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DEP RTT REC'D FOR CENTERVILLE CITY

**PINEAE VILLAGE** *D*  
**MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS,**  
*02-217-0101 thru 0163* **AND**  
**RESERVATION OF EASEMENTS**

This Pineae Village Master Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements (the "Master Declaration") is executed by CityView Pineae Village 227, L.P., a Delaware limited partnership, whose Utah address is 7300 South 300 West, Suite 106, Midvale, Utah 84047 ("Declarant").

**RECITALS:**

1. Pineae Village is a Utah planned residential development consisting of patio homes, town homes, condominiums, open space and amenities, located in Centerville, Davis County, Utah ("Pineae Village") developed by CityView Pineae Village 227, L.P., a Delaware limited partnership, .

1.1. This Declaration of Covenants, Conditions and Restrictions for Pineae Village will be recorded in the office of the County Recorder of Davis County, Utah. A Final Plat for the Pineae Village Subdivision, as more particularly defined herein, was recorded concurrently therewith.

1.2. The legal description for the Pineae Village located in Davis County, Utah is described on Exhibit "A" attached hereto and incorporated herein by this reference.

2. Pineae Village Condominium is a Utah condominium development located within Pineae Village in Centerville, Davis County, Utah developed by CityView Pineae Village 227, L.P., a Delaware limited partnership, (the "Pineae Village Condominium").

2.1. A Declaration of Condominium for Pineae Village Condominium was or will be recorded in the office of the County Recorder of Davis County, Utah (the "Pineae Village Condominium Declaration"). A Final Plat for the Pineae Village Condominium was or will be recorded in conjunction with the development of Pineae Village.

2.2. The legal description for the Pineae Village Condominium located in Centerville, Davis County, Utah is described on Exhibit "B" attached hereto and incorporated herein by this reference.

3. Pineae Village Patio Homes is a Utah planned unit development located within the Pineae Village in Centerville, Davis County, Utah developed by CityView Pineae Village 227, L.P., a Delaware limited partnership, (the "Pineae Village Patio Homes").

3.1. A Declaration of Covenants, Conditions and Restrictions for Pineae Village Patio Homes was or will be recorded in the office of the County Recorder of Davis County, Utah (the "Pineae Village Patio Homes Declaration"). A Final Plat for the Pineae Village Subdivision, including the Pineae Village Patio Homes, has been recorded concurrently with this Master Declaration.

3.2. The legal description for the Pineae Village Patio Homes located in Davis County, Utah is described on Exhibit "C" attached hereto and incorporated herein by this reference.

4. Pineae Village Town Homes is a Utah Condominium Tract located within Pineae Village in Centerville, Davis County, Utah developed by CityView Pineae Village 227, L.P., a Delaware limited partnership, (the "Pineae Village Town Homes").

4.1. A Declaration of Covenants, Conditions and Restrictions for Pineae Village Town Homes was or will be recorded in the office of the County Recorder of Davis County, Utah (the "Pineae Village Town Homes Declaration"). A Final Plat of for the Pineae Village Subdivision, including the Pineae Village Town Homes, has been recorded concurrently with this Master Declaration.

4.2. The legal description for the Pineae Village Town Homes located in Davis County, Utah is described on Exhibit "D" attached hereto and incorporated herein by this reference.

5. Pineae Village Condominium, Pineae Village Patio Homes, and Pineae Village Town Homes are adjoining developments within Pineae Village (collectively "Pineae Village Properties").

6. A separate parcel, designated as Lot 1 on the Pineae Village Subdivision Final Plat, as more particularly described in Exhibit "E," attached hereto and included herein by reference, is located within the Pineae Village, but is excluded from the terms and restrictions of this Master Declaration as more specifically provided below.

7. The Pineae Village Properties will share the use of the Common Area and Facilities as more particularly described herein.

8. By subjecting the Common Area and Facilities to this Master Declaration, it is the desire, intent and purpose of Declarant to create open space in which beauty shall be substantially preserved, which will both enhance the desirability of living at the Pineae Village

Properties and increase and preserve the utility, attractiveness, quality and value of the lands and improvements therein.

9. This Master Declaration affects that certain real property described in Exhibits "A" through "D", specifically excluding the real property described in Exhibit "E."

10. Declarant has constructed or is in the process of constructing upon the Common Area and Facilities certain improvements.

11. Declarant intends to sell to various purchasers the fee title to the individual Units and Lots at the Pineae Village Properties, together with both (a) an appurtenant non-exclusive right to use the Common Area and Facilities and (b) a corresponding mandatory membership in the Master Association, as defined herein, and any other applicable Neighborhood Associations or sub-associations.

12. Declarant desires, by filing this Master Declaration to submit the Common Area and Facilities, and all improvements now or hereafter constructed thereon, to the provisions and protective covenants set forth herein.

**AGREEMENT:**

For the reasons recited above, and in consideration of the reciprocal benefits to be derived from the easements, covenants, restrictions, and requirements set forth below, the parties hereto, and each of them, hereby agree:

**I. DEFINITIONS**

As used in this Declaration (including the "Recital" section above) each of the following terms shall have the indicated meaning:

1. The term **Architectural Review Committee** shall mean the person or persons appointed to review the designs, plans, specifications, engineering, elevations, homes, architecture, construction materials, landscaping, fencing and so forth within the Project (the "ARC").

2. The term **Area of Common Responsibility** shall mean and refer to the area for which the MHOA is responsible to maintain, repair, replace, administer and regulate, including the Common Area and Facilities, as more particularly defined herein.

3. The term **Area of Personal Responsibility** shall mean and refer to the area of privately owned property or Limited Common Area for the exclusive use of the Owner, and for which the Owner is responsible to maintain, repair and replace.

4. The term **Articles of Incorporation** shall mean and refer to the Articles of Incorporation of the Pineae Village Master Association, Inc. on file or to be filed with the Utah Department of Commerce.

5. The term **Assessment** shall mean and refer to any amount imposed upon, assessed or charged a Member or an Owner by the Master Association.

6. The term **Building** shall mean and refer to any of the structures constructed in the Project.

7. The term **Bylaws** shall mean and refer to the Bylaws of the Master Association, a copy of which is attached to and incorporated in this Declaration by reference as Exhibit "F".

8. The term **Capital Improvement** shall mean and refer to all new improvements intended to add to, enhance or upgrade the nature, scope, utility, value, or beauty of the Tract, as opposed to ordinary repair and maintenance.

9. The term **Church Site** shall mean and refer to Lot 1 of the Pineae Village Subdivision Final Plat, as more particularly described in Exhibit "E," which Lot 1 is designated for Church Use and not otherwise subject to any of the Tract Documents, or covenants, conditions or restrictions set forth therein.

10. The term **Church Use** shall mean and refer to use of the Church Site by a church or religious organization for a permanent church facility including a chapel used for religious services and which may be used for church cultural and recreational activities. Residential areas and real property other than an expressly and explicitly designated Church Site may not be utilized for Church Use. No Dwelling Unit may be utilized for Church Use or on the Church Site.

11. The term **City** shall mean and refer to the City of Centerville in Davis County, Utah.

12. The term **City Ordinances** shall mean and refer to the Ordinances adopted by the City, as they may be amended from time to time.

13. The term **City General Plan** shall mean and refer to the General Plan for the development of real estate and other improvements within the City adopted by the City, as it may be amended from time to time.

14. The term **Common Areas and Facilities** shall mean and refer to collectively all real property and improvements, facilities or amenities in the Tract owned by the Master Association or in common by the Owners including but not limited to the following items. When used herein separately, Common Areas shall mean the real property defined herein and Common Facilities shall mean the improvements, facilities and amenities thereon.

14.1 The real property and interests in real property submitted hereby, including the entirety of the Tract and all improvements constructed thereon, excluding the individual Patio Home Lots, Town Home Lots and/or Condominium Units.

14.2 All Common Area and Facilities designated as such in the Final Plat;

14.3 All Exclusive Common Area and Limited Common Areas designated as such in the Final Plat;

14.4 All central open space and amenities as more particularly delineated in the Development Agreement incorporated by this reference;

14.5 The Tract's open space, landscaping, roads, walkways, pedestrian features, perimeter fencing, buffering, parks, recreational amenities, entry and entry monuments;

14.6 All utility installations and all equipment connected with or in any way related to the furnishing of utilities to the Tract and intended for the common use of all Owners, such as telephone, electricity, gas, water, sewer and other utilities;

14.7 All portions of the Tract not specifically included within the individual Lots; and

14.8 All other parts of the Tract normally in common use or necessary or convenient to the use, existence, maintenance, safety, operation or management of the Property owned by the Master Association for the common benefit of its Members.

Provided, however, utility installations such as telephone, electricity, gas, water, and sewer may be dedicated to the City and, if so, this definition shall not be construed to allow the Master Association to exclude the City from the ownership and control of the utility systems so dedicated.

15. The term **Common Expense** shall mean and refer to: (a) Expenses of administration, maintenance, repair or replacement of the Common Area and Facilities; (b) All sums lawfully assessed against the Owners by the Master Association; (c) Expenses allocated by the Master Association among the Owners; (d) Expenses agreed upon as common expenses by the Master Association; and (e) Expenses declared common expenses by the Declaration.

16. The term **Conditional Use Permit** shall mean and refer to a permit issued by the City for a conditional use of real property.

