

JUL 01 2009

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

U.S. DISTRICT COURT  
WESTERN DISTRICT OF NC

|                          |   |                         |
|--------------------------|---|-------------------------|
| UNITED STATES OF AMERICA | ) | DOCKET NO. 3:09cr113-W  |
|                          | ) |                         |
|                          | ) | 18 U.S.C. § 371         |
| v.                       | ) | (15 U.S.C. §78j(b))     |
|                          | ) | (15 U.S.C. §78m(a))     |
|                          | ) | (15 U.S.C. §78m(b))     |
|                          | ) | (17 C.F.R. § 240.10b-5) |
| BEAZER HOMES USA, INC.   | ) | (18 U.S.C. § 1010)      |
| _____                    | ) | (18 U.S.C. § 1343)      |

**DEFERRED PROSECUTION AGREEMENT**

Defendant BEAZER HOMES USA, INC. ("BEAZER"), by its undersigned attorneys, pursuant to authority granted by its Board of Directors, and the United States Attorney's Office for the Western District of North Carolina (the "United States"), enter into this Deferred Prosecution Agreement. This Agreement shall be in effect for a period of sixty (60) months, unless terminated prior to such date pursuant to Paragraph 8 below.

1. BEAZER accepts and acknowledges that the United States will file a criminal information in the United States District Court for the Western District of North Carolina charging BEAZER with offenses relating to certain fraudulent mortgage practices (the "Mortgage Practices") by former employees of its subsidiary, Beazer Mortgage Corporation ("Beazer Mortgage"), and to certain fraudulent accounting practices (the "Accounting Practices") by certain former BEAZER employees. In doing so, BEAZER knowingly and willingly waives its right to indictment on these charges.

2. This Agreement reflects the following:

A. The efforts undertaken by BEAZER's Audit Committee through the retention of independent counsel Alston & Bird LLP ("Independent Counsel") to investigate, and report to the United States, the Mortgage Practices, as well as the voluntary identification and disclosure to law enforcement of the Accounting Practices by certain former BEAZER employees;

B. BEAZER's cessation of business activities of Beazer Mortgage and consequent elimination of any risk that Beazer Mortgage would continue to engage in fraudulent mortgage practices;

C. BEAZER's adoption of remedial measures, including the termination of executives and employees it identified as responsible for the misconduct, and its commitment to maintain and independently review such measures;

D. BEAZER's commitment to continue to cooperate with the United States in its ongoing investigation;

E. BEAZER's commitment to provide appropriate restitution to homebuyer victims in cooperation with the North Carolina Commissioner of Banks ("NCCOB") and through the establishment of a national restitution fund with (i) an immediate payment by BEAZER totaling \$10,000,000.00, which consists in part of the \$1,000,000.00 paid in bonus compensation in 2008 to the Chief Executive Officer and Chief Operating Officer, the after-tax proceeds of which each of those officers has voluntarily contributed to BEAZER as part of BEAZER'S initial payment to the restitution fund, and includes the approximate \$2,500,000.00 paid in May 2009 to the NCCOB for restitution to North

Carolina homebuyer victims; and (ii) through the contribution of other restitution funds, up to \$50,000,000.00, as set forth below (such that the total amount to be paid by BEAZER pursuant to this Agreement shall not exceed \$50,000,000.00);

F. BEAZER's commitment to provide appropriate compensation to the Federal Housing Administration through the immediate payment of \$4,000,000.00, and a later payment of \$1,000,000.00, and contingent payments pursuant to a separate agreement with the Civil Division of the United States Department of Justice and the United States Department of Housing and Urban Development; and

G. That the imposition of additional criminal penalties or the requirement of additional payment at this time would jeopardize the solvency of BEAZER and put at risk the employment of approximately 15,000 employees and full-time contractors not involved in the criminal wrongdoing.

