

When recorded, return to:

Lynn T. Ziolk, Esq.
Kutak Rock LLP
Suite 300
8801 North Scottsdale Road
Scottsdale, Arizona 85253-2742

60
Ma

605082 dy

**DECLARATION OF ANNEXATION
FOR
ESTRELLA VISTA
(Parcels A and B)**

This Declaration of Annexation for Estrella Vista (Parcels A and B) ("**Annexation Amendment**") is made and executed as of April 20, 2001 ("**Annexation Date**"), by Beazer Homes Holdings Corp., a Delaware corporation ("**Beazer**").

BACKGROUND

A. Beazer, as the "**Declarant**", recorded the Declaration of Homeowner Benefits and Covenants, Conditions, and Restrictions for Estrella Vista in Document No. 99-0337357, Official Records of Maricopa County, Arizona ("**Original Declaration**"). The Original Declaration subjects certain real property located in Maricopa County, Arizona to the covenants, conditions, restrictions, liens, and easements as more fully set forth in the Original Declaration and the other Project Documents.

B. Pursuant to Article XI of the Original Declaration, the Declarant possesses the right to annex the Annexable Property into the Property and to subject the Annexable Property to the covenants and restrictions contained in the Declaration. Declarant desires to annex and subject to the Declaration only that portion of the Annexable Property that is legally described on Exhibit "A" to this Annexation Amendment. The portion of the Annexable Property that is annexed and subjected to the Declaration by virtue of the recordation of this Annexation Amendment is referred to in this Annexation Amendment as the "**Annexed Property**".

C. Capitalized terms that are used but not defined in this Annexation Amendment will be ascribed the meanings specified in the Original Declaration.

ANNEXATION

Pursuant to Article XI of the Original Declaration, Declarant declares as follows:

1. **Annexation.** By recordation of this Annexation Amendment, Declarant conditionally annexes the Annexed Property into the Property and subjects the Annexed Property to the Declaration and all other Project Documents. The Annexed Property will not become irrevocably annexed until the date, if any, on which the first Lot within the Annexed Property is conveyed to an Owner other than the Declarant. From and after the Annexation Date, all references in the Original Declaration or any other Project Documents to the term "**Property**" or "**Project**" will include the property initially subjected to the Original Declaration as well as the Annexed Property described in this Annexation Amendment, and all references to the term "**Declaration**" will refer to the Original Declaration as modified by this Annexation Amendment.

2. **Benefit and Burden.** By executing and recording this Annexation Amendment, Declarant intends to subject the Annexed Property to all of the benefits, burdens, duties, and obligations of the Original Declaration, this Annexation Amendment, and the other Project Documents and intends that the Declaration will benefit and burden all subsequent purchasers of the Property (including the Annexed Property).

3. **Withdrawal.** Pursuant to Section 11.2(e) of the Original Declaration, Declarant reserves the right to withdraw from the Declaration and the Project all or part of the Annexed Property that has not been ^{Unofficial Document} dedicated or designated as Common Area.

4. **Plat.** From and after the Annexation Date, all references to the term "**Plat**" will refer to the Plat described in Section 1.29 of the Original Declaration as well as the Final Plat of Estrella Vista Parcels A & B, recorded in Book 557 of Maps, Page 24, Official Records of Maricopa County, Arizona ("**Parcels A/B Plat**").

5. **Common Areas.** Tracts "A" through "H", inclusive, as depicted on the Parcel A/B Plat, are designated as Common Area of the Project. All Common Area is to be used for those purposes, and will be subject to those covenants and restrictions, described in the Parcel A/B Plat and the Declaration.

6. **Private Recreational Facilities.** Portions of Tracts "C" and "H" may be developed by Declarant as a tot lot, and portions of Tract "H" may be developed as a pool. The tot lots and pool are reserved for the private use of the Owners within the Project and applicable Owner Permittees and are not intended for public use. Use of the tot lot and pool is at the sole risk of the users. The construction of tot lot facilities in the Common Area may be Visible From Neighboring Property and is not subject to the limitations established in Section 8.2 of the Original Declaration.

7. **Drainage and Retention.** Declarant grants to and for the benefit of the Association and all Owners a non-exclusive easement in, through, across, and under the surface of the Common Area for the purpose of delivering, storing, and accepting storm water to and from the Project and installing, maintaining, and repairing

underground drainage pipes, lines, drains, and other drainage facilities required by the City and approved by the Association (together with the right to ingress and egress to perform the installation, maintenance, or repair). Except for facilities associated with a tot lot and pool, no buildings or similar permanent structures may be erected on the Common Area. Any landscaping that may be planted in the Common Area must be planted so as to not materially impede the flow of water into, through, over, or under the Common Area.

8. **Sewer Easement.** Declarant grants to the City a non-exclusive easement for the installation, maintenance, and repair of sewer lines and sewage facilities under those portions of Tracts "C" and "H" designated on the Parcel A/B Plat. This easement will be perpetual unless and until abandoned by resolution of the City by recorded instrument signed by the Association.

9. **Vehicular Non-Access.** Where depicted and described by the Parcel A/B Plat, Declarant grants to the City a non-exclusive vehicular non-access easement across those portions of the Property identified on the Parcel A/B Plat. No vehicles may be driven or moved across or over these easement areas to access any adjoining streets or real property. This easement will be perpetual unless and until abandoned by resolution of the City.

10. **Visibility Easement.** Declarant grants to the City a non-exclusive restricted visibility easement on and over those specific areas of those Lots and tracts of Common Area indicated on the Parcel A/B Plat. All structures and landscaping that are located within this restricted visibility easement will have at all times a height no greater than three feet higher than the base height of the object in question. This easement will be perpetual unless and until abandoned by resolution of the City.

