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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

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**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 19, 2008**

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**MERITAGE HOMES CORPORATION**

(Exact Name of Registrant as Specified in Charter)

**Maryland**  
(State or Other Jurisdiction  
of Incorporation)

**1-9977**  
(Commission  
File Number)

**86-0611231**  
(IRS Employer  
Identification No.)

**17851 N. 85th Street, Suite 300, Scottsdale, Arizona**  
(Address of principal executive offices)

**85255**  
(Zip Code)

**(480) 515-8100**

(Registrant's telephone number, including area code)

(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:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 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))
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### ITEM 3.03 MATERIAL MODIFICATION TO RIGHTS OF SECURITY HOLDERS

On December 19, 2008, the board of directors (the “Board”) of Meritage Homes Corporation (the “Company”); (1) approved an amendment to the Company’s Amended and Restated Bylaws (the “Bylaws”) to restrict certain transfers of the Company’s common stock (the “Bylaw Amendment”), (2) approved, subject to the approval of the Company’s stockholders, an amendment to the Company’s Articles of Incorporation to restrict certain transfers of the Company’s common stock (the “Article Amendment”), and (3) called a Special Meeting of the Company’s stockholders to be held on February 16, 2009, or as soon thereafter as practical (the “Special Meeting”), to vote on the Article Amendment.

The terms of the Bylaw Amendment and the Article Amendment (together, the “Amendments”) are, for all intents and purposes, identical and are intended to preserve the long term value to the Company of certain tax assets primarily associated with net operating loss carryforwards (“NOLs”) and built in losses under Section 382 of the Internal Revenue Code of 1986 (“Section 382”). The Board adopted both the Bylaw Amendment and the Article Amendment, because there is no assurance that the Bylaw Amendment is enforceable against shares of the Company’s common stock (“Common Stock”) already outstanding, or at all, under applicable law. However, the Board believes that the Article Amendment, if adopted, would be enforceable.

For further details about the Bylaw Amendment, the information set forth below under Item 5.03 of this Current Report on Form 8-K is incorporated into this Item 3.03 by reference.

### ITEM 5.03 AMENDMENTS TO ARTICLES OF INCORPORATION OR BYLAWS; CHANGE IN FISCAL YEAR.

The Bylaw Amendment, which adds new Article XIII to the Bylaws, restricts transfers of the Company’s Common Stock that could result in limitations on the Company’s ability to use its NOLs to reduce its income tax liability. In general, the Company’s ability to use NOL’s and built in losses would be limited if there were an “ownership change” under tax law. Subject to a number of exceptions and qualifications, to determine if an ownership change has occurred the Company must compare the percentage of stock owned by each stockholder owning 5.0% or more of the Company’s stock (“5.0-percent Stockholder”) immediately after the close of the testing date to the lowest percentage of stock owned by such 5.0-percent Stockholder at any time during the testing period (which is generally a three year rolling period). The amount of the increase in the percentage of the Company’s stock owned by each 5.0-percent Stockholder whose stock ownership percentage has increased is added together with increases in stock ownership of other 5.0-percent Stockholders, and an ownership change occurs if the aggregate increase in ownership by all such 5.0-percent Stockholders exceeds 50%.

The Bylaw Amendment generally restricts any direct or indirect transfer (such as transfers of the Company’s Common Stock that result from the transfer of interests in other entities that own the Company’s Common Stock) if the effect would be to: (1) increase the direct or indirect ownership of the Company’s stock by any Person (as defined below) from less than 4.9% to 4.9% or more of the Company’s Common Stock, or (2) increase the percentage of the Company’s Common Stock owned directly or indirectly by any Person owning or deemed to own 4.9% or more of the Company’s Common Stock. As used herein, “Person” shall mean any individual or entity (including a group of persons treated as an entity within the meaning of the Treasury Regulations).

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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 Board will have the discretion to approve a transfer of Common Stock that would otherwise violate the transfer restrictions of the Bylaw Amendment, if the Board determines that such transfer is in the Company's best interests.