3. BEAZER accepts and acknowledges that it is responsible for the criminal acts of its former employees and the former employees of Beazer Mortgage as set forth in the criminal information filed in conjunction with this Agreement. Should the United States initiate the prosecution deferred by this Agreement, BEAZER agrees that it will neither contest nor contradict the facts set forth in the criminal information filed in conjunction with this Agreement, and that the information shall be admitted against BEAZER in any such proceeding as an admission, without objection. Neither this Agreement nor the criminal information is a final adjudication of the matters addressed in such documents.

4. BEAZER expressly agrees that it shall not, through its present or future attorneys, board of directors, officers, or any other person authorized to speak for the company, make any

public statement, in litigation or otherwise, contradicting BEAZER's acceptance of responsibility set forth above or the factual allegations in the criminal information filed in conjunction with this Agreement, except insofar as BEAZER contests the applicability of the factual allegations in the criminal information and/or this Agreement to a specific private civil litigant or class of litigants. Any such contradictory statement shall constitute a breach of this Agreement and BEAZER thereafter would be subject to prosecution. The decision of whether any public statement by any such person contradicting a fact contained in the criminal information will be imputed to BEAZER for the purpose of determining whether BEAZER has breached this Agreement shall be at the sole discretion of the United States. Should the United States decide that a public statement by any such person contradicts in whole or in part a statement of fact contained in the criminal information, the United States shall notify BEAZER. BEAZER may avoid a breach of this Agreement by publicly repudiating such statement within two business days after receipt of such notification. Consistent with BEAZER's obligations as set forth above, BEAZER shall be permitted to contest liability, raise defenses, or assert affirmative claims in civil proceedings with specific private civil litigants or classes of litigants relating to the matters set forth in the criminal information, including by disputing that the factual allegations in the criminal information and/or this Agreement apply to a specific private civil litigant or class of litigants. This paragraph is not intended to apply to any statement made by any individual employed by BEAZER in the course of any criminal, regulatory, or civil case initiated against such individual, unless such individual is speaking on behalf of BEAZER.

5. BEAZER agrees to continue to cooperate fully with the United States, and with any other agency designated by the United States, in investigating BEAZER and any of its

present and former officers, employees, consultants, contractors and subcontractors in all matters. BEAZER agrees that its continued cooperation with the United States shall be mediated by the Audit Committee of the Board of Directors through Independent Counsel or other such counsel as may retained by the Audit Committee. BEAZER agrees that its cooperation shall include, but shall not be limited to, the following:

A. Complete and truthful disclosure of all non-privileged information as may be requested by the United States with respect to the activities of BEAZER and its subsidiaries and affiliates, and its present and former officers, agents, and employees, concerning all matters inquired into by the United States;

B. On request from the United States, assembling, organizing, and producing (in any method and format requested by the United States) all non-privileged documents, records, or other tangible evidence in BEAZER's possession, custody, or control, concerning all matters inquired into by the United States;

C. Using BEAZER's best efforts to facilitate the availability of its present and former executives and employees to provide information and/or testimony as requested by the United States, including but not limited to sworn testimony in any proceeding and interviews with law enforcement authorities as requested;

D. Providing testimony and other information deemed necessary by the United States or a court to identify or establish the original location, authenticity, or other evidentiary foundation necessary to admit into evidence documents in any proceeding.

Cooperation will include identification of witnesses who, to BEAZER's knowledge, may have material information regarding the matters under investigation. With respect to any information,

testimony, document, record, or other tangible evidence provided to the United States pursuant to this Agreement, BEAZER consents to any and all disclosures to other government agencies of such materials as the United States, in its sole discretion, deems appropriate.

6. BEAZER agrees immediately to pay \$10,000,000.00 toward restitution for victimized home-buyers, and to increase the amount of such available restitution for the term of this Agreement, up to \$50,000,000.00, as set forth below.

