

WHEN RECORDED RETURN TO:

Unofficial
₂₀Document

RECORDING REQUESTED BY:
Lawyers Title of Arizona, Inc.
606803

00
1e

↑THIS SPACE FOR RECORDER'S USE ONLY↑

RECORDING COVER SHEET

CAPTION HEADING: DECLARATION OF ANNEXATION

**DO NOT REMOVE. THIS COVER SHEET IS A PART OF THE
ORIGINAL, NON-CONFORMING DOCUMENT REFERENCED IN
THE CAPTION HEADING ABOVE.**

When recorded, return to:

KUTAK ROCK LLP
DRAFT 2/27/03

Lynn T. Ziolko, Esq.
 Kutak Rock LLP
 Suite 300
 8601 North Scottsdale Road
 Scottsdale, Arizona 85253-2742

606803 Dey

**DECLARATION OF ANNEXATION
 FOR
 ESTRELLA VISTA
 (The Villas at Estrella Vista)**

This Declaration of Annexation for Estrella Vista (The Villas at Estrella Vista) ("Annexation Amendment") is made and executed as of February 26, 2003 ("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"), and Estrella Vista (Parcel D) pursuant to the Declaration of Annexation for Estrella Vista (Parcel D) recorded on March 26, 2002, in Document No. 2002-0302247, Official Records of Maricopa County, Arizona ("Parcel D Annexation Amendment"). The Parcel A/B Annexation Amendment and the Parcel D Annexation Amendment, together with any other Annexation Amendment that may have been recorded with respect to the Project, are called collectively the "Prior Annexation Amendments".

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 F of Estrella Vista, as depicted on the Villas 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 Prior Annexation Amendments, and the Annexed Property described in this Annexation Amendment, and all references to the term "Declaration" ^{Unofficial Document} will refer to the Original Declaration as modified by the Prior Annexation Amendments, 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"), 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"), the Final Plat for Estrella Vista Parcel F, recorded in Book 622 of Maps, Page 25, Official Records of Maricopa County, Arizona ("Parcel F Plat"), and the Final Plat for The Villas at Estrella

Vista, recorded in Book 622 of Maps, Page 26, Official Records of Maricopa County, Arizona ("Villas Plat").

5. **Single-Story Limitation.** Certain Lots within the Annexed Property are restricted to single-story Detached Dwelling Units, as designated on the Villas Plat, and these Lots consist of Lots 398, 399, 405, 406, 407, 412, 413, 415 through 420, inclusive, 432 through 435, inclusive, 447, 459, and 478 (collectively, the "**Single Story Lots**"). No multiple story houses or other multiple story structures may be constructed on the Single Story 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 and will be enforceable in the same manner as the use restrictions described in Article VIII of the Original Declaration.

6. **General Description.** The Annexed Property is comprised of eighty-two (82) Lots, various publicly dedicated streets (as named, depicted, and described on the Villas Plat), and various tracts of Common Area (which Tracts "A-1" through "A-8", inclusive, being referred to as the "**Private Road Tracts**").

7. **Common Areas.** Tracts "A-1" through "A-8", inclusive, and Tracts "B" through "V", inclusive, 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 Villas Plat and the Declaration.

8. **Drainage and Retention.** Declarant grants to and for the benefit of the Association and all Owners a non-exclusive ^{Unofficial Document} easement in, through, across, and under the surface of Tracts "B", "P", and "R" of the Common Area depicted on the Villas 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). Except for any utility facilities that may be constructed in the Drainage and Retention Tract, no buildings or similar permanent structures may be erected on the Drainage and Retention Tract. Any landscaping that may be planted in the Drainage and Retention Tract must be planted so as to not materially impede the flow of water into, through, over, or under the Drainage and Retention Tract.