The Bylaw Amendment will expire on the earlier of: (i) the Board's determination that the Bylaw Amendment is no longer necessary for the preservation of the NOLs because of the repeal of Section 382 or any successor statute, (ii) the beginning of a taxable year of the Company to which the Board determines that no NOLs may be carried forward or (iii) such date as the Board determines that the Bylaw Amendment is no longer necessary for the preservation of the NOLs. The Board is also permitted to accelerate or extend the expiration date of the Bylaw Amendment in the event of a change in the law.

The foregoing is a description and summary of the Bylaw Amendment, and is qualified in its entirety by the full text of the Bylaw Amendment (as adopted and effective on December 19, 2008), which is filed as Exhibit 3.1 hereto and incorporated herein by reference.

### **ITEM 8.01 OTHER EVENTS**

A copy of the press release issued on December 24, 2008, relating to the approval of the Bylaw Amendment, the approval of the Article Amendment and the calling of the Special Meeting, is attached hereto as Exhibit 99.1 to this Current Report on Form 8-K.

### **ITEM 9.01 FINANCIAL STATEMENTS AND EXHIBITS**

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
3.1	Meritage Homes Corporation Amendment to Bylaws dated December 19, 2008
99.1	Meritage Homes Corporation Press release issued on December 24, 2008

**SIGNATURES**

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.

Dated: December 24, 2008

**MERITAGE HOMES CORPORATION**

/s/ Larry W. Seay

Larry W. Seay

Executive Vice President and Chief Financial Officer

**MERITAGE HOMES CORPORATION**  
**AMENDMENT TO BYLAWS**

The Board of Directors of Meritage Homes Corporation, a Maryland corporation (the “Corporation”), pursuant to Article XII of Amended and Restated Bylaws of the Corporation (the “Amended and Restated Bylaws”) hereby amends the Amended and Restated Bylaws as follows:

**FIRST:** Article XIII of the Amended and Restated Bylaws is hereby added to read as follows:

**ARTICLE XIII**  
**RESTRICTIONS ON TRANSFER OF SHARES**

**Section 1. Definitions.**

As used in this Article XIII, the following capitalized terms have the following meanings when used herein with initial capital letters (and any references to any portions of Treasury Regulation § 1.382-2T shall include any successor provisions):

- (a) “*4.9-percent Transaction*” means any Transfer described in clause (i) or (ii) of Section 2 of this Article XIII.
  - (b) “*4.9-percent Stockholder*” means a Person who owns 4.9% or more of the Corporation’s then-outstanding Common Stock, whether directly or indirectly, and including shares such Person would be deemed to constructively own or which otherwise would be aggregated with shares owned by such Person pursuant to Section 382 of the Code, or any successor provision or replacement provision and the Treasury Regulations thereunder.
  - (c) “*Agent*” has the meaning set forth in Section 5 of this Article XIII.
  - (d) “*Board of Directors*” or “*Board*” means the board of directors of the Corporation.
  - (e) “*Common Stock*” means any interest in the 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).
  - (f) “*Code*” means the United States Internal Revenue Code of 1986, as amended from time to time, and the rulings issued thereunder.
  - (g) “*Corporation Security*” or “*Corporation Securities*” means (i) shares of Common Stock, (ii) shares of preferred stock issued by the Corporation (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.
  - (h) “*Effective Date*” means the date the Board of Directors approved the effectiveness of the Article XIII.
  - (i) “*Excess Securities*” has the meaning given such term in Section 4 of this Article XIII.
  - (j) “*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 Article XIII is no longer necessary for the preservation of Tax Benefits, (ii) the
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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 12 of this Article XIII.

(k) “*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.

(l) “*Person*” means any individual, firm, corporation or other legal entity, including a group of persons treated as an entity pursuant to Treasury Regulation § 1.382-3(a)(1)(i); and includes any successor (by merger or otherwise) of such entity.

(m) “*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.

(n) “*Prohibited Transfer*” means any Transfer or purported Transfer of Corporation Securities to the extent that such Transfer is prohibited and/or void under this Article XIII.

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

(p) “*Purported Transferee*” has the meaning set forth in Section 4 of this Article XIII.

(q) “*Securities*” and “*Security*” each has the meaning set forth in Section 7 of this Article XIII.

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

(s) “*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.

(t) “*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.