A. BEAZER has made a payment of approximately \$2,500,000.00 to the NCCOB, consistent with a separate agreement entered between the NCCOB and BEAZER, for restitution to North Carolina home-buyers victimized by Beazer Mortgage's fraudulent discount points practices, with the United States and BEAZER recognizing that these fraudulent practices were most prevalent in North Carolina and that harm to North Carolina victims can best be addressed by the NCCOB;

B. Within ten (10) days of the execution of this Agreement, BEAZER agrees to establish a restitution fund (the "restitution fund") administered by a Claims Administrator and to make a payment of \$7,500,000.00 to such Claims Administrator to be used for national restitution for home-buyers victimized by Beazer Mortgage's fraudulent discount points and/or down-payment assistance practices and not compensated through the NCCOB. The Claims Administrator shall be selected in consultation with the United States, and approved by the United States, subject to the approval of the Court.

The Claims Administrator shall use the restitution fund to compensate any home-buyer victimized by Beazer Mortgage's fraudulent discount points and/or down-payment

assistance practices. The Claims Administrator shall use the restitution fund to compensate victimized homebuyers as follows:

(i) The Claims Administrator shall refund to homebuyers an amount equal to the full amount paid to Beazer Mortgage for discount points (regardless of whether such payment was made by BEAZER or the homebuyer) upon receiving a preponderance of evidence that the homebuyer was victimized by BEAZER's fraudulent discount points practice, such that the amount paid for discount points was retained by Beazer Mortgage or did not in fact result in a bona fide reduction of the interest rate. A HUD-1 Settlement Statement showing that Beazer Mortgage received both a yield spread premium (or service release premium or similar fee) and a payment for discount points is sufficient evidence that the homebuyer was victimized and is entitled to a refund;

(ii) The Claims Administrator shall refund to homebuyers an amount equal to the full amount paid by BEAZER for down-payment assistance upon receiving a preponderance of evidence that the price of the home was increased to offset the supposed contribution of BEAZER for down-payment assistance; and

(iii) None of the monies in the restitution fund shall be payable as attorney's fees.

C. In fiscal year 2010, BEAZER agrees to make an additional payment to the restitution fund. This payment should be equal to the EBITDA calculation herein (“Adjusted EBITDA”), described and defined below in Paragraph 6(D), for the year 2010 or \$1,000,000.00, whichever is greater. This payment shall be submitted by BEAZER to the Claims Administrator no later than 30 calendar days after the filing of BEAZER’s 2010 annual report on Form 10-K.

D. For each of fiscal years 2011, 2012, 2013, and the portion of fiscal year 2014 covered by this Agreement, BEAZER shall contribute additional monies to the restitution fund in an amount equal to four percent of “Adjusted EBITDA,” subject to the adjustments set forth herein. BEAZER agrees that “Adjusted EBITDA” shall be defined as EBITDA adjusted upward (increased) for the following: (1) any lot option or land abandonment charges; (2) any bonuses and discretionary compensation; and (3) the amount in any such fiscal year that the ratio of the total amount of the Land Cost to Complete, House Cost to Complete, and Warranty accrued liabilities to revenues exceeds 4% (the “Accrual Ratio”). “Adjusted EBITDA” shall be adjusted downward (decreased) by the amount of any earnings merely attributable to Cancellation of Debt income pursuant to FASB 15. For purposes of this provision of the Agreement, “bonuses and discretionary compensation” means any executive compensation other than base salary, whether paid currently or deferred, excepting any award of stock, stock options, or other share-based compensation not included in (and which does not result in a reduction of) EBITDA. BEAZER agrees that any increases in executive base salaries from the 2008 level for an employee or that employee’s position shall be treated as discretionary



compensation, as well as any discretionary or contractual severance payment or post-employment compensation to executives. For purposes of this provision of the Agreement, “executive” has the meaning of “Executive Officer” under Rule 3b-7 of the Securities Exchange Act of 1934. BEAZER agrees that any attempt to circumvent this paragraph shall constitute a breach of the Agreement, as determined in the sole discretion of the United States. For purposes of this Agreement, for fiscal years 2011, 2012, and 2013, payment shall be submitted by BEAZER to the Claims Administrator no later than thirty (30) calendar days after the required filing date of BEAZER’s annual report on Form 10-K. In fiscal year 2014, payment shall be made thirty (30) days after the expiration of this Agreement.

