
UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant To Section 13 or 15(d) of
The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): December 5, 2008

HOVNANIAN ENTERPRISES, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation)

1-8551
(Commission
File Number)

22-1851059
(I.R.S. Employer
Identification No.)

110 West Front Street
P.O. Box 500
Red Bank, New Jersey 07701
(Address of principal executive offices and zip code)

(732) 747-7800
(Registrant's telephone number, including area code)

Not Applicable
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12(b) under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
-
-

Item 3.03. Material Modification to Rights of Security Holders.

On December 5, 2008, Hovnanian Enterprises, Inc. (the “Company”) held a Special Meeting of Stockholders (the “Special Meeting”) at which the Company’s stockholders approved (1) an amendment to the Company’s Certificate of Incorporation to restrict certain transfers of Class A Common Stock (the “Amendment”) and (2) the Board of Directors’ decision to adopt and implement the Company’s Rights Plan (the “Rights Plan”), which became effective on August 14, 2008. Both the Amendment and the Rights Plan are intended to help preserve the long-term value to the Company of its net operating losses and built-in losses within the meaning of Section 382 of the Internal Revenue Code (“NOLs”).

The Amendment restricts transfers of Class A Common Stock that would affect the percentage of stock that is treated as being owned by “5-percent stockholders” within the meaning of Section 382 because such transfers could result in limitations on the Company’s ability to use its NOLs to reduce future income tax liability. Subject to certain exceptions pertaining to pre-existing 5-percent stockholders and Class B stockholders (described below), the Amendment’s transfer restrictions generally restrict any direct or indirect transfer (such as transfers of the Company’s stock that result from the transfer of interests in other entities that own the Company’s stock) if the effect would be to: (1) increase the direct or indirect ownership of the Company’s stock by any person (or public group) from less than 5% to 5% or more of the Company’s common stock, (2) increase the percentage of the Company’s common stock owned directly or indirectly by a person (or public group) owning or deemed to own 5% or more of the Company’s common stock or (3) create a new public group. Transfers included under the transfer restrictions include sales to persons (or public groups) whose resulting percentage ownership (direct or indirect) of common stock would exceed the 5% thresholds discussed above, or to persons whose direct or indirect ownership of common stock would by attribution cause another person (or public group) to exceed such threshold. A transfer from one member of the public group to another member of the public group does not increase the percentage of the Company’s common stock owned directly or indirectly by the public group and, therefore, such transfers are not restricted. For purposes of determining the existence and identity of, and the amount of common stock owned by, any stockholder, the Company is entitled to rely on the existence or absence of filings with the Securities and Exchange Commission of Schedules 13D and 13G (or any similar filings) as of any date, subject to the Company’s actual knowledge of the ownership of its common stock.

The Amendment’s transfer restrictions contain an exception permitting otherwise prohibited transfers of Class B Common Stock among Class B stockholders. The transfer restrictions also contain exceptions permitting certain otherwise prohibited transfers by pre-existing 5-percent stockholders and Class B stockholders who have converted their Class B Common Stock for Class A Common Stock pursuant to the Company’s Certificate of Incorporation (“Converted A Shares”). Pre-existing 5-percent stockholders are (1) any person or entity who has filed a Schedule 13D or 13G with respect to the Company’s Class A or Class B Common Stock on or before December 9, 2008 and (2) certain persons and entities with specified ownership interests in the foregoing persons or entities. A direct or indirect transfer of shares of Class A Common Stock by (but not to) a pre-existing 5-percent stockholder or stockholders holding Converted A Shares is permitted so long as such a transfer does not (1) increase the ownership of the Company’s common stock by any person (other than a public group) to 5% or more of the Company’s common stock or (2) increase the percentage of the Company’s common stock owned by a person (other than a public group) owning 5% or more of the Company’s common stock. In addition, the transferred shares of Class A Common Stock must be owned by the pre-existing 5-percent stockholder prior to December 9, 2008 or be Converted A Shares.

