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SECRETARY OF STATE

**BEFORE THE TENNESSEE REAL ESTATE COMMISSION**

IN RE: )  
 ) Docket No. \_\_\_\_\_  
 BEAZER HOMES USA, INC., )  
 BEAZER HOMES CORP., and )  
 BEAZER REALTY SERVICES, LLC. )

**PETITION FOR DECLARATORY ORDER**

Come now Beazer Homes USA, Inc., Beazer Homes Corp., and Beazer Realty Services, LLC, pursuant to Tenn. Code Ann. §4-5-223, and respectfully show as follows:

**PARTIES**

1. Beazer Homes USA, Inc. ("Beazer") is a Delaware corporation, organized and validly existing under the laws of the state of Delaware, having its principal place of business in Atlanta, Georgia. Beazer Homes Corp. ("Beazer Homes") is a Tennessee corporation, organized and validly existing under the laws of the state of Tennessee, having its principal place of business in Atlanta, Georgia. Beazer Realty Services, LLC ("Beazer Realty") is a Delaware limited liability company, organized and validly existing under the laws of the state of Delaware, having its principal place of business in Atlanta, Georgia.

**JURISDICTION**

2. The Tennessee Real Estate Commission ("Commission") has jurisdiction over this matter pursuant to Tenn. Code Ann. §4-5-223(a)(1), which provides as follows:

**4-5-223. Declaratory orders.** -- (a) Any affected person may petition an agency for a declaratory order as to the validity or applicability

of a statute, rule or order within the primary jurisdiction of the agency. The agency shall:

(1) Convene a contested case hearing pursuant to the provisions of this chapter and issue a declaratory order, which shall be subject to review in the chancery court of Davidson County, unless otherwise specifically provided by statute, in the manner provided for the review of decisions in contested cases. . . .

### **FACTS**

3. Beazer is the parent company of Beazer Homes Holdings Corp., which is the parent company of Beazer Homes. Beazer Homes is the parent company of Beazer Homes Investments, LLC, which is the parent company of Beazer Realty.

4. Beazer Homes is a licensed contractor that conducts business in Tennessee as a builder and seller of residential real property.

5. Beazer Realty is a licensed real estate brokerage firm, holding license no. 4065, that performs brokerage activities in connection with the sale of Beazer Homes' properties.

6. Beazer markets Beazer Homes' properties through a variety of media, including print media (e.g., newspapers and magazines), brochures, billboards, radio, television, and its website (i.e., [www.beazer.com](http://www.beazer.com)). The telephone number appearing on all of these forms of media is (888) 623-2937, which is the telephone number of an office Beazer operates in Phoenix, Arizona ("Call Center").

7. There are nine (9) full-time employees who work in the Call Center, known as Call Center Coordinators. None of the Call Center Coordinators hold a Tennessee broker's or affiliate broker's license. When someone telephones Beazer or sends Beazer an e-mail expressing an interest in a Beazer home or a Beazer community, a

Call Center Coordinator will initially answer the call or reply to the e-mail. A Call Center Coordinator does not make any cold calls or send any cold e-mails. A Call Center Coordinator will only call or send an e-mail to someone who has asked to be contacted by Beazer.

8. Someone can ask to be contacted by Beazer in the following ways:
  - a. The person can leave a voice message or send an e-mail asking to be contacted by a Beazer representative;
  - b. The person can complete a form at a Beazer community asking for more information (a copy of the form is attached as **Exhibit 1**); or
  - c. The person can complete and submit an on-line form on Beazer's website asking to be contacted by a Beazer representative (attached as **Exhibit 2** is a copy of the "contact us" portion of Beazer's website and the on-line form that can be submitted to Beazer).

In each of the foregoing circumstances, the person making the call, sending the e-mail, or submitting the form to Beazer must ask to be contacted by a Beazer representative before the Call Center Coordinator will contact that person. Only when a person asks for more information or asks to be contacted by a Beazer representative will a Call Center Coordinator contact that person.