17. The term **Declaration** shall mean and refer to this Master Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements and if the context requires BOTH this Master Declaration and the Development Agreement.

18. The term **Dedicated Streets** shall mean and refer to those streets and cul-de-sacs within the Project formally dedicated to the City or any other municipal or governmental body politic, entity or agency.

19. The term **Development Agreement** shall mean that certain Development Agreement recorded March 8, 2006 against the Properties within the Pineae Village Subdivision, in the Davis County Recorder's Office at Entry No. 2150503, Book 3986, Pp. 1124-1198, as may be amended from time to time.

20. The term **Director** shall mean and refer to the voting representative of each Member of the MHOA.

21. The term **Declarant** shall mean and include Declarant and any person or persons who might acquire title from it to all or some of the unsold Lots or Units through purchase, assignment or other transfer including foreclosure or deed in lieu of foreclosure; or, in the situation where, any person purchases all, or some of the remaining Lots or Units in a sale in the nature of a bulk sale. The person acquiring any of such property from the Declarant shall be considered a Declarant with respect to that portion of the property so acquired and shall have the right to develop the property and/or sell such property in accordance with the terms and provisions of this Master Declaration and any Supplemental Master Declaration applicable to the property; provided, however, a notice of succession shall be recorded in the Office of the County Recorder signed by both the current Declarant and by its successor in interest as the new Declarant with respect to such property.

22. The term **Developmental Rights** shall mean and refer to the right granted hereunder to the Declarant, its agents, representatives, employees, successors and assigns, to develop and improve the Properties.

23. The term **Dwelling Unit** shall mean a home, dwelling or living unit constructed upon a Lot.

24. The term **Entry** shall mean the entry way into the Property or Properties.

25. The term **Entry Monument** shall mean the monuments, planter boxes, landscaping features and other physical improvements identifying the Property or Properties located at or near their Entry or entrances.

26. The term **Exclusive Common Area** shall mean and refer to that portion of the Common Area and Facilities intended for the exclusive use or primary benefit of one or more, but less than all, Neighborhoods.

27. The term **Final Plat** shall mean and refer to the Pineae Village Subdivision Final Plat showing all of the Neighborhoods and Common Area and Facilities, including roads, for the Tract, as recorded with the Davis County Recorder's Office concurrently with this Master Declaration.

28. The term **Guest** shall mean and refer to a family member, guest, invitee, licensee, and any person or occupant accompanied by a Member, or unaccompanied, who utilizes the

rights of the Member in and to the Common Area and Facilities or Exclusive Common Area and Facilities.

29. The term **Individual Charge** shall mean and refer to a charge levied against an Owner, Guest or Permittee for all expenses resulting from the act or omission of such Person, excepting the Owner's failure to pay any Assessment.

29.1 The act or negligence of any Guest or Permittee shall be deemed to be the act or negligence of the Owner responsible for such Person.

29.2 Individual Charges shall include, by way of illustration but not limitation, any expense resulting from the act or omission of any Owner, Guest or Permittee including:

29.2.1 The cost to repair any damage to any portion of the Tract or Improvement thereon on account of loss or damage caused by such Person; or

29.2.2 The cost to satisfy any expense to any other Owner or Owners or to the Master Association due to any intentional or negligent act or omission of such Person, or resulting from the breach by such Person of any provisions of the Tract Documents; and

29.2.3 Any transient occupancy tax, sales tax, use tax or other tax levied pursuant to the laws of the State of Utah and payable by any Owner, Guest or Permittee which the Master Association is or shall be required or entitled to collect on behalf of the levying authority, although this subsection is not considered an acknowledgment that any such tax may be levied.

While Individual Charges are not Assessments, they are secured by a lien in the same manner as Assessments, as set forth below. The Master Association also shall have all other remedies, both legal and equitable, described in the Tract Documents available against any Owner for nonpayment.

30. The term **Landscaping** shall mean and refer to the grass, trees, shrubs, bushes, flowers, plants, and like improvements located within the Common Area and Facilities, as well as the appurtenant sprinkling and irrigation systems.

31. The term **Lender** shall mean and refer to a Mortgagee.

32. The term **Lot** shall mean and refer to a separate physical part of the Property designated on the Final Plat as a Lot intended for independent use, including any Dwelling Unit and other Buildings or physical improvements constructed on the Lot. Mechanical equipment and appurtenances located within any one Lot, or located without said Lot but designated and designed to serve only that Lot, such as appliances, electrical receptacles and outlets, air conditioning compressors, furnaces, water heaters, apparatus, systems or equipment, fixtures and the like, shall be considered part of the Lot; so shall all decorated surfaces of interior walls, floors and ceilings, including but not limited to all paint, wallpaper, wall coverings, windows and window frames, doors and door frames, trim, carpeting, tile and linoleum. All pipes, wires,

conduits, or other utility lines or installations constituting a part of the Lot or serving only the Lot, and any structural members, parts, components or any other property of any kind, including fixtures or appliances within any Lot, which are removable without jeopardizing the integrity, soundness, safety or usefulness of the remainder of the Building within which the Lot is located shall be deemed to be part of the Lot.

33. The term **Lot Number** shall mean and refer to the number, letter or combination thereof designating a particular Lot.

34. The term **Master Assessment** shall mean and refer to the maintenance charges assessed each Owner and/or Unit or Lot by the Master Association to pay the Operating Expenses, and shall include an amount to fund an adequate reserve fund.

35. The term **Master Association** or **MHOA** shall mean and refer to all of the Owners of Patio Home Lots, Town Home Lots and Condominium Units in the Tract taken as or acting as, a group in accordance with the Declaration.

36. The term **Master Declaration** shall mean and refer to this Pineae Village Master Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements and where the context requires BOTH the Master Declaration and the Development Agreement.

37. The term **Master Site Plan** shall mean and refer to the Master Site Plan approved by the City for the development of the Project and other improvements, as it may be amended from time to time.

38. The term **Member** shall mean and refer to the members of the Master Association or where the context clearly requires the members of each Neighborhood Association.

39. The term **Mortgage** shall mean and refer to any mortgage, deed of trust or other security instrument (including the seller's rights under a contract for deed) by which a Lot or Unit or any part thereof or interest therein is encumbered. A First Mortgage is a Mortgage having priority as to all other Mortgages encumbering a Lot or Unit, or any part thereof or interest therein.

40. The term **Mortgagee** shall mean and refer to any person or entity named as the mortgagee, beneficiary or holder of the seller's interest (so long as in the case of the latter a copy of the contract for deed is given to the MHOA) under any Mortgage by which the interest of any Owner is encumbered, or any successor to the interest of such person under such Mortgage. A First Mortgagee shall mean and refer to any person or entity holding a First Mortgage including any insurer or guarantor of a First Mortgage. Any and all Mortgagee protections contained in the Master Declaration shall also protect the Declarant as the holder of a First Mortgage of a Lot or Unit, or any interest therein.

41. The term **Neighborhood** shall mean and refer to any residential area within the Project which is designated as a Neighborhood, whether or not governed by a Neighborhood



Association. By way of illustration and not limitation, a neighborhood of single family residences, patio homes, town homes, and condominium units might each be designated as a separate Neighborhood, or may be combined as one Neighborhood or more Neighborhoods. A Neighborhood may be comprised of more than one housing type. In addition, a parcel of land intended for development as any of the above may constitute a Neighborhood, subject to division into more than one Neighborhood upon development. Other Neighborhoods may be added by the Declarant from time to time subject to the terms of this Master Declaration, the Development Agreement and City Ordinances.

42. The term **Neighborhood Association** shall mean and refer to an association of property owners having jurisdiction, in whole or in part, over a specific Neighborhood concurrent with, but subordinate to, the MHOA.

43. The term **Office of the County Recorder** or **County Recorder** shall mean and refer to the Office of the County Recorder of Davis County, Utah.

44. The term **Operating Expenses** shall mean and refer to the common expenses of maintaining, repairing and replacing the Common Area and Facilities, and administering the MHOA.

45. The term **Owner** shall mean and refer to the person who is listed as the reputed owner or owner of record in the Office of the County Recorder of a fee or an undivided fee interest in a Lot or Unit, excluding a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

46. The term **Patio Home** shall mean and refer to a Dwelling Unit constructed upon a Patio Home Lot in the Patio Home Neighborhood.

47. The term **Patio Home Lot** shall mean and refer to a residential Lot or Unit as shown on the Final Plat for the Patio Homes Neighborhood, with or without walls or roofs in common with other single family dwelling Lots or Units and which shall include fee title to the real property lying directly below said single family dwelling Lot or Unit and such other real property as shown on the Final Plat, if any.

48. The term **Period of Declarant's Control** shall mean and refer to a period of time commencing on the date this Declaration is recorded and terminating on the occurrence of the earliest of the following events: (a) five (5) years from the effective date of this Declaration, (b) not less than 120 days after all of the land has been added or annexed to the Tract and 75% of the total number of Lots and/or Units have been conveyed, or (c) the Declarant executes and records a written Waiver of his right to control.

49. The term **Person** shall mean and refer to a natural person, corporation, partnership, trust, limited liability company, or other legal entity.

50. The term **Pineae Village Condominium** shall collectively and severally refer to the following items as the context requires:

50.1 The **Pineae Village Condominium Homeowners Association**, which shall mean and refer to the Pineae Village Condominium Homeowners Association, Inc., a Utah nonprofit corporation, consisting of all of the Owners in the Pineae Village Condominium Neighborhood acting as a group.