The Rights Plan is intended to act as a deterrent to any person or group acquiring 4.9% or more of the Company’s outstanding Class A common stock (an “**Acquiring Person**”) without the approval of the Board of Directors. Stockholders who owned 4.9% or more of the Company’s outstanding Class A common stock as of the close of business on August 15, 2008 will not trigger the Rights Plan so long as after such date they do not (i) acquire any additional shares of Class A common stock or (ii) fall under 4.9% ownership of Class A common stock and then re-acquire 4.9% or more of Class A common stock. The Rights Plan does not exempt any future acquisitions of Class A common stock by such persons. Any rights held by an Acquiring Person are void and may not be exercised. The Board of Directors may, in its sole discretion, exempt any person or group from being deemed an Acquiring Person for purposes of the Rights Plan.

The material features of the Amendment and the Rights Plan are described in the Company's definitive Proxy Statement for the Special Meeting and, with respect to the Rights Plan, the Company's Current Report on Form 8-K filed on August 4, 2008, which descriptions are filed herewith and incorporated herein by reference. The above descriptions of the Amendment and the Rights Plan are qualified in their entirety by reference to Exhibits 3.1, 4.1 and 4.2 and are incorporated herein by reference.

Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year

On December 9, 2008, the Company filed the Amendment with the Secretary of State of the State of Delaware and on August 15, 2008, the Company filed the Certificate of Designation of Series B Junior Preferred Stock of the Company with the Secretary of State of the State of Delaware in connection with the Rights Plan. The information set forth above under Item 3.03 of this Current Report on Form 8-K is incorporated by reference into this Item 5.03.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

Exhibit 3.1 Amendment to Certificate of Incorporation.

Exhibit 4.1 Rights Agreement dated as of August 14, 2008 between the Company and National City Bank, as Rights Agent, which includes the Form of Certificate of Designation as Exhibit A, Form of Right Certificate as Exhibit B and the Summary of Rights as Exhibit C (incorporated by reference to Exhibits to the Registration Statement (No. 1-8551) on Form 8-A of the Company, filed on August 14, 2008).

Exhibit 4.2 Certificate of Designation of Series B Junior Preferred Stock of the Company, dated August 14, 2008 (incorporated by reference to Exhibits to the Quarterly Report on Form 10-Q of the Company for the quarter ended July 31, 2008).

Exhibit 99.1 The sections entitled "MATTERS TO BE CONSIDERED AT SPECIAL MEETING — PROPOSAL ONE: NOL PROTECTIVE AMENDMENT — AMENDMENT TO CERTIFICATE OF INCORPORATION TO PRESERVE VALUE OF NET OPERATING LOSSES" and "- PROPOSAL TWO: APPROVAL OF RIGHTS PLAN" of the definitive Proxy Statement of the Company (incorporated by reference to the definitive Proxy Statement on Schedule 14A of the Company filed on October 15, 2008).

Exhibit 99.2 The discussion of the Rights Plan under Item 1.01 "Entry into a Material Definitive Agreement" of the Current Report on Form 8-K of the Company (incorporated by reference to the Current Report on Form 8-K of the Company filed on August 4, 2008).

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

HOVNANIAN ENTERPRISES, INC.
(Registrant)

By: /s/ J. LARRY SORSBY
Name: J. Larry Sorsby
Title: Executive Vice President and Chief Financial
Officer

Date: December 9, 2008

EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
Exhibit 3.1	Amendment to Certificate of Incorporation.
Exhibit 4.1	Rights Agreement dated as of August 14, 2008 between the Company and National City Bank, as Rights Agent, which includes the Form of Certificate of Designation as Exhibit A, Form of Right Certificate as Exhibit B and the Summary of Rights as Exhibit C (incorporated by reference to Exhibits to the Registration Statement (No. 1-8551) on Form 8-A of the Company, filed on August 14, 2008).
Exhibit 4.2	Certificate of Designation of Series B Junior Preferred Stock of the Company, dated August 14, 2008 (incorporated by reference to Exhibits to the Quarterly Report on Form 10-Q of the Company for the quarter ended July 31, 2008).
Exhibit 99.1	The sections entitled “MATTERS TO BE CONSIDERED AT SPECIAL MEETING — PROPOSAL ONE: NOL PROTECTIVE AMENDMENT — AMENDMENT TO CERTIFICATE OF INCORPORATION TO PRESERVE VALUE OF NET OPERATING LOSSES” and “- PROPOSAL TWO: APPROVAL OF RIGHTS PLAN” of the definitive Proxy Statement of the Company (incorporated by reference to the definitive Proxy Statement on Schedule 14A of the Company filed on October 15, 2008).
Exhibit 99.2	The discussion of the Rights Plan under Item 1.01 “Entry into a Material Definitive Agreement” of the Current Report on Form 8-K of the Company (incorporated by reference to the Current Report on Form 8-K of the Company filed on August 4, 2008).