E. All of the costs of the restitution fund shall be borne by BEAZER. Among other normal and appropriate costs of the restitution fund, BEAZER shall fund measures to give reasonable notice to homebuyers who may have been victimized, including through the establishment of a website clearly explaining the restitution fund and the process established by the Claims Administrator to provide appropriate restitution to homebuyer victims.

F. To the extent that any money in the restitution fund is unclaimed by victimized homebuyers as of the termination of this Agreement, the remaining amount shall revert to FHA, subject to the terms and limitations set forth in the separate agreement with the Civil Division of the United States Department of Justice and the United States Department of Housing and Urban Development, referenced in paragraph 2(F) of this Agreement.

G. All payments made pursuant to this Agreement are final and shall not be refunded under any circumstance, including if the United States later determines that BEAZER has breached this Agreement and brings a prosecution against it. Further, nothing in this Agreement shall be deemed an agreement by the United States that this amount is the maximum criminal fine that may be imposed in such prosecution, and the United States shall not be precluded from arguing that the Court should impose a higher fine in the event of a breach. The United States agrees, however, to recommend to the Court that the amount paid pursuant to this Agreement should be offset against whatever fine the Court shall impose as part of its judgment in the event of a subsequent breach and prosecution.

7. As a result of the investigation by the United States and the fraudulent conduct uncovered by Independent Counsel, BEAZER voluntarily ceased the business activities of Beazer Mortgage and the practice of originating loans. BEAZER agrees that it shall not attempt to reenter the mortgage origination business.

8. In light of BEAZER's self-reporting of the unlawful conduct of its former employees and its willingness (a) to acknowledge responsibility for its behavior, (b) to continue its cooperation with the United States and other investigative and regulatory agencies, (c) to adopt or maintain and independently review remedial measures and its commitment to implement and audit such measures, and (d) to consent to establish measures to provide restitution to home-buyers as set forth in paragraph 6 above, the United States shall recommend to the Court that prosecution of BEAZER on the criminal information filed pursuant to paragraph one be deferred until one of the two following conditions has been met: (a) a period of sixty (60)

months from the date of this Agreement has expired; or (b) until such time as (i) the earlier of thirty-six months has expired, or a change in control of the company has occurred, and (ii) BEAZER has paid \$50,000,000.00 pursuant to Paragraph 6 above; and (iii) the United States agrees to such early expiration, which agreement shall not be unreasonably withheld. For purposes of this provision, “change of control” means when a “person” and/or “affiliates” of such person (both as defined in the Securities Exchange Act of 1934) acquires more than 50% of BEAZER’s voting stock, or more than a majority of the fair market value of BEAZER’s assets, or a majority of BEAZER’s Board of directors no longer consists of current directors in connection with a corporate takeover.

9. The United States agrees that if BEAZER is in full compliance with all of its obligations under this Agreement, the United States, within thirty (30) days of the expiration of this Agreement, will seek dismissal with prejudice of the criminal information filed against BEAZER and this Agreement shall expire.

10. Should the United States determine that BEAZER through an employee of BEAZER, acting on behalf of BEAZER and with the knowledge of BEAZER management (i.e., a Division President or above), has knowingly and intentionally committed any federal crime after the date of this Agreement, BEAZER shall, in the sole discretion of the United States, thereafter be subject to prosecution for any federal crimes, including those arising from the conduct underlying this Agreement.

11. Should the United States determine that BEAZER has deliberately given false, incomplete, or misleading information pursuant to this Agreement, or has otherwise knowingly, intentionally, and materially violated any provision of this Agreement, BEAZER thereafter shall

be subject to prosecution for any Federal criminal violation, including those arising from the conduct underlying this Agreement.