50.2 The **Pineae Village Condominium Declaration**, which shall mean and refer to that certain Neighborhood Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for Pineae Village Condominium recorded in the Office of the County Recorder of Davis County, Utah.

50.3 The **Pineae Village Condominium Neighborhood**, which shall mean and refer to all of the Units and the Common Area comprising Pineae Village Condominium, as more particularly described on Exhibit "B."

50.4 The **Pineae Village Condominium Owners** shall mean and refer to the Owners of Units at Pineae Village Condominium.

50.5 The **Pineae Village Condominium Permittees** shall mean and refer to all of the tenants, visitors, guests, invitees, family members, contractors, licensees, successors, and assigns of each Owner of a Lot at Pineae Village Condominium.

50.6 The **Pineae Village Condominium Final Plat** shall mean and refer to that certain condominium subdivision plat of Pineae Village Condominium recorded in the Office of the County Recorder of Davis County, Utah.

51. The term **Pineae Village Patio Homes** shall collectively and severally refer to the following items as the context requires:

51.1 The **Pineae Village Patio Homeowners Association**, which shall mean and refer to the Pineae Village Patio Homeowners Association, Inc., a Utah nonprofit corporation, consisting of all of the Owners in the Pineae Village Patio Homes Neighborhood acting as a group.

51.2 The **Pineae Village Patio Homes Declaration**, which shall mean and refer to that certain Neighborhood Declaration of Covenants, Conditions and Restrictions, and Reservation of

Easements for Pineae Village Patio Homes recorded in the Office of the County Recorder of Davis County, Utah.

51.3 The **Pineae Village Patio Homes Neighborhood**, which shall mean and refer to all of the Lots and the Common Area comprising the Pineae Village Patio Homes, as more particularly described on Exhibit "C."

51.4 The **Pineae Village Patio Homeowners**, which shall mean and refer to the Owner(s) of the Lot(s) at the Pineae Village Patio Homes.

51.5 **Pineae Village Patio Homes Permittees** shall mean and refer to all of the tenants, visitors, guests, invitees, family members, contractors, licensees, successors, and assigns of each owner of a Lot at the Pineae Village Patio Homes.

51.6 **Pineae Village Patio Homes Final Plat** shall mean and refer to the Final Plat for the Pineae Village Subdivision, recorded in the Office of the County Recorder of Davis County, Utah.

52. The term **Pineae Village Town Homes** shall collectively and severally refer to the following items as the context requires:

52.1 The **Pineae Village Town Homes Homeowners Association**, which shall mean and refer to the Pineae Village Town Homes Homeowners Association, Inc., a Utah nonprofit corporation, consisting of all of the Owners in the Pineae Village Town Homes Neighborhood acting as a group.

52.2 The **Pineae Village Town Homes Declaration**, which shall mean and refer to that certain Neighborhood Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for the Pineae Village Town Homes recorded in the Office of the County Recorder of Davis County, Utah.

52.3. The **Pineae Village Town Homes Neighborhood**, which shall mean and refer to all of the Units and the Common Area comprising the Pineae Village Town Homes, as more particularly described on Exhibit "D."

52.4 The **Pineae Village Town Homes Owners**, which shall mean and refer to the Owner(s) of the Unit(s) at the Pineae Village Town Homes.

52.5 The **Pineae Village Town Homes Permittees**, which shall mean and refer to all of the tenants, visitors, guests, invitees, family members, contractors, licensees, successors, and assigns of each Owner of a Unit at the Pineae Village Town Homes.

52.6 The **Pineae Village Town Homes Final Plat** shall mean and refer to the Final Plat for the Pineae Village Subdivision, recorded in the Office of the County Recorder of Davis County, Utah.

53. The term **Private Street, Road, Cul-de-sac, Way or Drive** shall mean and refer to those streets, roads, cul-de-sacs, ways, drives or turnabouts within the Project not dedicated to the City or any county, state, or other governmental body politic, entity or agency.

54. The term **Project** shall mean and refer to the entire Tract, including by way of illustration but not limitation all of the Properties, Neighborhoods, Lots, Units, Common Area and Facilities, Exclusive Common Area and Facilities, and all improvements submitted to this Master Declaration or, if the context clearly requires, an individual Neighborhood.

55. The term **Properties** shall mean and refer to all of the real property in the Project.

56. The term **Project Documents** shall mean and refer to the Development Agreement, Master Declaration and Bylaws, Rules and Regulations, and Articles of Incorporation of the MHOA and, if the context clearly requires, it shall include the Neighborhood Declarations, Bylaws, Rules and Regulations, and Articles of Incorporation of the Neighborhood Associations.

57. The term **Recreational, Oversized or Commercial Vehicle** shall mean and refer to any recreational, commercial or oversized vehicle, motor home, commercial vehicle, tractor, golf cart, mobile home or trailer (either with or without wheels), camper, camper trailer, boat or other watercraft, boat trailer, or any other recreational or commercial transportation device of any kind.

58. The term **Repair** shall mean and refer to merely correcting the damage done sometimes by accident or fire or other cause, but more often due to the ravages of time and the deterioration resulting from ordinary wear and tear, by substituting for the damage, decayed or worn-out parts, new material, usually similar to that replaced, and so restoring the structure to its original sound condition.

59. The term **Residence Number** shall mean and refer to the number, letter or combination of name, numbers and letters that identifies only one Lot or Unit in the Project.

60. The term **Resident** shall mean and refer to any person living or staying at the Tract. This includes but is not limited to all lessees, tenants and the family members, agents, representatives, or employees of Owners, tenants or lessees.

61. The term **Residential Lot or Unit** shall mean and refer to a Residential Lot or Unit in the Tract.

62. The term **Single Family** shall mean one family unit operating a common household.

63. The term **Single Family Residence** shall mean and refer to both the architectural style of a Dwelling Unit and the nature of the residential use permitted. No one shall be entitled to reside in a residence constructed on a Lot unless he or she is a member of the immediate family therein residing, or are authorized foster children or wards. No boarding houses or other group housing for unrelated people of any kind is allowed regardless of the method or structure of the occupancy arrangement.

64. The term **Size** shall mean and refer to the number of cubic feet, or the number of square feet of ground or floor space, within each Unit as computed by reference to the Final Plat and rounded off to a whole number. Certain spaces within the Units, such as the attic, basement, or garage space, may be omitted from the calculation or be partially discounted by the use of a ratio if the same basis of calculation is employed for all Units in the Project and if that basis is described in the Project Documents.

65. The term **Total Votes of the Master Association** shall mean and refer to the total number of votes appertaining to all Members of the Master Association.

66. The term **Town Home** shall mean and refer to a residential Lot or Unit as shown on the Final Plat or Master Site Plan for the Town Homes Neighborhood, with or without walls or roofs in common with other single family dwelling Lots or Units and which shall include fee title to the real property lying directly below said single family dwelling Lot or Unit and such other real property as shown on the Final Plat or Master Site Plan, if any.

67. The term **Town Home Lot** shall mean and refer to a Lot located in the Town Home Neighborhood.

68. The term **Tract** shall mean and refer to all of the real estate subject to the Declaration, as more particularly described in Recital 9.

69. The term **Unit** shall mean and refer to a separate physical part of the Property intended for independent use, including one or more rooms or spaces located in one or more floors or part or parts of floors in a building. Mechanical equipment and appurtenances located within any one Unit, or located without said Unit but designated and designed to serve only that Unit, such as appliances, electrical receptacles and outlets, air conditioning compressors, furnaces, water heaters, apparatus, systems or equipment, fixtures and the like, shall be considered part of the Unit; so shall all decorated surfaces of interior walls, floors and ceilings, including but not limited to all paint, wallpaper, wall coverings, windows and window frames, doors and door frames, trim, carpeting, tile and linoleum. All pipes, wires, conduits, or other utility lines or installations constituting a part of the Unit or serving only the Unit, and any

structural members, parts, components or any other property of any kind, including fixtures or appliances within any Unit, which are removable without jeopardizing the integrity, soundness, safety or usefulness of the remainder of the Building within which the Unit is located shall be deemed to be part of the Unit.

70. The term **Unit Number** shall mean and refer to the number, letter or combination thereof designating a particular Unit.

71. The term **Use Restrictions** shall mean and refer to the rules, regulations and use restrictions described with particularity below, as they may be modified, amended, repealed, canceled, limited, withdrawn or expanded from time to time.

72. The term **Voting Group** shall mean and refer to a group of Owners, Neighborhoods or sub-associations designated by the Declarant as a voting group.

## II. SUBMISSION

The Properties and Tract, as more particularly described in Exhibits "A" through "D", and specifically excluding real property described in Exhibit "E," is hereby subject to the terms and conditions of this Master Declaration.

The Properties and Tract is hereby made subject to, and shall be governed by this Master Declaration, applicable statutes and the covenants, conditions and restrictions set forth herein. The Properties and Tract is also subject to the right of the City to access the roads within the Project for emergency vehicles, service vehicles, and to all of the utility installations up to the residential meters.

The Properties and Tract is SUBJECT TO the described easements and rights of way. Easements and rights-of-way in favor of the City include any dedicated roadways and public utility easements as depicted on the Final Plat or other recorded documents.

TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property, including by way of illustration and not limitation all easements and rights-of-way in and to the detention basin, entry way, monument, and park.

ALL OF THE FOREGOING IS SUBJECT TO: All liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservation and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described Tract or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible and necessary easements and rights-of-way; all easements and rights-of-way of record; any easements, rights of-way, encroachments, or discrepancies shown on or revealed by the Final Plat or

otherwise existing; an easement for each and every common area improvement, equipment, pipes, lines, cables, wires, utility systems, or similar facilities which traverse or partially occupy the above-described Tract; and all easements necessary for servicing, repairing, ingress to, egress from, maintenance of, and replacement of all such common area improvements, equipment, pipes, lines, cables, wires, utility systems, and similar facilities.

### III. NATURE OF OWNERSHIP AND MEMBERSHIP

**3.1 Description of Improvements.** It is intended that the Tract will consist of Common Area and Facilities, Patio Home Lots, Town Home Lots and Condominium Units (collectively "Lots and Units"). Pursuant to Section 12-41-110 of the City Planned Development Overlay Zone, any future subdivision or development of the Common Area is prohibited. The location and configuration of the improvements referred to in the foregoing sentence are depicted on the Final Plat.

**3.2 Description and Legal Status of the Property.** The Final Plat shows or will show the Lot Number of each Lot and/or Unit, its location, any Limited Common Area and Facilities which are reserved for its exclusive use, and the Common Area and Facilities to which it has immediate access. All Lots and Units shall be capable of being independently owned, encumbered and conveyed; and shall have an appurtenant undivided percentage of ownership interest in the Common Area and Facilities, subject to the rights of Declarant, the City, and all easements of record. Title to the Common Area and Facilities is hereby granted to and shall be owned by the Master Association for and in behalf of the Owners.

**3.3 Allocation of Profits, Losses and Voting Rights.** Profits, losses and voting rights shall be distributed among the Owners equally. The percentage of ownership interest in the Common Area and Facilities appurtenant to each Lot or Unit is equal. The undivided interest of each Owner in the Common Area and Facilities shall have a permanent character and shall not be altered without the consent of two-thirds (2/3) of the Owners expressed in an amended declaration duly recorded.

**3.4 Membership in the MHOA.** The initial Members of the MHOA are the Pineae Village Patio Homeowners Association, the Pineae Village Condominium Homeowners Association, and the Pineae Village Town Homes Association. Pursuant to City Ordinances and the Development Agreement, membership in the MHOA is mandatory for all Owners within the Project, and their grantees, successors and permitted assigns.

**3.5 Assignment or Transfer.** Membership in the MHOA may not be assigned, transferred, pledged, or alienated in any way from its Neighborhood, and any attempt to do so shall be voidable by MHOA.

**3.6 Area of Application.** This Declaration shall apply to all of the property within the Project, the Properties and the Tract, as defined herein.

**3.7 Right to Expand Application, Withdraw Land, Reconfigure Structure, or Change the Nature of the Use.** Without any other additional approval required, but subject to compliance with City Ordinances and the Development Agreement, the Declarant reserves and is hereby granted and shall have the unilateral right to:

**3.7.1 Annexation.** Expand the application of this Master Declaration in order to annex additional land, Common Area and Facilities, Exclusive Common Area and Facilities, Limited Common Area, Units, or Lots;

**3.7.2 Neighborhoods.** Add, withdraw or merge Neighborhoods and Directors;  
and

**3.7.3 Withdraw Land.** Withdraw land from this Master Declaration.

A written supplement to this Master Declaration duly recorded shall be necessary and sufficient to expand the application of this Master Declaration.

**3.8 Bylaws.** The initial Bylaws of the Association shall be adopted by the initial Board of Directors.

**3.9 Neighborhood Associations or Sub-Associations.** The Board of Directors has the right to require any Neighborhood or group of Neighborhoods to form a neighborhood association or sub-association which shall assist, but be subordinate to the MHOA. Membership in such a neighborhood association or sub-association will be mandatory and all members of the Neighborhood will automatically become a member of the neighborhood association or sub-association.

**3.10 Liability of Board of Directors.** The Master Association shall indemnify every officer and Member of the Board of Directors against any and all expenses, including but not limited to attorney's fees reasonably incurred by or imposed upon any officer or Member of the Board of Directors in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or Member of the Board of Directors. The officers and Members of the Board of Directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and Members of the Board of Directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Master Association (except to the extent that such officers or Members of the Board of Directors may also be Members of the Master Association), and the Master Association shall indemnify and forever hold each such officer and Member of the Board of Directors free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall be exclusive of any other rights to which any officer or Member of the Board of Directors, or former officer or Member of the Board of Directors, may be entitled. The Master Association shall, as a common expense,



maintain adequate general liability and Officer's and Director's insurance coverage to fund this obligation, if such insurance is reasonably available.

**3.11 Developmental Rights.** The following Developmental Rights are hereby granted or reserved by Declarant:

**3.11.1 Easements.** Declarant hereby reserves an easement throughout the Project for a period twenty (20) years from the recording of this Master Declaration for the purpose of completing all improvements contemplated by the Master Declaration and the Final Plat, including but not limited to improvements to any land annexed.

**3.11.2 Construction of Improvements.** Declarant hereby reserves the right, but is not obligated to construct any improvements, buildings, structures or improvements that Declarant desires to construct on the Property, or any other real estate owned by Declarant, regardless of whether the same ever become part of the Project.

**3.11.3 Use of Lot/Unit as Sales Office.** Declarant hereby reserves the right to maintain sales offices, management offices, signs advertising the Project and models in any of the Units which it owns or leases or on the Common Area and Facilities of the Project for so long as Declarant is an Owner within the Project. All Declarant installed signage shall comply with City Ordinances, as the same may be changed from time to time. Declarant shall be entitled to utilize, at any one time, any number of Lots or Units which it owns or leases and some or all of the Common Area and Facilities as sales offices, management offices, and models anywhere in the Project. Declarant may relocate sales offices, management offices and models to other Units or Common Area and Facilities at any time. Notwithstanding an Owner's right to resell his Lot or Unit and list such Lot or Unit with any firm or agency as he shall determine, no person or entity other than Declarant and/or its duly appointed affiliates, successors, agents or assigns, shall have the right to market or initially sell Lots or Units within the Project.

**3.11.4 Modifications to Property.** Notwithstanding anything to the contrary contained in this Master Declaration, Declarant may unilaterally, in its sole discretion make such alterations, changes or modifications to any property, Lot or Unit owned by it or the adjacent Common Area and Facilities or Exclusive Common Area and Facilities, as Declarant deems necessary or appropriate including but not limited to the creation or removal of interior walls and modifications to plumbing and electrical systems.

**3.11.5 Project Name Change.** During the Period of Declarant's Control, Declarant hereby reserves the right to unilaterally change the name of the Project or a Neighborhood or to redistrict Neighborhoods.

**3.11.6 Developmental Rights.** Neither the MHOA, Neighborhood Association, Board of Directors, or any Committee, nor any Owner or Member may take any action or adopt any rule or regulation that interferes or diminishes any Developmental Rights hereunder, without Declarant's express prior written consent, and any action taken in violation of this Section shall be null and void and have no force or effect.

#### IV. EASEMENTS

4.1 **Grant of Easement.** Declarant hereby reserves to itself and grants to the MHOA a nonexclusive, perpetual right-of-way and easement over, across and through the Neighborhoods, together with the right to use, operate, maintain, repair and replace the Common Area and Facilities and Exclusive Common Area and Facilities, subject to all of the terms, covenants, conditions and restrictions set forth herein.

4.2 **Common Use of Easement.** Said easement is to be used in common for ingress and egress over the Common Area by the Declarant and each Neighborhood and its Owners, subject to all of the terms, covenants, conditions and restrictions set forth herein.

4.3 **Private Easement.** The easement created is intended to be used as a private non-exclusive easement for the exclusive use and benefit of Declarant, each Neighborhood and its Owners.

4.4 **Benefited Expense Regarding Landscaping.** Each Neighborhood is hereby empowered to and may, with the prior written consent of the MHOA, elect, at its sole expense and for its benefit, to upgrade its Neighborhood, or any part thereof (the "Benefited Expense"), although such Benefited Expense shall not be considered part of the Operating Expenses.

4.5 **Encroachments.** If any part of the Common Area and Facilities or Exclusive Common Area or Facilities encroaches or shall hereafter encroach upon a Lot or Unit or Lots or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Lot or Unit encroaches or shall hereafter encroach upon the Common Area and Facilities, or upon an adjoining Lot or Unit or Lots or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. Such easements shall extend for whatever period the encroachment exists. Such encroachments shall not be considered to be encumbrances either on the Common Area and Facilities or the Lots or Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any improvement constructed or to be constructed within the Project, by error in the Plat, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

4.6 **Improvements.** Improvements, including Lots or Units, Common Area and Facilities, Exclusive Common Area and Facilities and Limited Common Area and Facilities, constructed as subsequent phases of the Project may encroach upon portions of the Common Area and Facilities of earlier phases of the Project. A perpetual easement for such encroachment and this Master Declaration necessary to repair, maintain and operate such improvements is hereby granted.