9. Whether the Call Center Coordinator is answering a call, replying to an e-mail, or making a call at someone's request, the Call Center Coordinator performs two functions: 1) the Call Center Coordinator will answer the person's questions, but only to the extent those questions can be answered from information on Beazer's website or from general, publically available information about Beazer Homes' communities that

was supplied to the Call Center Coordinator under the supervision of Beazer Realty's broker, and 2) the Call Center Coordinator will gather information from the person in order to refer that person to the appropriate local sales representative holding a Tennessee broker's or affiliate broker's license ("Sales Agent").

10. Regarding the Call Center Coordinator's function to answer questions, all of the information the Call Center Coordinator provides is readily available from Beazer's website or is publically available and of a general nature about Beazer Homes' communities, such as that information found in a listing agreement (e.g., distance from schools, distance from shopping centers, distance from major roads, etc.). The Call Center Coordinator does not discuss or explain listings, offers, contracts, or other similar matters. Nor does the Call Center Coordinator negotiate any terms of a real estate transaction. The Call Center Coordinator merely answers the person's questions based strictly upon the information available on the website or from the publically available information that was provided to them under the supervision of Beazer Realty's broker. If a person poses questions that would require the Call Center Coordinator to go beyond this information, the Call Center Coordinator seeks to refer that person to a Sales Agent. That Sales Agent is then responsible for the transaction from that point forward.

11. In addition to answering questions as described above, the Call Center Coordinator seeks to obtain information so that the Call Center Coordinator can refer interested people to the appropriate local Sales Agent. The Call Center Coordinator will seek to determine the following information:

- a. The geographical area of interest to the person;

- b. The price range of the home the person is considering;
- c. The person's financial profile;
- d. Whether the person has already been pre-qualified for a loan. (If not, the Call Center Coordinator will mention that Beazer has a working relationship with Bank of America and offer to provide the telephone number for the Bank of America relationship representative);
- e. The timeframe that the person would like to be in a new home;
- f. The current living situation of the person (e.g., rental, homeowner, student, etc.);
- g. The person's current living situation that is causing the person to consider moving;
- h. Whether the person has visited any non-Beazer Homes' communities, and if so, which ones; and
- i. Whether the person has visited a Beazer Homes' community, and if so, what did the person like or dislike about the community.

Once the Call Center Coordinator has gathered the foregoing information, the Call Center Coordinator will seek to refer the person to a local Sales Agent to assist the person in moving forward with the sales transaction. If the person does not wish to speak with a local Sales Agent, the Call Center Coordinator will respect the person's wishes and discontinue contact with the person.

12. If someone expresses an interest in setting up an appointment with a local Sales Agent or expresses an interest in being re-contacted at a later date, the Call Center Coordinator will follow-up with the person, either by telephone or e-mail, to

ensure that the local Sales Agent made contact with the person, or if the person wanted to be contacted at a later date, whether the person has become interested in setting up an appointment with a local Sales Agent. If, upon any follow-up contact, the person expresses an interest in not being contacted further, the Call Center Coordinator will respect the person's wishes and no further contact will be made.

13. The compensation of the Call Center Coordinators is not dependent upon, or directly related to, any real estate transaction. The Call Center Coordinators receive a base salary. In addition, the Call Center Coordinators can qualify for a bonus based upon performance. In this case, though, performance is not based upon a completed real estate closing, or even an executed real estate contract. A Call Center Coordinator's performance is based upon a number of factors including the following:

- a. The number of people the Call Center Coordinator successfully refers to a local Sales Agent;
- b. Feedback from customers as to the Call Center Coordinator's performance;
- c. The results of Beazer's quality assurance program which monitors a Call Center Coordinator's adherence to the above-described protocol; and
- d. Other discretionary factors not having to do with a completed real estate closing or an extended real estate contract.