9. **Vehicular Non-Access.** Where depicted and described by the Villas Plat, Declarant grants to the City a non-exclusive vehicular non-access easement across those portions of the Annexed Property. 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 Villas Plat. All structures and landscaping that are located within this restricted visibility easement will have at all times a height and width

consistent with the limitations contained in the Villas Plat. 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 Villas Plat, as more fully detailed in Paragraphs 8, 9, and 10 above, of this Annexation Amendment, all Common Area (except the Private Road Tracts) will be used as landscaped open space and, where depicted on the Villas Plat, sidewalk easement areas, and, for those purposes, Declarant grants to the Association and all Owners a non-exclusive easement for landscape and open space over the Common Area (except the Private Road Tracts) and for sidewalks in the areas designated on the Villas Plat. All landscaping within these areas will be maintained by the Association upon the conveyance of these portions of the Common Area to the Association. The sidewalk areas will be used solely for pedestrian access. This easement for landscaped and open space and sidewalks will remain in effect during the term of the 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 between the street curb and the boundary line of any adjacent Common Area. Specifically, these maintenance areas will include landscaping along the applicable portions of South Estrella Parkway and Goodyear Boulevard 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**". Additionally, as specified on the Villas Plat, all landscaping that may be located Unofficial Document within any dedicated street right-of-way between the street curb and the boundary line of any adjoining Lot will be maintained by the Owner of the adjoining Lot.

13. **Private Streets.** Declarant grants and reserves the following non-exclusive and permanent easements over the Private Road Tracts: (i) to the Owners and the Owner's Permittees, an easement for private roadways for vehicular and pedestrian access except in those Street Parking Areas described below; (ii) to the City and any provider utility companies, an easement to install, maintain, and repair public utilities and facilities; and (iii) to the City and any emergency service and waste removal providers, an easement for access to provide emergency services and trash removal. Nothing in this Annexation Amendment should be construed or interpreted as a dedication or conveyance of the Private Road Tracts to the public or for general use by the public. Declarant, on behalf of each Owner within the Annexed Property, requests that the Association provide special services to the Owners within the Annexed Property consisting of maintaining and repairing the Private Road Tracts. The Association's maintenance responsibility described above will not include the maintenance or repair of any utility lines located within or under the Private Road Tracts, the responsibility for which will rest with the applicable utility company. Costs incurred by the Association in the maintenance and repair of the Private Road Tracts will be charged solely to the Owners within the Annexed Property as an Other Assessment under Section 4.4 of the Original Declaration, and all Other Assessments charged to these special services may be collected along with the Annual Assessments charged to the Owners.

14. Limited On-Street Parking.

(a) The Annexed Property has been platted and designed to feature courtyard elements. As a design consequence, various street parking areas have been established in and around the courtyard areas in the Private Road Tracts. As a result, no Recreational Vehicle Parking Areas will be permitted on any Lot within the Annexed Property.

(b) These street parking areas are depicted on the Villas Plat as notched areas, such as, for example, the part of Tract A-3 located between Lots 411 and 412 (which, for reference below, is called the **"Supai Circle North Parking Area"**). Any of the areas of the Private Road Tracts that are actually constructed from time to time as parking areas are called the **"Street Parking Areas"**.

(c) Except as established below with respect to the Lot 411 Spaces, all of the Street Parking Areas will be used for guest parking by non-residents and, in limited circumstances, additional parking for Owners and other residents. Use of the Street Parking Areas by non-resident guests will be on a first-come, first-served, and as available basis, and may be overnight. Except as established below with respect to the Lot 411 Spaces, the Street Parking Areas may be used by Owners and other residents as a parking area on a limited and non-recurring basis which may include overnight parking. For purposes of interpreting the foregoing, the use of a Street Parking Area by an Owner or another resident will be considered recurring if the ^{Unofficial Document} Street Parking Areas are used more than seven times in any 30-day period. The Board may establish a tow-away policy and/or a system of fines for Owners and residents that improperly use the Street Parking Areas on a recurring basis. Any permitted use of the Street Parking Areas by the Owners and residents will be on a first-come, first-served, and as available basis.