4.7 **Rights of Access.** Each Owner shall have the right to ingress and egress over, upon and across the Common Area and Facilities as necessary for access to the Lot or Unit he is occupying and to any Limited Common Area and Facilities appurtenant to his Lot or Unit, and

he shall have the right to the horizontal, vertical and lateral support of his Lot or Unit. Neighborhoods may have Exclusive Common Area and Facilities for the benefit of one or more, but not all, Neighborhoods.

**4.8 Declarant's Easement.** The MHOA hereby grants and conveys to the Declarant an exclusive easement to make such use of the Common Area and Facilities and Exclusive Common Area and Facilities, as may be necessary or convenient to perform the duties and functions that each is obligated or permitted to perform pursuant to this Master Declaration, including, without limitation, the right to construct the Common Area and Facilities for use by the Owners and Members.

**4.9 Construction Easements.** The Declarant hereby reserves for itself and its affiliates and assignees a temporary construction easement over the Common Area and Facilities and Exclusive Common Area and Facilities for the purpose of doing all things that are reasonably necessary as a part of constructing any new improvements for the Project including all physical improvements as well as all Lots, Units, Common Area and Facilities, Limited Common Area and Exclusive Common Area and Facilities. The Owners of Lots and Units do hereby acknowledge and agree that there will be construction activities, traffic, noises, odors and vibrations which may temporarily disrupt their quiet enjoyment of their Lots, Units and the Common Area and Facilities, and Exclusive Common Area and Facilities until all improvements are complete, and such Owners do hereby waive any right to object to such construction activity; provided, however, Declarant shall endeavor to use reasonable efforts to minimize the adverse impact of such construction activities on the Owners of Lots, Units and Common Area and Facilities and Exclusive Common Area and Facilities in the Project. Declarant's construction activities pursuant to the easement granted hereunder shall not be deemed to be a violation of the Use Restrictions.

**4.10 Locations Facilities Easements.** Declarant reserves a non-exclusive easement for itself and its affiliates and assignees to construct, operate, maintain, repair and replace all types of telecommunication facilities, including but not limited to roof antennas, within suitable locations for such facilities (the "Locations of Facilities") within the Project. Declarant further reserves a right of access to the Locations of Facilities over, across, and through all other Common Area and Facilities and Exclusive Common Area and Facilities of the Project in order to access the Locations of Facilities to exercise the rights established herein. Declarant reserves the perpetual right to transfer by easement, license agreement or other conveyance the rights reserved hereunder to one or more telecommunication facilities providers. Declarant may exercise all of such rights unilaterally and without the consent of any Owner, Mortgagee or the MHOA. The MHOA, on behalf of all Owners, agrees to execute such further and additional instruments as may be requested by Declarant documenting the rights hereunder, in form satisfactory to the Declarant, and any assignee of its rights hereunder.

**4.11 Declarant's Non-Exclusive Easement.** Declarant reserves a non-exclusive easement for itself and its affiliates and assignees over, through and under the Property for ingress to, egress from, and installation of all utility and service lines and systems, including, without limitation, water, sewer, gas, telephone, electricity and cable communication that service

the Property or any portion thereof as well as any such lines and systems which service property owned by the Declarant. Upon installation of such utilities the responsibility to repair, maintain and replace the utilities shall be assumed by the MHOA or public or quasi-public entity having jurisdiction over the utility.

**4.12 Entry Monuments, Pedestrian Pathways and Amenities.** Declarant reserves a non-exclusive easement for itself and its affiliates and assignees to construct, operate, maintain, repair and replace any Entry Monument or Entry feature for the Project and all pedestrian pathways and amenities. Entry monuments and features, pedestrian pathways and amenities shall be installed by the developer in accordance with the Development Agreement. All Common Areas and amenities within the Project shall comply with the Common Areas and Amenities Plan as adopted in the Development Agreement. All entry monuments and features, pedestrian pathways and amenities shall be maintained by the MHOA in accordance with the terms and conditions of this Master Declaration and the Development Agreement.

**4.13 Reservation of Rights.** All conveyances of Lots or Units within the Project hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve such easements and/or licenses as are provided herein, even though no specific reference to such easements appears in any such conveyance.

**4.14 Common Area Repairs.** All Common Areas shown on Final Plat are subject to public utilities and drainage easements for the installation and maintenance of improvements and such easements shall be subject to the right of the City to require the Master Association to assess its members to repair streets, landscaping etc., where needed to repair or replace the public utilities.

**4.15 Gold Easement.** The Declarant hereby grants to Donald F. Gold and the owner of Parcel No. 02-095-0040 an easement and right of way for use as a driveway to access the main road servicing the Tract and for ingress and egress to and from said Parcel.

## V. VOTING

**5.1 Directors by Neighborhood and at Large.** Subject to the Declarant's control during the Period of Declarant Control, the MHOA shall have at least three (3) Directors and not more than seven (7) Directors. The Board of Directors is not obligated, but may elect to establish a districting form of elections to the Board by assigning each Neighborhood a specific number of Directors to be elected from each Neighborhood, provided that at least one (1) but not more than three (3) Directors may be elected at large. If a districting form of electing directors is not established then all Directors will be elected at large.

**5.2 Voting.** The Owner of each Lot or Unit shall be entitled to one vote for each Lot or Unit owned, regardless of size or value. The voting rights appurtenant to each Lot, Unit or Membership shall vest upon execution and recording of this Master Declaration.

## VI. INITIAL USE RESTRICTIONS

6.1 **General.** Subject to the Developmental Rights, the Lots, Units, Common Area and Facilities, and Exclusive Common Area and Facilities, including but not limited to the Limited Common Area, shall be used in accordance with the following restrictions:

6.1.1 **No Commercial Use.** Except to the extent specifically permitted by this Master Declaration, Owners shall not make any commercial use of the Lots or Units, or any portion thereof, with the exception of home occupations which do not increase traffic into the Property, subject to rules and regulations enacted by the Board of Directors; provided, however, that nothing in this subsection shall prevent Declarant or an affiliated entity or a duly authorized agent from using any Lot or Unit owned or leased by Declarant as sales offices and model units or a property management office or for other commercial purposes.

Home based businesses are allowed under limited circumstances, and must comply with community guidelines. The prior written consent of the Board of Directors is required for any type of home based business. No businesses are allowed that have employees of any kind, or that have any customers that are not residents of the community. Examples include, but are not limited to: day care/pre-schools, hair/nail salons, photo studios, auto repair, general office (i.e. mortgage, accounting, legal), call centers, etc. In the event of a dispute between an Owner and the Board of Directors regarding compliance with this subsection, the decision of the Board of Directors shall be final, conclusive and binding.

6.1.2 **Subject to Project Documents.** Use of the Lots and Units shall be pursuant to the Project Documents, and rules and regulations of the MHOA, as each document may be amended from time to time.

6.1.3 **“For Sale” or “For Rent” Signs.** One “For Sale” or “For Rent” sign may be placed in a Dwelling Unit, but it must be located in the front window of the Dwelling Unit, must be professionally prepared, and may not exceed a total of 378 square inches.

6.1.4 **Owner Rights of Occupation and Use.** Subject to the payment of all Assessments and other charges approved by the MHOA and levied against the Owners and Members, and subject to compliance with the provisions of this Master Declaration, and with rules and regulations promulgated from time to time by the MHOA, each Owner and Member shall have the right with all other Owners and Members to occupy and use the Lots, Units, Common Area and Facilities, and the Exclusive Common Area and Facilities.

6.1.5 **No Construction.** No Owner shall erect or construct, in the Common Area and Facilities and Exclusive Common Area and Facilities any structure of any type whatsoever.

6.1.6 **Placement of Outbuildings.** Outbuildings such as sheds are only permitted on Lots with detached Single Family Residences and then only upon approval of the Board of Directors.

**6.1.7 Storage of Vehicles.** No Owner shall place, store, keep or permit to be placed, stored or kept, upon the Common Area and Facilities or Exclusive Common Area and Facilities any personal property, including, but not limited to, vehicles of any type except pursuant to the rules and regulations of the MHOA without the prior written approval of the Board of Directors.

**6.1.8 Unauthorized Activity.** No noxious, offensive, illegal or unauthorized activity shall be carried on in or upon any part of the Project nor shall anything be done on or placed in or upon any part of the Project which is or may become a nuisance or may cause unreasonable embarrassment, disturbance or annoyance to Owners. Normal construction activities shall not be considered to violate the terms and conditions of this Section and by accepting a deed to a Lot or Unit, an Owner or Member acknowledges that noises, lights and odors common to recreational and commercial activities, as well as construction activities, may exist on or near the Property, at any time and from time to time.

**6.1.9 Safety.** No activities shall be conducted, or improvements constructed, in or upon any part of the Project which are or may become unsafe or hazardous to any person or property.

**6.1.10 Signage Generally.** No signs, flags or advertising devices of any nature, including, without limitation, for sale or for rent signs, political, informational or directional signs or devices, shall be erected or maintained on any part of the Project, except as may be necessary temporarily to caution or warn of danger, except as may be used by Declarant as part of its sales program, except to advertise the Project, or except as otherwise approved by Declarant or, after expiration of the Period of Declarant's Control, the Board of Directors.