CERTIFICATE OF AMENDMENT OF
CERTIFICATE OF INCORPORATION
OF
HOVNIANIAN ENTERPRISES, INC.

It is hereby certified that:

1. The name of the corporation (hereinafter called the "Corporation") is Hovnianian Enterprises, Inc.
2. The Certificate of Incorporation of the Corporation is hereby amended by adding the following Paragraph NINTH:

NINTH: RESTRICTIONS ON TRANSFERS

9.1 DEFINITIONS. As used in this Paragraph NINTH, 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):

"5-percent Transaction" means any Transfer described in clause (a) or (b) of Section 9.2.

"5-percent Stockholder" means a Person or group of Persons that is a "5-percent shareholder" of the Corporation pursuant to Treasury Regulation § 1.382-2T(g).

"Agent" has the meaning set forth in Section 9.5.

"Board of Directors" or "Board" means the board of directors of the Corporation.

"Class A Common Stock" means any interest in Class A Common Stock, par value \$0.01 per share, of the Corporation that would be treated as "stock" of the Corporation pursuant to Treasury Regulation § 1.382-2T(f)(18).

"Class B Common Stock" means any interest in Class B Common Stock, par value \$0.01 per share, of the Corporation that would be treated as "stock" of the Corporation pursuant to Treasury Regulation § 1.382-2T(f)(18).

"Code" means the United States Internal Revenue Code of 1986, as amended from time to time, and the rulings issued thereunder.

"Converted A Shares" has the meaning set forth in Section 9.3.

"Corporation Security" or "Corporation Securities" means (i) shares of Class A Common Stock and Class B Common Stock, (ii) shares of Preferred Stock (other than preferred stock described in Section 1504(a)(4) of the Code), (iii) warrants, rights, or options (including

options within the meaning of Treasury Regulation § 1.382-2T(h)(4)(v)) to purchase Securities of the Corporation, and (iv) any Stock.

“*Effective Date*” means the date of filing of this Certificate of Amendment of Certificate of Incorporation of the Corporation with the Secretary of State of the State of Delaware.

“*Excess Securities*” has the meaning given such term in Section 9.4; provided, however, that Excess Securities shall not include Class B Common Stock.

“*Expiration Date*” means the earlier of (i) the repeal of Section 382 of the Code or any successor statute if the Board of Directors determines that this Paragraph NINTH is no longer necessary for the preservation of Tax Benefits, (ii) the beginning of a taxable year of the Corporation to which the Board of Directors determines that no Tax Benefits may be carried forward or (iii) such date as the Board of Directors shall fix in accordance with Section 9.12 of this Paragraph NINTH.

“*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.

“*Person*” means any individual, firm, corporation or other legal entity, and includes any successor (by merger or otherwise) of such entity; provided, however, that a Person shall not mean a Public Group.

“*Pre-existing 5-percent Stockholder*” means (i) any Person that has filed a Schedule 13D or 13G with respect to the Corporation on or before the Effective Date and (ii) any “5-percent owner” or “higher tier entity” of any Person described in clause (i) within the meaning of Treasury Regulation § 1.382-2T(f)(10) and 1.382-2T(f)(14).

“*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.

“*Prohibited Transfer*” means any Transfer or purported Transfer of Corporation Securities to the extent that such Transfer is prohibited and/or void under this Paragraph NINTH.

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

“*Purported Transferee*” has the meaning set forth in Section 9.4.

“*Securities*” and “*Security*” each has the meaning set forth in Section 9.7.

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

“*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.

“*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.

“*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 or group. A Transfer also shall include the creation or grant of an option (including an option within the meaning of Treasury Regulation § 1.382-2T(h)(4)(v)). 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.

“*Transferee*” means any Person to whom Corporation Securities are Transferred.