(u) “*Transfer*” means, any direct or indirect sale, transfer, assignment, conveyance, pledge or other disposition or other action taken by a person, other than the Corporation, that alters the Percentage Stock Ownership of any Person. A Transfer also shall include the creation or grant of an option (including an option within the meaning of Treasury Regulation § 1.382-2T(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.

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

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

#### **Section 2. Transfer and Ownership Restrictions**

In order to preserve the Tax Benefits, from and after the Effective Date of this Article XIII any attempted Transfer of Corporation Securities prior to the Expiration Date and any attempted Transfer of Corporation Securities pursuant to an agreement entered into prior to the Expiration Date, shall be prohibited and void *ab initio* to the extent that, as a result of such Transfer (or any series of Transfers of which such Transfer is a part), either (i) any Person or Persons would become a 4.9-percent Stockholder or (ii) the Percentage Stock Ownership in the Corporation of any 4.9-percent Stockholder would be increased.

#### **Section 3. Exceptions**

(a) Notwithstanding anything to the contrary herein, Transfers to a Public Group (including a new Public Group created under Treasury Regulation § 1.382-2T(j)(3) (i)) shall be permitted.

(b) The restrictions set forth in Section 2 of this Article XIII shall not apply to an attempted Transfer that is a 4.9-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 3 of Article XIII, 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 Article XIII through duly authorized officers or agents of the Corporation. Nothing in this Section 3 of this Article XIII shall be construed to limit or restrict the Board of Directors in the exercise of its fiduciary duties under applicable law.

#### **Section 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 5 of this Article XIII or until an approval is obtained under Section 3 of this Article XIII. 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 Sections 4 or 5 of this Article XIII shall also be a Prohibited Transfer.

(b) The Corporation may require as a condition to the registration of the Transfer of any Corporation Securities or the payment of any distribution on any Corporation Securities that the proposed Transferee or payee furnish to the Corporation all information reasonably requested by the Corporation with respect to its direct or indirect ownership interests in such Corporation Securities. The Corporation may make such arrangements or issue such instructions to its stock transfer agent as may be determined by the Board of Directors to be necessary or advisable to implement this Article XIII, including, without limitation, authorizing such transfer agent to require an affidavit from a Purported Transferee regarding such Person's actual and constructive ownership of stock and other evidence that a Transfer will not be prohibited by this Article XIII as a condition to registering any transfer.

**Section 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 6 of this Article XIII if the Agent rather than the Purported Transferee had resold the Excess Securities.

**Section 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 6 of Article XIII. In no event shall the proceeds of any sale of Excess Securities pursuant to this Section 6 of Article XIII 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.

**Section 7. Modification of Remedies for Certain Indirect Transfers.**

In the event of any Transfer which does not involve a transfer of securities of the Corporation within the meaning of Maryland law ("*Securities*," and individually, a "*Security*") but which would cause a 4.9-percent Stockholder to violate a restriction on Transfers provided for in this Article XIII, the application of Sections 5 and 6 of this Article XIII shall be modified as described in this Section 7 of this Article XIII. In such case, no such 4.9-percent Stockholder shall be required to dispose of any interest that is not a Security, but such 4.9-percent Stockholder and/or any Person whose ownership of Securities is attributed to such 4.9-percent Stockholder shall be deemed to have disposed of and shall be required to dispose of sufficient Securities (which Securities shall be disposed of in the inverse order in which they were acquired) to cause such 4.9-percent Stockholder, following such disposition, not to be in violation of this Article XIII. 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 5 and 6 of this Article XIII, except that the maximum aggregate amount payable either to such 4.9-percent Stockholder, or to such other Person that was the direct holder of such Excess Securities, in connection with such sale shall be the fair market value of such Excess Securities at the time of the purported Transfer. All expenses incurred by the Agent in disposing of such Excess Stock shall be paid out of any amounts due such 4.9-percent Stockholder or such other Person. The purpose of this Section 7 of Article XIII is to extend the restrictions in Section 2 and 5 of this Article XIII to situations in which there is a 4.9-percent Transaction without a direct Transfer of Securities, and this Section 7 of Article XIII, along with the other provisions of this Article XIII, shall be interpreted to produce the same results, with differences as the context requires, as a direct Transfer of Corporation Securities.