**6.1.11 Restriction of Animals.** No animals, livestock or poultry of any kind shall be raised, bred or kept in any Lot or Unit, except that dogs, cats, birds or other household pets, two or less in total number, may be kept provided that they are not kept, bred or maintained for any commercial purpose. Notwithstanding the foregoing, no animals or fowl may be kept on the Properties which result in an annoyance or are obnoxious, by noise, smell or otherwise, to Owners. All pets must be kept within the boundary of the Lot or Unit or on a leash attended to by a Person when in the Common Area or Exclusive Common Area. Such pets may not be kept in the Limited Common Area unless attended to at all times by a Person. All pet waste must be immediately cleaned-up. The following are not considered household pets: reptiles, rodents, swine, insects and animals weighing fifty (50) pounds or more. This Section may be made more restrictive by Rule of the MHOA. A dog which repeatedly barks, or a cat that howls, whether or not within the Owner's yard, will be considered to be a nuisance. No outside dog houses or dog runs are allowed without the prior written consent of the Board of Directors.

**6.1.12 Smoking.** The Board of Directors may prohibit smoking in any area or the whole of the Project.

**6.1.13 Littering.** Owners and Members shall not, and shall not permit their Guests, to litter.

**6.1.14 Trash.** No burning trash, garbage or other waste materials will be permitted on the Property. Garbage cans must be screened from view for the streets, except for a period not to exceed 24 hours on the day of garbage collection.

**6.1.15 Window Coverings.** The Board of Directors shall have the right to establish rules requiring interior and exterior window coverings to present a uniform appearance or common design scheme from the exterior of Dwelling Units.

**6.1.16 Reasonable Accommodation.** No Dwelling Unit shall be used to accommodate more persons than it was designed to accommodate comfortably and safely.

**6.1.17 Alterations.** Except as otherwise permitted by this Master Declaration, no Owner shall, without the prior written consent of the Board of Directors, make or permit to be made any alteration, improvement or addition in or to any Lot or Unit. Examples of improvements that must be submitted for review include but are not limited to the following: swimming pool, tennis courts, basketball court, accessory buildings (storage sheds, detached garage structures, etc.) fencing, landscaping, decks and walls. In addition, any alterations of any kind or nature to the primary structure including changes in colors or materials, awnings, roofing, windows, porches, courtyards, etc. must also be submitted for review. Architectural designs, plans and specifications showing the nature, kind, shape, color, size, materials, and location of all exterior changes or improvements must be submitted for review and approval prior to construction.

**6.1.18 Maintaining Structural Soundness.** No Owner shall, without the prior written consent of the Board of Directors, do any act that would impair the structural soundness or integrity of the Buildings or the safety of property, impair any easement or hereditament appurtenant to the Project.

**6.1.19 Actions Affecting Insurance.** Nothing shall be done or kept in any Lot or Unit or in the Common Area and Facilities and Exclusive Common Area and Facilities or any part thereof which would result in cancellation of the insurance on the Project or any part thereof, nor shall anything be done or kept in any Lot or Unit which would increase the rate of insurance on the Project or any part thereof over what the MHOA but for such activity, would pay, without the prior written consent of the Board of Directors.

**6.1.20 Violation of Statutes.** Nothing shall be done or kept in any Lot or Unit or in the Common Area and Facilities and Exclusive Common Area and Facilities or any part thereof which would be in violation of any statute or rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

**6.1.21 Damage or Waste.** No damage to, or waste of, the Properties or any part thereof shall be committed by any Owner, Member, Guest, tenant, visitor or invitee, and each Owner or Member shall indemnify and hold the MHOA and the other Owners or Members

harmless against all loss resulting from any such damage or waste caused by him or his Guests, tenants, visitors, or invitees.

6.1.22 **Use of Lots.** No Owner shall violate the rules and regulations for the use of Lots, Units, Common Area and Facilities and Exclusive Common Area and Facilities as adopted from time to time by the MHOA.

6.1.23 **Owner-Occupancy.** The Board of Directors may unilaterally implement Owner occupancy requirements by rule and without further Owner approval required. The term "owner-occupied" shall mean a Lot occupied by one of the following:

6.1.24.1 The owner of record, as shown in the Office of the County Recorder of Davis County, Utah; or

6.1.24.2 The spouse, children or parents of the owner of record; or

6.1.24.3 The shareholder, partner, member, trustor, beneficiary or other legal representative of an institutional owner (provided, such person holds a beneficial interest in such legal entity of at least 50%) and/or his spouse, children or parents.

6.1.24 **Rental Restrictions.** The Board of Directors may unilaterally implement rental restrictions and prohibitions by rule and without further Owner approval required.

6.1.25 **Leases.** All leases and rental agreements are subject to the following restrictions:

6.1.25.1 Any lease agreement between an Owner and a renter respecting a Lot or Unit shall be subject to the Project Documents and any failure by the renter to comply with the terms of such documents shall be considered a material default under the lease.

6.1.25.2 **Leases Must Be In Writing.** All such lease agreements shall be in writing. Other than the foregoing, there is no restriction on the right of any Owner to lease his property.

6.1.25.3 **Owner Responsible for Renters.** An Owner shall be responsible and liable for any damage to the Project caused by his renter.

6.1.25.4 **Minimum Lease Terms.** All leases shall be for a minimum term of twelve (12) months.

6.1.26 **Partition of Property.** By accepting title to a Lot or Unit, each Owner, for himself and for his heirs, successors-in-title and assigns, does absolutely and forever waive any right to seek or obtain physical partition of the property, or any portion thereof, and does further waive the right to seek or obtain partition of the property by means of the sale of thereof, in whole or in part, unless the institution of such suit or action for partition has been approved by the affirmative vote of the same number of Owners that would be required to sell all or any



portion of the Project pursuant to and in compliance with this Master Declaration and the Declarant, if Declarant still then retains the right to control the MHOA. Notwithstanding the foregoing, there shall be no limitation on judicial sale in lieu of partition in the case of co-owners of individual Lots or Units.

**6.1.27 Validity of Master Declaration.** It is intended that this Master Declaration alone, incorporating by reference the Bylaws, Articles, rules and regulations of the MHOA, shall govern all rights with respect to the use, possession, enjoyment, management and disposition of the Property. Accordingly, all rights with respect to the use, possession, enjoyment, management and disposition of the property which an Owner might otherwise have are hereby unconditionally and irrevocably subordinated to this Master Declaration for so long as this Master Declaration shall remain in effect.

**6.1.28 Fencing.** Perimeter and internal fencing shall be provided within the Project by the developer in accordance with the Development Agreement and the Fencing Plan adopted therein. The MHOA shall maintain all perimeter and internal fencing in accordance with the terms of the Development Agreement. The following fencing is expressly prohibited: Front yard fencing of any kind (the only exceptions may be on corner lots and/or collector roads if expressly approved in writing by the Board of Directors), fencing inside fencing, fencing (including by way of illustration but not limitation all hedges, trees, bushes, shrubs or other animate or inanimate, natural or artificial objects) behind entry monuments and other monuments, planter boxes or special landscaping established by the Declarant, spite fences, and any other fencing not expressly approved by the Board of Directors in writing. Block and wrought iron fencing is the only fence type which are specifically approved, any other type of fence must be approved in advance and in writing by the Board of Directors.

**6.1.29 Satellite Dishes.** Satellite dishes may be installed in accordance with FCC regulations taking into consideration the written guidelines established for or by Board of Directors. Further, Declarant may identify the location of satellite ports on each Lot or Unit where an acceptable quality signal can be obtain. In the event, the Declarant so designates the location of the satellite ports then any satellite dish must be installed at the location of the port.

**6.1.30 Storage and Parking of Motor Vehicles, Trailers and Transportation Devices.** Except as otherwise expressly and specifically stated herein or in a Neighborhood Declaration (and in the event of a conflict the more restriction provision shall apply), the driving, parking, standing and storing of motor vehicles throughout the Project shall be subject to the following:

**6.1.30.1 Parking Rules.** The parking rules and regulations adopted by the Board of Directors from time to time;

**6.1.30.2 Recreational Vehicles.** Recreational vehicles may only be stored on and within the Lots with detached Single Family Residences. Recreational vehicles must be stored behind a fence or in a garage, except for loading and unloading which cannot exceed 24 hours in any 72 hour period. No recreational vehicles shall be parked on or within any public or private roads, streets or driveways. In no event may recreation vehicles be stored overnight in

any part of the Project containing attached Lots or Units. Recreation vehicles shall include by way of illustration but not limitation boats, trailers, utility trailers, buses, motor homes, motorcycles, all terrain vehicles, off road vehicles, snowmobiles, campers, and any other related vehicles defined as recreational vehicles by the Board of Directors.

**6.1.30.3 Obstacle or Dangerous Situation.** No motor vehicle or trailer may be parked or stationed in such a manner so as to create a potentially dangerous situation, so as to create an obstacle or along any street or road, or in front of any garage, walkway, driveway, Building or Lot, or in an unauthorized Common Area.

**6.1.30.4 Designated Areas.** Residents may only park their motor vehicles within their garages or in other areas designated by the Declarant or MHOA.

**6.1.30.5 Red Zones and Fire Lanes.** Residents may not park their motor vehicles in red zones, fire lanes, guest or visitor parking, or other unauthorized areas.

**6.1.30.6 Guest Parking.** Guests and visitors shall park their motor vehicles in Common Area designated for "Guest" or "Visitor" parking.

**6.1.30.7 Repairs.** No Owners or Residents shall repair or restore any vehicle of any kind in, on or about any Lot or the Common Area, except for emergency repairs, and then only for a seventy-two (72) hour period to enable movement thereof to a proper repair facility.