11. **Landscaped Open Space.** Subject to the uses and easements designated or created in the Parcel A/B Plat or in Paragraphs 6, 7, 8, 9, or 10 above of this Annexation Amendment, all Common Area will be used as landscaped open space, and, for that purpose, Declarant grants to the Association and all Owners a non-exclusive easement for landscape and open space over the Common Area. All landscaping within these areas will be maintained by the Association upon the conveyance of the Common Area to the Association. This easement for landscaped and open space will remain in effect during the term of this Declaration.

12. **Areas of Association Responsibility.** The Association will maintain, repair, and install all landscaping that may be located within any dedicated street right-of-way but between the street curb and the boundary line of any adjacent Lot or Common Area. Specifically, these maintenance areas will include landscaping along the east side of Goodyear Boulevard West and 157th Avenue as well as all internal and local streets of the Project. The maintenance areas described above will be known and treated as "**Areas of Association Responsibility**".

13. **Airports.** THE PROJECT IS LOCATED TWO MILES WEST OF THE PHOENIX-GOODYEAR AIRPORT AND IS WITHIN TERRITORY IN THE VICINITY OF

LUKE AIR FORCE BASE. AS A RESULT, THE PROJECT IS SUBJECT TO ATTENDANT NOISE, VIBRATIONS, DUST, AND ALL OTHER EFFECTS THAT MAY BE CAUSED BY OVER FLIGHTS OR THE OPERATION OF AIRCRAFT LANDING AT OR TAKING OFF FROM THESE AIR STRIPS. EACH OWNER AND ALL OF THE OWNER'S PERMITTEES, AS AN EXPRESS CONDITION TO RESIDENCY IN THE PROJECT, RELEASE DECLARANT, THE ASSOCIATION, AND ANY BUILDER (AND THEIR RESPECTIVE SHAREHOLDERS, OFFICERS, MEMBERS, PARTNERS, DIRECTORS, EMPLOYEES, AND AGENTS) FROM ALL LIABILITY, LOSS, DAMAGE, AND CLAIMS FOR PROPERTY DAMAGE, BODILY INJURY, PERSONAL INJURY, OR MARKETABILITY ARISING OUT OF ANY NOISE, VIBRATIONS, DUST, OR FUMES FROM ARRIVING OR DEPARTING AIRPLANES, ANY FALLING OBJECTS OR MATERIALS FROM THE SKY FROM AIRPLANE OPERATIONS, OR ANY OTHER ASPECT OF AIRPORT OPERATIONS.

14. **Adjacent Agricultural Uses.** EACH OWNER UNDERSTANDS AND ACKNOWLEDGES THAT THE PROJECT IS LOCATED IN THE VICINITY OF PROPERTY THAT IS CURRENTLY OPERATED FOR AGRICULTURAL PURPOSES. AS A RESULT, THE PROJECT IS SUBJECT TO NOISE, DUST, AND ODORS ASSOCIATED WITH ITS AGRICULTURAL USE. ACTIVITIES THAT MAY BE CONDUCTED IN THIS ADJACENT AGRICULTURAL AREA INCLUDE HARVESTING, PLOWING, FERTILIZING, SPRAYING, AND OTHER RELATED AGRICULTURAL USES. AS A RESULT, PEOPLE RESIDING WITHIN THE PROJECT MAY EXPERIENCE NOISE, DUST, FUMES, ODORS, POLLEN, FLIES, AND OTHER ANNOYANCES TYPICALLY ASSOCIATED WITH AN ADJACENT AGRICULTURAL USE. EACH OWNER AND ALL OF THE OWNER'S PERMITTEES, AS AN EXPRESS CONDITION TO RESIDENCY IN THE PROJECT, SPECIFICALLY ACKNOWLEDGES AND ACCEPTS THIS ADJACENT USE AND RELEASES THE DECLARANT, ANY BUILDER, AND THE ASSOCIATION (AND THEIR RESPECTIVE SHAREHOLDERS, OFFICERS, MEMBERS, DIRECTORS, PARTNERS, EMPLOYEES, AND AGENTS) FROM ALL LIABILITY CLAIMS, LOSS, AND DAMAGE THAT MAY ARISE OUT OF THE LOCATION OF THE PROJECT NEAR THE AGRICULTURAL USE.

15. **Single-Story Limitation.** Certain Lots within the Project are restricted to single-story Detached Dwelling Units, as designated on the Parcel A/B Plat. No multiple story houses or other structures may be constructed on those Lots.

Declarant has executed this Annexation Amendment as of the Annexation Date.

"Declarant"

Beazer Homes Holdings Corp.,
a Delaware corporation

By: 

Name:

Rexford Ross

Title:

V.P., Land Dev.

STATE OF ARIZONA

)

) ss.

County of Maricopa

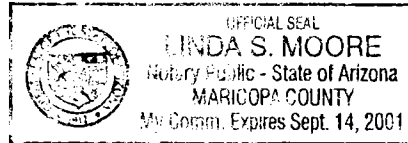
)

The foregoing instrument was acknowledged before me this 20th day of April, 2001, by Rexford Ross, the V.P., Prod Dev. of Beazer Homes Holdings Corp., a Delaware corporation, who executed the foregoing on behalf of the corporation, being authorized so to do for the purposes therein contained.

Linda S. Moore
Notary Public

My Commission Expires:

9.14.2001



Unofficial Document

EXHIBIT "A"
TO
DECLARATION OF ANNEXATION
FOR
ESTRELLA VISTA
(Parcels A and B)

(legal description of annexed property)

Lots 107 through 323 inclusive, and Tracts "A" through "H", inclusive, Estrella Vista
Parcels A & B, a subdivision according to the plat of record in Book 557 of Maps, Page
24, Official Records of Maricopa County, Arizona.

Unofficial Document