the Judgment in any action that has been or may be brought against him, her, or it in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel,

release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion, or similar defense or counterclaim.

7.5 The exhibits to this Stipulation ("Exhibits") are a material and integral part hereof and are fully incorporated herein by this reference.

7.6 The Stipulation may be amended or modified only by a written instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest.

7.7 This Stipulation and the Exhibits attached hereto constitute the entire agreement among the parties hereto and no representations, warranties, or inducements have been made to any party concerning the Stipulation or its Exhibits other than the representations, warranties, and covenants contained and memorialized in such documents. Except as otherwise provided herein, each party shall bear its own costs.

7.8 Each counsel or other person executing the Stipulation or its Exhibits on behalf of any party hereto hereby warrants that such person has the full authority to do so.

7.9 The Stipulation may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of original executed counterparts shall be filed with the Court.

7.10 The Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto.

7.11 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Stipulation, and all parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in the Stipulation.

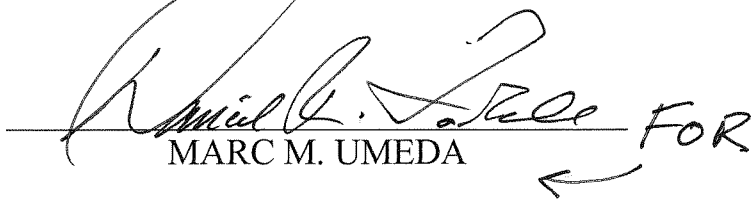
7.12 This Stipulation and the Exhibits hereto shall be considered to have been negotiated, executed, and delivered, and to be wholly performed in the State of

Georgia, and the rights and obligations of the parties to the Stipulation shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of Georgia without giving effect to that State's choice of law principles.

IN WITNESS WHEREOF, the parties hereto have caused the Stipulation to be executed, by their duly authorized attorneys, dated as of October 30, 2009.

DATED: October 30, 2009

ROBBINS UMEDA LLP
MARC M. UMEDA
GEORGE C. AGUILAR
DANIEL R. FORDE



MARC M. UMEDA

600 B Street, Suite 1900
San Diego, CA 92101
Telephone: (619) 525-3990
Facsimile: (619) 525-3991

Lead Counsel for Plaintiff

COHEN COOPER ESTEP &
WHITEMAN, LLC
STEVEN J. ESTEP
3350 Riverwood Parkway, Suite 2220
Atlanta, GA 30339
Telephone: (404) 814-0000
Facsimile: (404) 816-8900

Liaison Counsel Plaintiff

ROY JACOBS & ASSOCIATES
ROY L. JACOBS
60 East 42nd Street, 46th Floor
New York, NY 10165
Telephone: (212) 867-1156
Facsimile: (212) 504-8343

THE WEISER LAW FIRM, P.C.
ROBERT WEISER
121 N. Wayne Avenue, Suite 100
Wayne, PA 19087
Telephone: (610) 225-2616
Facsimile: (610) 225-2678

Additional Counsel for Plaintiff

DATED: October 30, 2009

CRAVATH SWAINE & MOORE
RICHARD W. CLARY
MICHAEL A. PASKIN

MICHAEL A. PASKIN

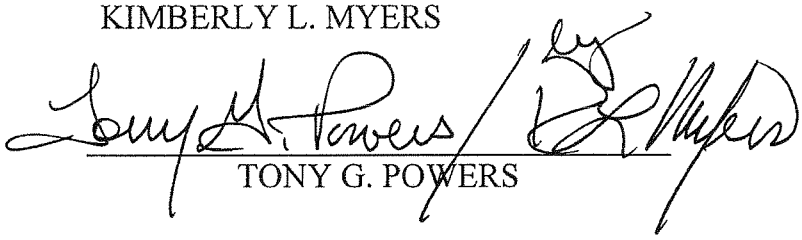
825 Eighth Avenue
Worldwide Plaza
New York, NY 10019
Telephone: (212) 474-1000
Facsimile: (212) 474-3700

TROUTMAN SANDERS, LLP-ATL
J. TIMOTHY MAST
JAIME L. THERIOT
Bank of America Plaza
600 Peachtree Street, N.E., Suite 5200
Atlanta, GA 30308
Telephone: (404) 885-3000
Facsimile: (404) 962-6796

Counsel for defendants Beazer Homes USA, Inc., Ian J. McCarthy, Laurent Alpert, Brian C. Beazer, Larry T. Solari, Katie J. Bayne, Stephen P. Zelnak, Jr., Peter G. Leemputte, James O'Leary, and Maureen E. O'Connell