**Section 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 5 of this Article XIII (whether or not made within the time specified in Section 5 of this Article XIII), 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 8 of Article XIII shall (i) be deemed inconsistent with any Transfer of the Excess Securities provided in this Article XIII being void *ab initio*, (ii) preclude the Corporation in its discretion from immediately bringing legal proceedings without a prior demand or (iii) cause any failure of the Corporation to act within the time periods set forth in Section 5 of this Article XIII to constitute a waiver or loss of any right of the Corporation under this Article XIII. The Board of Directors may authorize such additional actions as it deems advisable to give effect to the provisions of this Article XIII.

**Section 9. Liability.**

To the fullest extent permitted by law, any stockholder subject to the provisions of this Article XIII who knowingly violates the provisions of this Article XIII 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.

**Section 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 Article XIII or the status of the Tax Benefits of the Corporation.

**Section 11. Legends.**

The Board of Directors may require that any certificates issued by the Corporation evidencing ownership of shares of Stock that are subject to the restrictions on transfer and ownership contained in this Article XIII bear the following legend:

“THE AMENDED AND RESTATED BYLAWS OF THE CORPORATION, AS AMENDED (THE “BYLAWS”), CONTAINS RESTRICTIONS PROHIBITING THE TRANSFER (AS DEFINED IN THE BYLAWS) OF 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 BYLAWS) 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 MARYLAND ("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 BYLAWS 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 BYLAWS, 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 3 of this Article XIII also bear a conspicuous legend referencing the applicable restrictions.

**Section 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 Article XIII, including, without limitation, (i) the identification of 4.9-percent Stockholders, (ii) whether a Transfer is a 4.9-percent Transaction or a Prohibited Transfer, (iii) the Percentage Stock Ownership in the Corporation of any 4.9-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 6 of this Article XIII, 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 Article XIII. In addition, the Board of Directors may, to the extent permitted by law, from time to time establish, modify, amend or rescind by-laws, regulations and procedures of the Corporation not inconsistent with the provisions of this Article XIII 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 Article XIII.

(b) Nothing contained in this Article XIII 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 Article XIII, (iii) modify the definitions of any terms set forth in this Article XIII or (iv) modify the terms of this Article XIII 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 Article XIII, including any definition used herein, the Board of Directors shall have the power to determine the application of such provisions with respect to any situation based on its reasonable belief, understanding or knowledge of the circumstances. In the event this Article XIII requires an action by the Board of Directors but fails to provide specific guidance with respect to such action, the Board of Directors shall have the power to determine the action to be taken so long as such action is not contrary to the provisions of this Article XIII. All such actions, calculations, interpretations and determinations which are done or made by the Board of Directors in good faith shall be conclusive and binding on the Corporation, the Agent, and all other parties for all other purposes of this Article XIII. The Board of Directors may delegate all or any portion of its duties and powers under this Article XIII to a committee of the Board of Directors as it deems necessary or advisable and, to the fullest extent permitted by law, may exercise the authority granted by this Article XIII through duly authorized officers or agents of the Corporation. Nothing in this Article XIII shall be construed to limit or restrict the Board of Directors in the exercise of its fiduciary duties under applicable law.

**Section 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 and the Corporation's legal counsel, independent auditors, transfer agent, investment bankers or other employees and agents in making the determinations and findings contemplated by this Article XIII. 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.

**Section 14. Benefits of This Article XIII.**

Nothing in this Article XIII shall be construed to give to any Person other than the Corporation or the Agent any legal or equitable right, remedy or claim under this Article XIII. This Article XIII shall be for the sole and exclusive benefit of the Corporation and the Agent.

**Section 15. Severability.**

The purpose of this Article XIII is to facilitate the Corporation's ability to maintain or preserve its Tax Benefits. If any provision of this Article XIII or the application of any such provision to any Person or under any circumstance shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this Article XIII.

**Section 16. Waiver.**

With regard to any power, remedy or right provided herein or otherwise available to the Corporation or the Agent under this Article XIII, (i) no waiver will be effective unless expressly contained in a writing signed by the waiving party; and (ii) 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.