(d) Notwithstanding the foregoing, the two southern-most parking spaces (the **"Lot 411 Spaces"**) of the Supai Circle North Parking Area are reserved for the exclusive use of the Owners, residents, and non-resident guests of Lot 411, and the Owner of Lot 411 is granted a permanent easement to use the Lot 411 Spaces on an exclusive basis, whether recurring or non-recurring. This exclusive parking easement will be subordinate and subject to any public utility easements located in the Supai Circle North Parking Area and those easements established in Section 13 above. The benefit of this exclusive parking easement may not be transferred, sold, or assigned except in connection with a conveyance of Lot 411 and, then, only to the successor Owner of Lot 411. The benefit of this exclusive parking easement of the Lot 411 Spaces will be transferred automatically by virtue of the recordation of a conveyancing deed for Lot 411, and no additional documentation will be necessary to document or evidence the transfer.

(e) All Street Parking Areas are subject to an easement in favor of the Association for the uses established in this Section 14. Except as to the Lot 411

Spaces, no Owner will have exclusive use rights as to any Street Parking Areas for themselves, other residents of their Detached Dwelling Unit, or non-resident guests. The Association will maintain all Street Parking Areas (including the Lot 411 Spaces) at the common expense of all Owners within the Annexed Property only. Assessments for maintenance and repair of the Street Parking Areas will be charged as Other Assessments under Section 4.4 of the Original Declaration for those special services. Those Other Assessments may be collected along with the Annual Assessments charged to the Owners.

(f) As used above, the term "**residents**" will refer only to actual residents of Detached Dwelling Units within the Annexed Property.

(g) No on-street parking will be permitted within the Annexed Property, except as established above with respect to the Street Parking Areas. This means, among other things, that neither Family Vehicles nor Commercial or Recreational Vehicles may be parked in the streets within the Annexed Property even if done so on a Temporary And Nonrecurring Basis. Notwithstanding the foregoing, the Street Parking Areas will be used only for the parking of Family Vehicles and not Commercial or Recreational Vehicles. Commercial or Recreational Vehicles may be parked only within an enclosed garage and, notwithstanding Section 8.23 of the Original Declaration, the driveway of a Lot (without restriction as to use only on a Temporary And Nonrecurring Basis).

(h) The provisions of Section 14 of this Annexation Amendment will apply only to the Annexed Property and not to other areas of the Project, which will still be governed by the parking restrictions identified in the Original Declaration and, to the extent applicable, any of the Prior Annexation Amendments. As to the Annexed Property, the parking restrictions of Original Declaration will apply except to the extent modified under this Annexation Amendment (including, for example, the limitations on vehicle repairs in Section 8.25 of the Original Declaration).

15. **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, RELEASES DECLARANT AND THE ASSOCIATION (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.

16. **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 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.

17. **Other Assessments.** As indicated on the Villas 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 ^{Unofficial Document} 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.

18. **Declaration.** Any use of the term "Declaration" when made in reference to the Annexed Property will refer to the Original Declaration, as amended from time to time, as supplemented by this Annexation Amendment.

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

"Declarant"

Beazer Homes Holdings Corp.,
a Delaware corporation

By: Art Nehf
Name: Art Nehf
Title: Authorized Agent

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 26 day of
FEBRUARY, 2003, by Art Nehf, the AUTHORIZED AGENT
 of Beazer Homes Holdings Corp., a Unofficial Document Delaware corporation, who executed the foregoing
 on behalf of the corporation, being authorized so to do for the purposes therein
 contained.

Notary Public
Notary Public

My Commission Expires:

5/31/2006



EXHIBIT "A"
TO
DECLARATION OF ANNEXATION
FOR
ESTRELLA VISTA
(The Villas at Estrella Vista)

(legal description of Annexed Property)

Lots 397 through 478, inclusive, Tracts "A-1" through "A-8", inclusive, and Tracts "B" through "V", inclusive, The Villas at Estrella Vista as set forth in the final plat of record in Book 622 of Maps, Page 26, Official Records of Maricopa County, Arizona.

Unofficial Document