14. In no case will a Call Center Coordinator solicit, negotiate or attempt to solicit or negotiate a sale, purchase, exchange, lease or option to buy, sell, rent, or exchange any real estate or of the improvements on any real estate or any time-share interval as defined in the Tennessee Time-Share Act. A Call Center Coordinator is not

employed to sell any real estate or any lots or parcels of real estate. Rather, the Call Center Coordinator is employed to perform the acts described above, which are tailored to providing people who have expressed an interest in a Beazer home with general, publically available information and to referring such people to a local Sales Agent. At no point does a Call Center Coordinator perform any of the activities listed below:

1. Make cold calls by telephone or in person to potential clients;
2. Show properties for sale and/or lease to prospective purchasers;
3. Host open houses, home show booths or fairs;
4. Discuss or explain listings, offers, contracts, or other similar matters with persons outside the firm;
5. Negotiate any terms of a real estate transaction; or
6. Negotiate or agree to any commission split or referral fee on behalf of a licensee;
7. Be paid any compensation which is dependent upon, or directly related to, a real estate transaction.

15. In August 2009, Beazer representatives initiated communications with the Executive Director and legal counsel for the Commission to confirm that Tennessee law does not require the Call Center Coordinators to hold a Tennessee broker's or affiliate broker's license to perform the above-described activities. Based upon communications from the Executive Director and legal counsel for the Commission, Beazer, Beazer Homes, and Beazer Realty understand that the Call Center Coordinators are not required to hold a Tennessee broker's or affiliate broker's license to perform the above-described activities.

**COUNT I**  
**DECLARATORY ORDER**

16. Beazer, Beazer Homes, and Beazer Realty incorporate by reference the allegations set forth in paragraphs 1 through 15 above.

17. Tenn. Code Ann. §62-13-102 contains the following definitions relevant to this action:

(3) "Affiliate broker" means any person engaged under contract by or on behalf of a licensed broker to participate in any activity included in subdivision (4);

(4)(A) "Broker" means any person who for a fee, commission, finders fee or any other valuable consideration, or with the intent or expectation of receiving the same from another, solicits, negotiates or attempts to solicit or negotiate the listing, sale, purchase, exchange, lease or option to buy, sell, rent or exchange for any real estate or of the improvements thereon or any time-share interval as defined in the Tennessee Time-Share Act, compiled in title 66, chapter 32, part 1, collects rents or attempts to collect rents, auctions or offers to auction, or who advertises or holds out as engaged in any of the foregoing;

(B) "Broker" also includes any person employed by or on behalf of the owner or owners of lots or other parcels of real estate, at a salary, fee, commission, or any other valuable consideration, to sell such real estate or any part thereof, in lots or parcels or other disposition thereof. It also includes any person who engages in the business of charging an advance fee or contracting for collection of a fee in connection with any contract whereby the person undertakes primarily to promote the sale of real estate either through its listing in a publication issued primarily for such purpose, or for referral of information concerning such real estate to brokers, or both;

(5) "Client" means a party to a transaction with whom the broker has entered into a specific written agency agreement to provide services;

(6) "Customer" means any party, other than a client in a transaction, for whom or to whom a licensee provides services;

\* \* \*

(12) "Party" means any person or persons seeking to obtain or divest an interest in real estate or a business opportunity as a buyer, seller, landlord, tenant, option grantee or option grantor;

18. Tenn. Code Ann. §62-13-103 describes the activities which require a brokerage license as follows:

**62-13-103. Broker or affiliate identified by single act.** – (a) Any person who, directly or indirectly for another, with the intention or upon the promise of receiving any valuable consideration, offers, attempts or agrees to perform, or performs, any single act defined in §62-13-102, whether as a part of a transaction, or as an entire transaction, is deemed a

broker, affiliate broker or time-share salesperson within the meaning of this chapter.

(b) The commission of a single such act by a person required to be licensed under this chapter and not so licensed constitutes a violation thereof.