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

9.2 TRANSFER AND OWNERSHIP RESTRICTIONS. In order to preserve the Tax Benefits, from and after the Effective Date of this Paragraph NINTH any attempted Transfer of Corporation Securities (excluding Class B Common Stock) prior to the Expiration Date and any attempted Transfer of Corporation Securities (excluding Class B Common Stock) pursuant to an agreement entered into prior to the Expiration Date, shall be prohibited and void *ab initio* (a) if the transferor is a 5-percent Stockholder or (b) to the extent that, as a result of such Transfer (or any series of Transfers of which such Transfer is a part), either (1) any Person or group of Persons would become a 5-percent Stockholder or (2) the Percentage Stock Ownership in the Corporation of any 5-percent Stockholder would be increased.

9.3 EXCEPTIONS.

(a) Notwithstanding anything to the contrary herein, if a Transfer by (but not to) a Pre-existing 5-percent Stockholder or a stockholder holding shares of Class A Common Stock acquired upon conversion of Class B Common Stock in accordance with Paragraph FOURTH of this Certificate of Incorporation (“*Converted A Shares*”) otherwise would be prohibited by Section 9.2, such Transfer shall not be prohibited under Section 9.2 if both of the following conditions are met: (i) such Transfer does not increase the Percentage Stock Ownership of any 5-percent Stockholder or create a new 5-percent Stockholder, in each case other than a Public Group (including a new Public Group created under Treasury Regulation § 1.382-2T(j)(3)(i)), and (ii) the Stock that is the subject of the Transfer either (x) was acquired by such Pre-existing 5-percent Stockholder prior to the Effective Date or (y) is *Converted A Shares*.

(b) The restrictions set forth in Section 9.2 shall not apply to an attempted Transfer that is a 5-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 Section 9.3, 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 the application of any Section 382 of the Code limitation on the use of the Tax Benefits; 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 Paragraph NINTH through duly authorized officers or agents of the Corporation. Nothing in this Section 9.3 shall be construed to limit or restrict the Board of Directors in the exercise of its fiduciary duties under applicable law.

9.4 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 Section 9.5 or until an approval is obtained under Section 9.3(b). 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 this Section 9.4 or Section 9.5 shall also be a Prohibited Transfer.

(b) The Corporation may require as a condition to the registration of the Transfer of any Corporation Securities (other than Class B Common Stock) or the payment of any distribution on any Corporation Securities (other than Class B Common Stock) that the proposed Transferee or payee furnish to the Corporation all information reasonably requested by the Corporation with respect to all the 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 Paragraph NINTH, 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 Paragraph NINTH as a condition to registering any transfer.

9.5 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 Section 9.6 if the Agent rather than the Purported Transferee had resold the Excess Securities.

9.6 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 Section 9.6. In no event shall the proceeds of any sale of Excess Securities pursuant to this Section 9.6 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.

9.7 MODIFICATION OF REMEDIES FOR CERTAIN INDIRECT TRANSFERS. In the event of any Transfer (excluding Class B Common Stock) 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 5-percent Stockholder to violate a restriction on Transfers provided for in this Paragraph NINTH, the application of Section 9.5 and Section 9.6 shall be modified as described in this Section 9.7. In such case, no such 5-percent Stockholder shall be required to dispose of any interest that is not a Security, but such 5-percent Stockholder and/or any Person whose ownership of Securities is attributed to such 5-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 5-percent Stockholder, following such disposition, not to be in violation of this Paragraph NINTH. 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 Sections 9.5 and 9.6, except that the maximum aggregate amount payable either to such 5-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 5-percent Stockholder or such other Person. The purpose of this Section 9.7 is to extend the restrictions in Sections 9.2 and 9.5 to situations in which there is a 5-percent Transaction without a direct Transfer of Securities, and this Section 9.7, along with the other provisions of this Paragraph NINTH, shall be interpreted to produce the same results, with differences as the context requires, as a direct Transfer of Corporation Securities.