12. BEAZER agrees that the decision whether conduct and/or statements of any individual will be imputed to BEAZER for the purpose of determining whether BEAZER has knowingly, intentionally and materially violated any provision of this Agreement shall be in the sole discretion of the United States.

13. Should the United States determine that BEAZER has committed a knowing, intentional, and material breach of any provision of this Agreement, the United States shall provide written notice to BEAZER, addressed to its counsel, David N. Kelley, Esq., Cahill Gordon & Reindel LLP, Eighty Pine Street, New York, NY 10005-1702, with a copy to BEAZER, Attention: General Counsel, 1000 Abernathy Road, Atlanta, GA 30328, or to any successor that BEAZER may designate, of the alleged breach and provide BEAZER with a two-week period from the date of receipt of such notice in which to make a presentation to the United States, or its designee, to demonstrate that no breach has occurred, or, to the extent applicable, that the breach was not knowing, intentional or material, or has been cured. Upon request by BEAZER, the United States may agree in writing to extend this two-week period, including providing BEAZER with an opportunity to cure any breach of this Agreement. The parties to this Agreement expressly understand and agree that should BEAZER fail to make a presentation to the United States, or its designee, within the two-week period (or other period agreed to by the United States), the United States may conclusively presume that BEAZER is in knowing, intentional and material breach of this Agreement. The parties further understand and agree that

the exercise of discretion by the United States or its designee under this paragraph is not subject to review in any court or tribunal.

14. It is further agreed that in the event that the United States, in its sole discretion, determines that BEAZER has materially breached or violated any provision of this Agreement: (a) all statements made by or on behalf of BEAZER to the United States, or any testimony given by BEAZER before a grand jury or any tribunal, at any legislative hearings, or to the U.S. Securities and Exchange Commission, whether prior or subsequent to this Agreement, or any leads derived from such statements or testimony, shall be admissible in evidence in any and all criminal proceedings brought by the United States against BEAZER and (b) BEAZER shall not assert any claim under the United States Constitution, Rule 11(e)(6) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule, that statements made by or on behalf of BEAZER prior to or subsequent to this Agreement, or any leads therefrom, should be suppressed.

15. BEAZER expressly waives all rights to a speedy trial pursuant to the Sixth Amendment of the United States Constitution, Title 18, United States Code, Section 3161, Federal Rule of Criminal Procedure 48(b), and any applicable Local Rules of the United States District Court for the Western District of North Carolina. BEAZER further waives any right to contest any prosecution of BEAZER relating to the conduct that is the subject of or related to the criminal information on the ground that such prosecution is time-barred by the applicable statute of limitations. BEAZER's waiver of the statute of limitations is knowing and voluntary and in express reliance on the advice of counsel.

16. BEAZER acknowledges that the United States has made no representations, assurances, or promises concerning what sentence may be imposed by the Court should BEAZER materially breach this Agreement and this matter proceed to judgment. BEAZER further acknowledges that any such sentence is solely within the discretion of the Court and that nothing in this Agreement binds or restricts the Court in the exercise of such discretion.

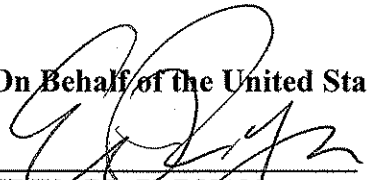
17. BEAZER agrees that in the event it sells all or substantially all of its business operations as they exist as of the date of this Agreement, whether such sale is structured as a stock or asset sale, or merges into another company, it shall include in any contract for sale or merger a provision providing that the obligations described in this Agreement shall bind the purchaser of such assets, if an asset sale, BEAZER, if a stock sale, and the surviving company in the event of a merger.