DATED: October ___, 2009

ROGERS & HARDIN LLP
TONY G. POWERS
KIMBERLY L. MYERS



TONY G. POWERS

229 Peachtree Street, N.E.
Atlanta, GA 30303
Telephone: (404) 522-4700
Facsimile: (404) 525-2224

Counsel for defendant Michael T. Rand

DATED: October ___, 2009

HARTMAN, SIMONS, SPIELMAN
& WOOD LLP
SCOTT M. RATCHICK
CHRISTOPHER SCOTT BADEAUX

_____
SCOTT M. RATCHICK

6400 Powers Ferry Rd., N.W., Suite 400
Atlanta, GA 30339
Telephone: (770) 980-4417
Facsimile: (678) 391-9943

COVINGTON & BURLING, LLP
BRUCE A. BAIRD
1201 Pennsylvania Avenue, N.W.
Washington, DC 20004
Telephone: (202) 662-5122
Facsimile: (202) 778-5122

Counsel for defendant Michael H.
Furlow

417577

DATED: October ___, 2009

ROGERS & HARDIN LLP
TONY G. POWERS
KIMBERLY L. MYERS

_____
TONY G. POWERS

229 Peachtree Street, N.E.
Atlanta, GA 30303
Telephone: (404) 522-4700
Facsimile: (404) 525-2224

Counsel for defendant Michael T. Rand

DATED: October 30, 2009

HARTMAN, SIMONS, SPIELMAN
& WOOD LLP
SCOTT M. RATCHICK
CHRISTOPHER SCOTT BADEAUX

SCOTT M. RATCHICK

6400 Powers Ferry Rd., N.W., Suite 400
Atlanta, GA 30339
Telephone: (770) 980-4417
Facsimile: (678) 391-9943

COVINGTON & BURLING, LLP
BRUCE A. BAIRD
1201 Pennsylvania Avenue, N.W.
Washington, DC 20004
Telephone: (202) 662-5122
Facsimile: (202) 778-5122

Counsel for defendant Michael H.
Furlow

417577

CERTIFICATE OF SERVICE

This is to certify that on October 30, 2009, I electronically filed a true and correct copy of **STIPULATION OF SETTLEMENT** with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

Marc M. Umeda
George C. Aguilar
Daniel R. Forde
ROBBINS UMEDA LLP
600 B Street, Suite 1900
San Diego, CA 92101
Telephone: (619) 525-3990
Facsimile: (619) 525-3991

Lead Counsel for Plaintiff

Steven J. Estep
COHEN COOPER ESTEP & WHITEMAN, LLC
3350 Riverwood Parkway, Suite 2220
Atlanta, GA 30339
Telephone: (404) 814-0000
Facsimile: (404) 816-8900

Liaison Counsel for Plaintiff

Roy L. Jacobs
ROY JACOBS & ASSOCIATES
60 East 42nd Street, 46th Floor
New York, NY 10165
Telephone: (212) 867-1156
Facsimile: (212) 504-8343

Additional Counsel Plaintiff

Robert B. Weiser
THE WEISER LAW FIRM, P.C.
121 N. Wayne Avenue, Suite 100
Wayne, PA 19087
Telephone: (610) 225-2616
Facsimile: (610) 225-2678

Additional Counsel for Plaintiff

COUNSEL FOR DEFENDANTS

Richard W. Clary
Michael A. Paskin
CRAVATH SWAINE & MOORE
825 Eighth Avenue
Worldwide Plaza
New York, NY 10019
Telephone: (212) 474-1000
Facsimile: (212) 474-3700

John J. Dalton
J. Timothy Mast
Jaime L. Theriot

Tony G. Powers
Kimberly L. Myers
ROGERS & HARDIN LLP
229 Peachtree Street, N.E.
2700 International Tower
Peachtree Center
Atlanta, GA 30303
Telephone: (404) 522-4700
Facsimile: (404) 525-2224

Attorneys for defendant Michael T. Rand

TROUTMAN SANDERS, LLP-ATL
Bank of America Plaza
600 Peachtree Street, N.E., Suite 5200
Atlanta, GA 30308
Telephone: (404) 885-3000
Facsimile: (404) 962-6796

Attorneys for defendants Beazer Homes USA, Inc., Ian J. McCarthy, Laurent Alpert, Brian C. Beazer, Larry T. Solari, Katie J. Bayne, Stephen P. Zelnak, Jr., Peter G. Leemputte, James O'Leary, and Maureen E. O'Connell

Bruce A. Baird
COVINGTON & BURLING, LLP
1201 Pennsylvania Avenue, N.W.
Washington, DC 20004
Telephone: (202) 662-5122
Facsimile: (202) 778-5122

Scott M. Ratchick
Christopher Scott Badeaux
HARTMAN, SIMONS, SPIELMAN & WOOD LLP
6400 Powers Ferry Rd., N.W., Suite 400
Atlanta, GA 30339
Telephone: (770) 980-4417
Facsimile: (770) 952-7821

Attorneys for defendant Michael Furlow

s/Marc M. Umeda
MARC M. UMEDA