9.8 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 Section 9.5 (whether or not made within the time specified in Section 9.5), then the Corporation shall promptly take all cost effective actions which it believes are appropriate to enforce the provisions hereof, including the institution of legal proceedings to compel the surrender. Nothing in this Section 9.8 shall (a) be deemed inconsistent with any Transfer of the Excess Securities provided in this Paragraph NINTH 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 Section 9.5 to constitute a waiver or loss of any right of the Corporation under this Paragraph NINTH. The Board of Directors may authorize such additional actions as it deems advisable to give effect to the provisions of this Paragraph NINTH.

9.9 LIABILITY. To the fullest extent permitted by law, any stockholder subject to the provisions of this Paragraph NINTH who knowingly violates the provisions of this Paragraph NINTH 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.

9.10 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 Paragraph NINTH or the status of the Tax Benefits of the Corporation.

9.11 LEGENDS. The Board of Directors may require that any certificates issued by the Corporation evidencing ownership of shares of Stock (other than Class B Common Stock) that are subject to the restrictions on transfer and ownership contained in this Paragraph NINTH bear the following legend:

“THE 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 CLASS A COMMON 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 FIVE PERCENT SHAREHOLDER UNDER THE CODE AND SUCH REGULATIONS. 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 FIVE 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 Section 9.3 of this Paragraph NINTH also bear a conspicuous legend referencing the applicable restrictions.

9.12 AUTHORITY OF BOARD OF DIRECTORS.

(a) The Board of Directors shall have the power to determine all matters necessary for assessing compliance with this Paragraph NINTH, including, without limitation, (i) the identification of 5-percent Stockholders, (ii) whether a Transfer is a 5-percent Transaction or a Prohibited Transfer, (iii) the Percentage Stock Ownership in the Corporation of any 5-percent Stockholder, (iv) whether an instrument constitutes a Corporation Security, (v) the amount (or fair market value) due to a Purported Transferee pursuant to Section 9.6, and (vi) 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 Paragraph NINTH. 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 Paragraph NINTH for purposes of determining whether any Transfer of Corporation Securities would jeopardize the Corporation's ability to preserve and use the Tax Benefits and for the orderly application, administration and implementation of this Paragraph NINTH.

(b) Nothing contained in this Paragraph NINTH 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, (i) accelerate or extend the Expiration Date, (ii) modify the ownership interest percentage in the Corporation or the Persons or groups covered by this Paragraph NINTH, (iii) modify the definitions of any terms set forth in this Paragraph NINTH or (iv) modify the terms of this Paragraph NINTH 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, extension 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 Paragraph NINTH, 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 Paragraph NINTH 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 Paragraph NINTH. 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 Paragraph NINTH. The Board of Directors may delegate all or any portion of its duties and powers under this Paragraph NINTH 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 Paragraph NINTH through duly authorized officers or agents of the Corporation. Nothing in this Paragraph NINTH shall be construed to limit or restrict the Board of Directors in the exercise of its fiduciary duties under applicable law.

9.13 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 or of 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 Paragraph NINTH, and 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.

9.14 BENEFITS OF THIS PARAGRAPH NINTH. Nothing in this Paragraph NINTH 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 Paragraph NINTH. This Paragraph NINTH shall be for the sole and exclusive benefit of the Corporation and the Agent.

9.15 SEVERABILITY. The purpose of this Paragraph NINTH is to facilitate the Corporation's ability to maintain or preserve its Tax Benefits. If any provision of this Paragraph NINTH 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 Paragraph NINTH.

9.16 WAIVER. With regard to any power, remedy or right provided herein or otherwise available to the Corporation or the Agent under this Paragraph NINTH, (1) no waiver will be effective unless expressly contained in a writing signed by the waiving party; and (2) 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.

3. The amendment of the Certificate of Incorporation of the Corporation herein certified was duly adopted, pursuant to, and in accordance with, the provisions of Section 242 of the General Corporation Law of the State of Delaware, by the Board of Directors of the Corporation on October 14, 2008.

4. The amendment of the Certificate of Incorporation of the Corporation herein certified was duly adopted, pursuant to, and in accordance with, the provisions of Section 242 of the

General Corporation Law of the State of Delaware, by the stockholders of the Corporation on December 5, 2008.

HOVNANIAN ENTERPRISES, INC.

/s/ PETER S. REINHART

Name: Peter S. Reinhart

Title: Senior Vice President
and General Counsel

Date: December 9, 2008