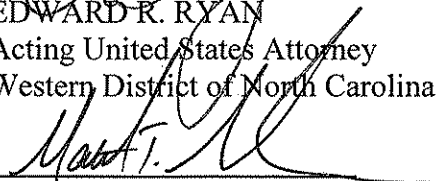
18. The United States agrees that, other than the charges in the information in this case, it will not bring any other criminal charges against BEAZER for conduct which falls within the scope of the grand jury investigation in the Western District of North Carolina, or was known to the Western District of North Carolina as of the date of the execution of this Agreement. The non-prosecution provisions of this agreement are binding on the Office of the United States Attorney for the Western District of North Carolina, the United States Attorney's Offices for each of the other 93 judicial districts of the United States, and the Criminal Division of the United States Department of Justice. The non-prosecution provisions of this Agreement shall not affect any actions taken by the United States, civil or criminal, relating to federal tax matters.


19. This Agreement sets forth all the terms of the Deferred Prosecution Agreement between BEAZER and the United States. No modifications or additions to this Agreement shall

be valid unless they are in writing and signed by the United States, BEAZER's attorneys, and a duly authorized representative of BEAZER.

**On Behalf of the United States:**

  
EDWARD R. RYAN  
Acting United States Attorney  
Western District of North Carolina

  
MATTHEW T. MARTENS  
Deputy Criminal Chief, Assistant United  
States Attorney  
Western District of North Carolina

  
KURT W. MEYERS  
Assistant United States Attorney  
Western District of North Carolina

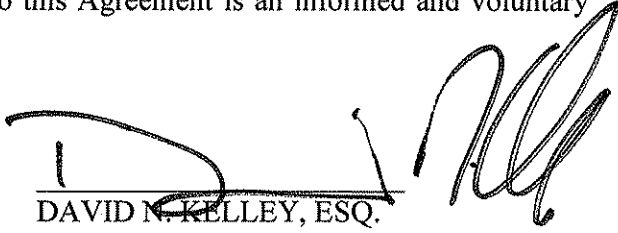
**CERTIFICATE OF COUNSEL**

I am counsel for BEAZER HOMES USA, INC. ("BEAZER"). In connection with such representation, I have examined relevant BEAZER documents, and have discussed this Agreement with the authorized representative of BEAZER. Based on my review of the foregoing materials and discussions, I am of the opinion that:

1. Brian C. Beazer is duly authorized to enter into this Agreement on behalf of BEAZER.
2. This Agreement has been duly and validly authorized, executed and delivered on behalf of BEAZER, and is a valid and binding obligation of BEAZER.

Further, I have carefully reviewed every part of this Agreement with directors of BEAZER. I have fully advised these directors of BEAZER's rights, of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into this Agreement. To my knowledge, BEAZER's decision to enter into this Agreement is an informed and voluntary one.

June 26, 2009  
DATE

  
\_\_\_\_\_  
DAVID N. KELLEY, ESQ.  
Cahill Gordon & Reindel LLP  
Attorney for Beazer Homes USA, Inc.



**DIRECTOR'S CERTIFICATE**

I have read this Agreement and carefully reviewed every part of it with counsel for BEAZER HOMES USA, INC. ("BEAZER"). I understand the terms of this Agreement and voluntarily agree, on behalf of BEAZER, to each of the terms. Before signing this Agreement, I consulted with the attorney for BEAZER. The attorney fully advised me of BEAZER's rights, of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into this Agreement. No promises or inducements have been made other than those contained in this Agreement. Furthermore, no one has threatened or forced me, or to my knowledge any person authorizing this Agreement on behalf of BEAZER, in any way to enter into this Agreement. I am also satisfied with the attorney's representation in this matter. I certify that I am a director of BEAZER, and that I have been duly authorized by BEAZER to execute this Deferred Prosecution Agreement on behalf of BEAZER.

JUNE 26 2009  
DATE

  
\_\_\_\_\_  
BRIAN C. BEAZER  
BEAZER HOMES USA, INC