19. Tenn. Code Ann. §§62-13-104(1) and (6) contain the following exemptions for a brokerage and affiliate brokerage license:

**62-13-104. Exemptions – Firm licenses for vacation lodging services.** – (a) The provisions of this chapter do not apply to:

(1) An owner of real estate with respect to property owned or leased by such person;

\* \* \*

(6) A corporation, foreign or domestic, acting through an officer duly authorized to engage in such real estate transaction, where the transaction occurs as an incident to the management, lease, sale or other disposition of real estate owned by the corporation; however, this exemption does not apply to a person who performs an act described in §62-13-102(4)(A) either as a vocation or for compensation, if the amount of the compensation is dependent upon, or directly related to, the value of the real estate with respect to which the act is performed;

20. Tenn. Code Ann. §62-13-301 contains the following requirements for licensure:

**62-13-301. License requirement.** -- It is unlawful for any person, directly or indirectly, to engage in or conduct, or to advertise or claim to be engaging in or conducting the business, or acting in the capacity of a real estate broker, affiliate broker, time-share salesperson or acquisition agent, as defined in §62-13-102, within this state, without first obtaining a license as such broker, affiliate broker, time-share salesperson or acquisition agent, as provided in this chapter, unless exempted from obtaining a license under §62-13-104.

21. The manual published by the Commission contains the following guidance regarding the activities that an unlicensed employee may and may not perform:

**WHAT MAY AN UNLICENSED EMPLOYEE, ASSISTANT OR SECRETARY DO?**

1. Answer the phone, forward calls and give information contained only on the listing agreement as limited by the broker;

2. Fill out and submit listings and changes to any multiple listing service;
3. Follow up on loan commitments after a contract has been negotiated and generally secure status reports on the loan progress;
4. Assemble documents for closing;
5. Secure public information from courthouses, utility districts, etc;
6. Have keys made for listings;
7. Place ads which have been approved by the Principal Broker;
8. Receive, record and deposit earnest money, security deposits and advance rents under the direct supervision of the Principal Broker;
9. Type contract forms for approval by licensee and Principal Broker;
10. Monitor licenses and personnel files;
11. Calculate, print or distribute commission checks;
12. Place signs on property;
13. Order repairs as directed by the licensee;
14. Prepare for distribution fliers and promotional information which have been approval by the Principal Broker;
15. Deliver documents and pick up keys;
16. Place routine telephone calls on late rent payments;
17. Gather information for a comparative market analysis (CMA);
18. Unlock property under the direction of a licensee; and
19. Disclose the current sales status of a listed property.

**AN UNLICENSED EMPLOYEE, ASSISTANT OR SECRETARY MAY NOT:**

1. Make cold calls by telephone or in person to potential clients;
2. Show properties for sale and/or lease to prospective purchasers;
3. Host open houses, home show booths or fairs;
4. Discuss or explain listings, offers, contracts, or other similar matters with persons outside the firm;
5. Negotiate any terms of a real estate transaction; or
6. Negotiate or agree to any commission split or referral fee on behalf of a licensee;
7. Be paid any compensation which is dependent upon, or directly related to, a real estate transaction.

22. Pursuant to Tenn. Code Ann. §4-5-223(a) "Any affected person may petition an agency for a declaratory order as to the validity or applicability of a statute, rule or order within the primary jurisdiction of the agency." Beazer, Beazer Homes, and

Beazer Realty are persons affected by the applicability of the statutes and rules set forth above.

23. A justifiable controversy exists as to whether, based upon the foregoing statutes and rules, the Call Center Coordinators are required to hold a Tennessee broker's or affiliate broker's license in connection with the sale of Beazer Homes' properties.

24. This controversy presents a real question, not a theoretical one, and legally protectable interests are at stake.

25. Beazer, Beazer Homes, and Beazer Realty are entitled to a declaratory order, pursuant to Tenn. Code Ann. §4-5-223, that Tennessee law does not require the Call Center Coordinators to hold a Tennessee principal broker's or affiliate broker's license to perform the above-described activities.

WHEREFORE, premises considered, Beazer Homes USA, Inc., Beazer Homes Corp., and Beazer Realty Services, LLC pray:

1. That the Commission enter a declaratory order that Tennessee law does not require the Call Center Coordinators to hold a Tennessee principal broker's or affiliate broker's license to perform the above-described activities.