**6.1.30.8 Garage Alterations Prohibited.** No garage may be altered in such a manner that the number of motor vehicles which may reasonably be parked therein after the alteration is less than the number of motor vehicles that could have been reasonable parked in the garage as originally designed and constructed.

**6.1.30.9 Access.** No motor vehicle shall be parked in such a manner as to inhibit or block access to a Lot, garage, covered parking space, uncovered parking space, entrance, exit, or parking area.

**6.1.30.10 Intended Purposes.** All parking areas shall be used solely for the parking and storage of motor vehicles used for personal transportation.

**6.1.30.11 Damaged or Disabled Vehicles.** Vehicles that are not operational or licensed or which leak fluids must be stored in a garage or behind an enclosure and so as not to be visible from the street or another Lot or Unit.

**6.1.31 Landscaping.** Perimeter, buffer and internal Landscaping within the Project shall be provided by the developer in accordance with the terms and conditions of the Development Agreement and the Planned Development Landscaping Plan adopted therein. The MHOA shall maintain all perimeter, buffer and internal Landscaping in accordance with the terms of the Development Agreement and City Ordinances.

6.1.31.1 **Installation Deadline.** Landscaping for Lots shall be installed by the developer in accordance with the terms and conditions of the Development Agreement.

6.1.31.2 **Maintenance Costs for Entry and Entry Monuments.** The Declarant may provide water and power utility services to the Entry, Entry Monuments and other common elements at its expense (the "Common Utility Service"). Such Common Utility Service shall be maintained and paid for as a Common Expense; provided, however, the Declarant may elect to provide such Common Utility Services through a meter or meters on an individual Lot or Lots and, if so, each such Owner agrees, by accepting a deed or other document of conveyance to such Lot, to provide, and not terminate, delay or interrupt, those Common Utility Services to the Entry, Entry Monument or other common elements not separately metered and billed to the Owner by the provider, although in such circumstance the Owner of each such Lot shall be entitled to reasonable water and power credits for the additional charges as determined by the Board of Directors.

6.1.32 **Chimes and Musical Sound Makers.** Chimes, dream catchers, bells, tubes or other objects hung vertically outside the Unit which ring, strike or otherwise produce musical sounds or harmony heard by other residents are prohibited.

6.1.33 **View Impairment.** The Declarant and its affiliates and assigns do not guaranty or represent that any view over and across any property, including any Lot, Unit or Building will be preserved without impairment. Neither the Declarant nor the Association shall have the obligation to prune or thin trees or other landscaping except as set forth herein. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

6.1.34 **Entry Monument.** If an Owner purchases a Lot which includes a common improvement, including by way of illustration but not limitation an Entry, Entry Monument, planter, planter box, planter strip, perimeter fence, wall, street light, exterior lighting or other landscaping treatment of any kind, the Owner may not improve his property or place any plant, hedge, tree, bush, shrub or object, natural or artificial, behind, to the side or in front of such improvement or feature or so as to impair, obstruct, block or impede the view or purpose of the Entry, Entry Monument or other improvement, planter box, landscaping strip, or any such special landscaping feature.

## VII. INSURANCE AND INDEMNITY

7.1 **Insurance.** The Board of Directors may adopt General Insurance House Rules, Policies and Procedures intended as a guide for owners and residents in order to maintain the insurability of the project, keep the insurance premium reasonable, and enforce the maintenance responsibilities of the individual owners.

7.2 **Insurance Obligation of the Association.** The Association shall obtain the following insurance coverage (collectively, "Association Master Policy"):

7.2.1 **Public Liability.** Public liability coverage for the Common Area and Facilities;

7.2.2 **Common Area and Facilities.** Property, fire and extended hazard coverage for all Common Areas, Elements and Facilities;

7.2.3 **Buildings and Units.** Property, fire and extended hazard coverage for all Buildings that contain more than one Unit, including any improvement which is a permanent part of a Building and is considered Common Area, Elements and Facilities;

7.2.4 **D&O.** Directors and officers coverage; and

7.2.5 **Fidelity Bond.** A fidelity bond.

The Association Master Policy **DOES NOT** cover the contents or the personal property in the Unit or belonging to the Owner or renter (as defined below), or personal liability. Coverage C (as that term is defined by the standard homeowners insurance policy) – Personal Property is excluded from the Association Master Policy. The Association **IS NOT REQUIRED** to cover property, fire or hazard insurance on a Lot or Unit or loss of business, rents or rental income although it expressly reserves and is hereby granted the right to obtain such and other coverage for its benefit.

7.3 **Minimum Amount of Insurance Coverage.** The liability insurance purchased by the Association shall be in an amount not less than \$1,000,000.00 per occurrence and \$2,000,000.00 per aggregate and optional umbrella liability coverage to be determined by the Board of Directors from time to time for bodily injury, death, and property damage. This amount may be increased or decreased unilaterally by the Board of Directors.

7.4 **Name Association as “Loss Payee” or “Additional Insured.”** Any insurance policy obtained independently by a Neighborhood Association, if any, shall name the Master Association as a certificate holder, additional insured and/or loss payee if applicable.

7.5 **Premium a Common Expense.** The premiums for insurance coverage and the fidelity bond are to be considered a Common Expense.

7.6 **Insurance Obligation of Owner.** The foregoing obligation and right of the Association to purchase insurance coverage **DOES NOT** preclude the right or negate the obligation of each Owner to insure his own Lot or Unit for his benefit. EACH OWNER SHALL OBTAIN AT LEAST THE FOLLOWING INSURANCE COVERAGE (collectively, “Owner Policy”):

7.6.1 **Public Liability Insurance.** PUBLIC LIABILITY COVERAGE FOR HIS UNIT. THE LIMITS OF HIS PUBLIC LIABILITY INSURANCE POLICY SHALL BE IN AN

AMOUNT NOT LESS THAN \$500,000.00 FOR BODILY INJURY, DEATH, AND PROPERTY DAMAGE;

7.6.2 Coverage "A" Building (as that term is defined by the standard homeowners insurance policy) A COVERAGE "A" BUILDING POLICY IN THE AMOUNT OF AT LEAST \$100,000.00; and

7.6.3 EACH OWNER SHOULD PURCHASE INDIVIDUAL PROPERTY, FIRE AND EXTENDED COVERAGE IN THE AMOUNT RECOMMENDED BY THE OWNER'S INDEPENDENT INSURANCE AGENT, WHICH SHOULD BE AN AMOUNT SUFFICIENT TO REPAIR ANY DAMAGE TO THE INTERIOR UNIT, TO WIT: For use herein the insurance required shall cover at least the interior Unit boundaries, to wit: The horizontal boundaries extend to the intersection with the vertical boundaries. Each Unit's lower boundary shall be a plane coinciding with the top of the concrete slab below the Unit's floor and each Unit's upper boundary shall be a plane coinciding with the top the Unit's ceiling. The vertical boundaries extend to the intersection with each other and with the horizontal boundaries. Each Unit's vertical boundaries shall be its perimetric walls. This includes by way of illustration but not limitation the sheetrock, drywall or plaster, windows and window frames; doors; stairwell; appliances; mechanical equipment and appurtenances located within any one unit or located outside said unit but designated and designed to serve only that unit; plumbing-including all pipes, wires, conduits, or other public utility lines or installations constituting a part of the unit and serving only that unit including sewer, water main that enters the property and pipes within the home; electrical receptacles and outlets, air conditioning and compressors and other air cooling apparatus, boilers, water heaters and water softeners; cabinets, fixtures, lighting, sinks, tubs, counters, countertops and islands, hardware; all decorated (affixed) interiors and surfaces of interior structural walls, floor coverings, ceilings and trim, consisting of wallpaper, paint, wood floors, carpeting and tile; patio porch, or deck, along with any covering of said patio, porch or deck; interior of garage, storage and any other areas which shall pass with the title to the Lot or Unit with which is associated and any Limited Common Area and facilities that are reserved for the use of the individual Lot or Unit. EACH OWNER IS ENCOURAGED TO SPEAK WITH HIS INDEPENDENT INSURANCE AGENT BEFORE DETERMINING THE AMOUNT OF HIS OWNER POLICY.

7.7 **Changes in Amounts of Required Insurance.** The amounts of insurance required may be increased or decreased unilaterally by the Board of Directors.

7.8 **Coverage C (as that term is defined by the standard homeowners insurance policy) – Personal Property/Contents and Lost Rents.** EACH OWNER IS RESPONSIBLE TO PURCHASE COVERAGE C – PERSONAL PROPERTY INSURANCE COVERING THE CONTENTS OF HIS LOT OR UNIT AND LOST BUSINESS, RENTS OR RENTAL INCOME. For use herein the term "contents" shall mean and refer to in the broadest possible sense all furniture, furnishings, appliances, accessories, dining and cooking ware, televisions, stereo equipment, electronic equipment and systems, computers, art, table lamps, linens, blankets, quilts, rugs, lost business, rents, income and profits, personal items not specified in the

original design and specifications, and all personal property, belongings and effects in the Unit, Building or Common Area and Facilities not covered by the Master Association Policy.

**7.9 Premium Is An Individual Expense.** The insurance premium on the Owner Policy shall be an Individual Expense.

**7.10 Maintenance of Coverage.** The Owner shall obtain and keep in full force and effect at all times the required insurance coverage provided by companies duly authorized to do business in Utah.

