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**DECLARATION OF ANNEXATION
FOR
ESTRELLA VISTA
(Parcel D)**

This Declaration of Annexation for Estrella Vista (Parcel D) ("**Annexation Amendment**") is made and executed as of March 20, 2002 ("**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.

C. Prior to the Annexation Date, Declarant previously annexed Estrella Vista (Parcels A and B) pursuant to the Declaration of Annexation for Estrella Vista (Parcels A and B) recorded on May 23, 2001, in Document No. 20010439179, Official Records of Maricopa County, Arizona ("**Parcels A/B Annexation Amendment**").

D. Declarant presently 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**". The Annexed Property generally consists of Parcel D of Estrella Vista, as depicted on the Parcel D Plat described below.

E. 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, the property described in the Parcels A/B Annexation Amendment, and the Annexed Property described in this Annexation Amendment, and all references to the term "**Declaration**" will refer to the Original Declaration as modified by the Parcels A/B Annexation Amendment and 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 irrevocably annexed into the Project.

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 (also referred to as the "**Parcels C/G Plat**"), 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**"), and the Final Plat for Estrella Vista Parcel D, recorded in Book 576 of Maps, Page 29, Official Records of Maricopa County, Arizona ("**Parcel D Plat**").

5. **Single-Story Limitation.** Certain Lots within the Annexed Property are restricted to single-story Detached Dwelling Units, as designated on the Parcel D Plat. No multiple story houses or other structures may be constructed on those Lots. This limitation applies only to the Single Story Lots and not to any other Lots within the Project. The restriction contained in this Paragraph 5 will be considered a use restriction on the Single Story Lots similar to those described in Article VIII of the Original Declaration.

6. **General Description.** The Annexed Property is comprised of sixty-one (61) Lots, various publicly dedicated streets (as named, depicted, and described on the

Parcel D Plat) and seven tracts of Common Area (i.e. Tracts "K", "L", "M", "N", "O", "P", and "R"). There is no Tract "Q" as part of the Parcel D Plat.

7. **Common Areas.** Tracts "K" through "P", inclusive, and Tract "R", as all are depicted on the Parcel D 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 D Plat and this Annexation Amendment.

8. **Private Recreational Facilities.** Portions of Tract "P" may be developed by Declarant as a tot lot (i.e., children's playground). The tot lot is reserved for the private use of the Owners within the Project and applicable Owner Permittees and is not intended for public use. Use of the tot lot or its facilities 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 Sections 8.2 or 8.28 of the Original Declaration.

9. **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 Tracts "K", "O", and "R" of the Common Area depicted on the Parcel D Plat (the "**Drainage and Retention Tracts**") 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). No buildings or similar permanent structures may be erected on the Drainage and Retention Tracts. Any landscaping that may be planted in the Drainage and Retention Tracts must be planted so as to not materially impede the flow of water into, through, over, or under the Drainage and Retention Tracts.

10. **Vehicular Non-Access.** Where depicted and described by the Parcel D Plat, Declarant grants to the City a non-exclusive vehicular non-access easement across those portions of the Property identified on the Parcel D 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.

11. **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 D Plat. All structures and landscaping that are located within this restricted visibility easement will have at all times a height no greater than two feet higher than the base height of the object in question, and a width no greater than six inches in diameter. This easement will be perpetual unless and until abandoned by resolution of the City.

12. **Landscaped Open Space.** Subject to the uses and easements designated or created in the Parcel D Plat, as more fully detailed in Paragraphs 7, 8, 9, 10, and 11 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 the Declaration.

13. **Areas of Association Responsibility.** The Association will maintain, repair, and install all landscaping that may be located within any dedicated street right-of-way between the street curb and the boundary line of any adjacent Lot or Common Area. Specifically, these maintenance areas will include landscaping along the applicable portions of Goodyear Boulevard 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**".

14. **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, THE PROJECT OWNER, AND ANY BUILDER (AND THEIR RESPECTIVE SHAREHOLDERS, OFFICERS, MEMBERS, PARTNERS, DIRECTORS, Unofficial Document 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.