RESPECTFULLY SUBMITTED,

A handwritten signature in blue ink that reads "Todd E. Panther". The signature is written in a cursive style and is positioned above a horizontal line.

Todd E. Panther (#14438)  
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# NEW HOME VISITOR'S SURVEY

NHC Initials: \_\_\_\_\_



Thank you for taking the time to respond to our survey. Providing us with the following information allows our providers to contact you with information that may be of interest to you.

Today's Date: \_\_\_\_\_

Name: _____			
Address: _____			
City: _____	State: _____	Zip: _____	
Email Address: _____			
Phone: (H) _____	(W) _____	(C) _____	

Is this your first visit to this community?  Yes  No

Please tell us the different ways you have learned about Beazer Homes? (Please check all that apply)

<input type="checkbox"/> Internet	<input type="checkbox"/> TV Ads	<input type="checkbox"/> Magazine	<input type="checkbox"/> Event	<input type="checkbox"/> Flyer
<input type="checkbox"/> Radio	<input type="checkbox"/> Signage	<input type="checkbox"/> Newspaper	<input type="checkbox"/> Another Beazer Community	
<input type="checkbox"/> Billboards	<input type="checkbox"/> Direct Mail	<input type="checkbox"/> Email	<input type="checkbox"/> Referral _____	
<input type="checkbox"/> Real Estate Agent _____		Primary Phone: _____		

By checking this box, I authorize Beazer's preferred lender, Bank of America Home Loans, to contact me with information regarding mortgage financing. AR78159

MORTGAGE INFORMATION

Income: \_\_\_\_\_ Rent/Own: \_\_\_\_\_  
Debt: \_\_\_\_\_ Current Payment: \_\_\_\_\_  
Down Payment: \_\_\_\_\_ Home for Sale: \_\_\_\_\_  
Desired Payment: \_\_\_\_\_ Timeframe: \_\_\_\_\_  
Competition Visited: \_\_\_\_\_ TP Type: \_\_\_\_\_

Notes: \_\_\_\_\_  
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This worksheet and the information provided are solely for the internal use of Beazer Homes and may not be shared with any party other than the homebuyer. This worksheet and the information provided are used by Beazer Homes in connection with the assessment of a potential home sales transaction—Beazer Homes is not acting as a mortgage broker or lender. Homebuyers are encouraged to consult with the mortgage broker or lender of their choice regarding mortgage loans and qualifications for mortgage loans. © 2009 Beazer Homes. 72870



ABOUT US

MY BEAZER HOME

ESPAÑOL

SEARCH BEAZER

GO

find your home

discover eSMART

steps to ownership

contact us

HOME > CONTACT US > NEW HOME INFORMATION

### Contact Us

#### New Home Information

Use the form below to let us know how we can help you request more information about a Beazer community, get additional details on a new home, or schedule an appointment with one of our New Home Counselors.

Or to speak with a New Home Counselor directly, you may call 888-623-2937.



#### Contact Us

- New Home Information
- Warranty Request
- Design Studio Information
- Shareholder Information
- Offer Land for Sale
- Website Feedback

#### eSMART TIP



Asthma sufferers breathe easier in Beazer homes thanks to our MERV 8 air filters.

[Learn More](#)

REQUIRED

Location of Interest:

Price Range:

First name:

Last name:

Email:

Re-type Email:

Address:

City:

State:

ZIP:

Phone:

I Have Been Looking:

I Am Planning to Move:

What brought you to our website? (Please select all that apply)

- Newspaper
- Magazine
- TV
- Radio
- Direct Mail
- E-mail
- Billboard
- Signage
- Event
- Referral
- Realtor
- Other Website
- Visited a Beazer Community

Please tell us how we can help you:

By entering my contact information and clicking SUBMIT, I give my permission for Beazer Homes and its representatives to call or email with information that may be of interest to me. [Privacy Policy](#)

SUBMIT



EXHIBIT 2