Listed on the NYSE: MTH



# press release

**Contacts:****Investor Relations:**

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**Corporate Communications:**

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Vice President-Corporate Communications  
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**MERITAGE HOMES TAKES STEPS TO PRESERVE THE VALUE OF ITS DEFERRED TAX ASSETS**

SCOTTSDALE, ARIZ. (December 24, 2008) — Meritage Homes Corporation (NYSE: MTH), a leading U.S. homebuilder, announced today that it has taken a number of steps designed to preserve the long term value to the Company of certain tax assets primarily associated with net operating loss carryforwards ("NOLs") and built in losses under Section 382 of the Internal Revenue Code. At September 30, 2008, the Company estimated that it had \$137 million in deferred tax assets (before reserves), generated by approximately \$360 million in net operating losses through September 30, 2008.

The Company's ability to use NOL's and built in losses is limited if there is an "ownership change" under tax law. In general, ownership changes relate to the accumulation of stock by 5-percent (or more) stockholders, measured over a given period of time (generally a three year rolling period.)

To reduce the risk of losing or limiting the long term value of its NOLs and built in losses, the Company has taken the following steps:

1. Adopted a Bylaw provision restricting transfers or issuances of stock that would create more than 4.9-percent Stockholders, or that would change the ownership of such holders. These restrictions allow for the Company's Board of Directors to approve exceptions to these restrictions that are in the best interests of the stockholders. The restrictions will terminate when the Company's tax assets are utilized or expire, or when the Board deems appropriate.
  2. Approved, subject to stockholder approval, a provision in its Articles of Incorporation that creates the same transfer restrictions, and exception and termination provisions.
  3. Determined to hold a Special Meeting of Stockholders on February 16, 2009, or as soon thereafter as practicable, to vote on the amendment of the Articles of Incorporation. The record date for shareholders to vote at this meeting is January 5, 2009.
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Larry Seay, Chief Financial Officer of the Company stated, "We believe that we are acting in the best interests of our shareholders to preserve the value of our deferred tax assets, and retain our ability to use accumulated net operating losses to offset future income and taxes. Without these changes, a potential unintended consequence of changes in the stock ownership of Meritage Homes investors could limit our potential realization of deferred tax assets. The steps we have adopted are intended to allow stockholders to accumulate stock with Board approval, while preserving our tax assets with certain transfer restrictions."

### **About Meritage Homes Corporation**

Meritage Homes Corporation (NYSE:MTH) builds primarily single-family homes across the southern and western United States under the Meritage, Monterey and Legacy brands. Meritage has active communities in Houston, Dallas/Ft. Worth, Austin, San Antonio, Phoenix/Scottsdale, Tucson, Las Vegas, the East Bay/Central Valley and Inland Empire of California, Denver and Orlando. The Company was ranked by *Builder* magazine in 2008 as the 12th largest homebuilder in the U.S. and ranked #803 on the 2008 *Fortune* 1000 list. For more information about the Company, visit [www.meritagehomes.com](http://www.meritagehomes.com).

Click here to join our email alert list: <http://www.b2i.us/irpass.asp?BzID=1474&to=ea&s=0>

### **Cautionary Language**

This press release contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Such statements include those regarding the Company's potential use of tax assets to offset future income and taxes, and relating to measures that could help protect these assets. There can be no assurance that the Company will generate net income or be able to utilize these tax assets in the future, or that the measures adopted will prevent changes in ownership that would limit use of these assets. In this regard, a Bylaw provision restricting share transfers may not be enforceable under applicable law as to shares outstanding prior to the restriction, or at all. If the stockholders do not adopt the amendment to the Company's Articles of Incorporation, the Company may implement a shareholder rights plan as a deterrent to accumulations that would limit or impair its tax assets.

Meritage's business is subject to other significant risks and uncertainties. Many factors are identified in documents filed by the Company with the Securities and Exchange Commission, including those set forth in our Form 10-K for the year ended December 31, 2007, and Form 10-Q for the quarter ended September 30, 2008, under the caption "Risk Factors." As a result of these and other factors, the Company's stock and note prices may fluctuate dramatically. The Company makes no commitment, and disclaims any duty, to update or revise any forward-looking statements to reflect future events or changes in these expectations.

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