15. **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, THE PROJECT OWNER, 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.

16. **Other Assessments.** As indicated on the Parcel D Plat, the City has been designated as having an assured water supply pursuant to A.R.S. § 45-576.B. The City's assured water supply designation is supported in part by the City's membership in the Central Arizona Groundwater Replenishment District ("**CAGRD**"). Any payment actually made by the Association under the CAGRD (whether for charges made directly to the Association or for charges due from an Owner but not paid by the Owner) will be considered Other Assessments pursuant to Section 4.4(b) of the Original Declaration, and may be levied by the Board without a vote of the Members.

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

"Declarant"

Beazer Homes Holdings Corp.,
a Delaware corporation

By: 

Name: Rexford Ross

Title: Authorized Agent

Unofficial Document

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 20th day of March, 2002, by Rexford Ross, the authorized agent 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.


Notary Public

My Commission Expires:

9.14.2005



CONSENT OF PROJECT OWNER

The undersigned, Hektor Investments, L.L.C., an Arizona limited liability company ("**Project Owner**"), as the owner of fee title to the Annexed Property, consents to the recordation of the Declaration (as that term is used and defined in the attached Annexation Amendment), subjects the Annexed Property to the covenants and restrictions contained in the Declaration, and joins in the grant, reservation, and creation of the various easements described in the Declaration. Unless and until a supplemental declaration is recorded stating that the Project Owner has elected to be treated as a Builder under the Declaration because of the termination or expiration of Declarant's purchase option rights over all or part of the Annexed Property (other than as a result of Declarant's acquisition of all of the Annexed Property subject to the option), Beazer Homes Holdings Corp, a Delaware corporation ("**Beazer Homes**"): (i) will be deemed the Declarant under the Project Documents with respect to the Annexed Property; (ii) will have and will exercise (subject to the limitations established in the Declaration) all rights, privileges, duties, and obligations of Declarant under the Project Documents with respect to the Annexed Property (including the right to exercise any weighted voting rights); (iii) will be deemed the Owner of all Lots within the Annexed Property that either are owned by Declarant or over which Declarant has purchase option rights, including, without limitation, for purposes of determining the number and class of votes appurtenant to the Lots; and (iv) not assign, transfer, convey, or encumber (whether voluntarily, involuntarily, or by operation of law, merger, consolidation, reorganization, or otherwise) any of the rights, privileges, ^{Unofficial Document} duties, and obligations of Declarant under the Project Documents with respect to the Annexed Property.

When Beazer Homes purchases all of the Lots that are part of the Annexed Property and that are subject to the purchase option granted by Project Owner, all references to the Project Owner will be deemed deleted from the Declaration, and Project Owner will have no approval, veto, or other rights or obligations under the Project Documents. If, instead, the purchase option rights of Beazer Homes expire or are terminated (other than through the acquisition of all Lots in the Annexed Property subject to the option), the right and obligation of Beazer Homes to exercise the rights, privileges, duties, and obligations of the Declarant under the Project Documents will cease with respect to any remaining Lots within the Annexed Property.

Project Owner acknowledges and understands that Beazer Homes, as the Declarant, has previously subjected Lots and Common Area to the Project Documents, and nothing in this Consent of Project Owner will apply to any Lots or Common Area tracts that are not part of the Annexed Property described in the attached Annexation Amendment.

All items used in this Consent of Project Owner will have the meanings ascribed in the Declaration, as that term is used and defined in the attached Annexation Amendment.

"Project Owner"

Hektor Investments, L.L.C., an Arizona
limited liability company

By: 

Name: _____

Title: _____

John Carbe

Partner

Unofficial Document

EXHIBIT "A"
TO
DECLARATION OF ANNEXATION
FOR
ESTRELLA VISTA
(Parcel D)

(legal description of annexed property)

Lots 336 through 396 inclusive, Tracts "K" through "P", inclusive, and Tract "R", Estrella Vista Parcel D, a subdivision according to the plat of record in Book 576 of Maps, Page 29, Official Records of Maricopa County, Arizona.

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