**7.11 Not a Limitation.** The provisions of this subsection shall not be construed to limit the power or authority of the Owner to obtain and maintain insurance coverage in addition to any insurance coverage required hereunder, in such amounts and in such forms as he may deem appropriate.

**7.12 Name Association as "Additional Insured."** Each Owner Policy shall name the Master Association as an "Additional Insured."

**7.13 Certificate of Insurance.** Each Owner shall provide the Master Association with a "Certificate of Insurance" upon request.

**7.14 Owner's Default.** If a Owner fails to obtain his Owner Policy or fails to provide a Certificate of Insurance within three (3) days of a request, and fails to remedy a default within ten (10) days of written notice, the Association may but is not obligated to purchase the required insurance and treat the cost as an Individual Expense. Anything to the contrary notwithstanding, if an Owner fails to obtain his required Owner Policy, then he shall be personally responsible to pay any deductible on the Master Association Policy as well as any and all costs, up the minimum amount of coverage, incurred for repairs of or to the building as defined in Subsections 7.6.1 and 7.6.2 above.

**7.15 Payment of Deductible.** It is presumed that the claimant is responsible to pay the deductible; provided, however, the deductible on a claim made against the Association Master Policy shall be paid for by the party (i) who would be liable for the loss, damage, claim, or repair in the absence of insurance or (ii) from whose Unit the causal event originates. In the event of multiple responsible parties, the loss shall be allocated in relation to the amount each party's responsibility bears to the total. If a loss is caused by an act of God or nature or by an element, risk or peril beyond the control of the parties, then the Owner shall be responsible for the deductible. It is the intent of the Declarant to obtain property, fire and extended hazard insurance with a \$5,000.00 deductible. This amount may be increased or decreased unilaterally by the Board of Directors upon a written recommendation for its insurance agent without amending the Declaration. Each Owner is encouraged to purchase insurance to cover the cost of the deductible.

**7.16 Damages.** Each Owner is responsible for the maintenance of his Unit and for the repair of any damage he causes to another Unit or the Common Area and Facilities.

7.17 **Validity of Document.** If any term, part or provision of this document is ruled by a court of competent jurisdiction to be illegal or in conflict with any law of the State of Utah, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the document did not contain such term, part or provision.

7.18 **Right to Adjust Claims.** The Master Association has the right, power and authority to adjust claims.

7.19 **Use of Insurance Proceeds and Repairs.** Repair of damage shall be completed within a reasonable time and insurance proceeds shall be used to repair the covered damage.

7.20 **Quality of Insurance Company.** The Master Association and Owners shall use a responsible insurance company or companies duly qualified and licensed in the State of Utah.

7.21 **Primary Coverage.** It is the intent of the Declarant that the Owner Coverage A Building provide PRIMARY coverage and that the Association Master Policy provide SECONDARY coverage.

## VIII. MAINTENANCE

8.1 **Operation and Maintenance of Common Area.** The MHOA shall have the power, authority, right, and duty to operate, maintain, keep, and replace all Common Area and Facilities and Exclusive Common Area and Facilities.

8.2 **Area of Common Responsibility.** Unless the maintenance responsibility is expressly delegated to and accepted by a Neighborhood Association, the maintenance, replacement and repair of the Common Area and Facilities and Exclusive Common Area and Facilities, shall be the sole responsibility of the MHOA. Pursuant to City Ordinances, no transfer of the obligation for maintenance of the Common Areas and Facilities shall be made by the MHOA without notice to and approval by the City. The Association is responsible for all private road maintenance and the removal of all ice and snow accumulations from the Common Area and Facilities.

8.3 **Common Parking and Utilities.** The MHOA shall maintain, replace and repair all common parking areas, and all common utilities, conduits, ducts, plumbing and wiring and other common central facilities for the furnishing of heat, air conditioning, gas, light, power, water and sewer service. Where, however, such utilities, conduits, ducts, plumbing and wiring and other facilities for the furnishing of heat, air conditioning, gas, light, power, water and sewer service are associated with a single Lot or Unit, the Owner of such Lot or Unit shall be responsible for the maintenance, replacement and repair.

**8.4 Incidental Damages.** All incidental damages caused to private property by the maintenance, replacement and repairs of the Common Area and Facilities or utility services shall be repaired promptly and the cost thereof charged as an Operating Expense.

**8.5 Access Through Common Area.** Because some of the Common Area and Facilities and Exclusive Common Area and Facilities are or may be located within private property or may be conveniently accessible only through such property, the MHOA shall have the irrevocable right to have access to each Lot or Unit and to all Common Area and Facilities and Exclusive Common Area and Facilities from time to time during such reasonable hours as may be necessary for the cleaning, repair or replacement of any Common Area and Facilities and Exclusive Common Area and Facilities or for making any emergency repairs at any time and when necessary to prevent damage to the Common Area and Facilities or to any Lot or Unit.

**8.6 Access Through Lots or Units.** The MHOA shall also have the irrevocable right to have access to any Lot or Unit when necessary in connection with any cleaning, maintenance, repair, replacement, painting, landscaping, construction or reconstruction for which the MHOA is responsible or for the purpose of abating a nuisance or a known or suspected dangerous or unlawful condition. Such entry shall be made with as little inconvenience to the Owners as is practicable under the circumstances and any damage caused thereby shall be repaired by the MHOA.

**8.7 Maintenance of Attached Units.** The MHOA shall have the power, authority, right, and duty to maintain, keep, and replace the all exterior elements, excluding glass and electrical and mechanical equipment, of all attached Units in a state of good repair and condition. The costs of maintaining, keeping, and replacing such exterior elements shall be assessed to the Neighborhood for which such elements are appurtenant as a Neighborhood Assessment. All incidental damages caused to private property by the maintenance, replacement and repairs of the Exclusive Common Area and Facilities shall be repaired promptly and the cost thereof charged as a Neighborhood Expense.

**8.8 Maintenance of Detached Units.**

**8.8.1. Maintenance Obligations of Owners.** It shall be the duty of each Owner of a detached Unit, at his sole cost and expense to maintain, repair, replace and restore all improvements located on his Lot or structures built by the Owner on the Limited Common Area, and to ensure that the Lot itself is maintained in a neat, sanitary and attractive condition. If any Owner shall permit any improvement, the maintenance of which is the responsibility of such Owner, to fall into disrepair or to become unsafe, unsightly or unattractive or to otherwise violate this Master Declaration, the Board of Directors shall have the right to seek any remedies at law or in equity which it may have. In addition, the Board or Directors shall have the right, but not the duty, to enter upon such Owner's Lot to perform such emergency and non-emergency repairs or maintenance as the Board of Directors deems appropriate and to charge the cost thereof to the Owner. Said cost shall be an Individual Assessment enforceable as set forth in this Master Declaration. For non-emergency repairs or maintenance the Owner shall be entitled to Notice and right to hearing.



**8.8.2. Damage to Dwelling Units - Reconstruction.** If all or any portion of any Lot or Unit is damaged or destroyed by fire or other casualty, the Owner of such Lot shall, at the Owner's election, either rebuild, repair or reconstruct the Lot and the Unit in a manner which will restore them substantially to their appearance and condition immediately prior to the casualty or as otherwise approved by the Board of Directors or restore the Lot by removing from the Properties all damaged or destroyed building materials. The Owner of any damaged Lot or Unit shall be obligated to proceed with all due diligence hereunder, and such Owner shall cause reconstruction or restoration of the Lot to commence within three (3) months after the damage occurs and to be completed within fifteen (15) months after damage occurs, unless prevented by causes beyond the Owner's reasonable control. A transferee of title to the Lot which is damaged or upon which is located a damaged Unit shall commence and complete reconstruction of the Unit or restoration of the Lot in the respective periods which would have remained for the performance of such obligations if the Owner of the Lot at the time of the damage still held title to the Lot. However, in no event shall such transferee of title be required to commence or complete such reconstruction or restoration of the Lot or Unit in less than thirty (30) days from the date such transferee acquired title to the Lot.

#### **8.9 Party Walls.**

**8.9.1 General Rules of Law to Apply.** Each wall which is built as a part of the original construction of the Dwelling Units upon the Property and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

**8.9.2 Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall, including perimeter walls, shall be shared by the Owners who make use of the wall in proportion to such use, or the Owner of the wall even if there is no wall in common.

**8.9.3 Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, then, to the extent said destruction or damage is not covered by insurance and repaired out of the proceeds of the same, any Owner who has used the wall shall restore it, and, if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

**8.9.4 Weatherproofing.** Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements to the extent that said protection is not covered by insurance and paid for out of the proceeds of the same.

**8.9.5 Right to Contribution Runs With Land.** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

**8.9.6 Arbitration.** In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within ten (10) days after written request to do so, the Board of Directors of the Association shall select an arbitrator for the refusing party.

**8.9.7 Perimeter Walls.** The MHOA shall not be obligated to maintain any walls in the Project, except walls dividing a Lot and Common Area shall be maintained jointly by the Owner of the Lot and the MHOA or the Neighborhood, as the case may require.

**8.10 Payment for Goods and Services.** All goods and services procured by the MHOA in maintaining the Common Area and Facilities and administering the MHOA shall be paid for with funds generated by the Master Assessments.

**8.11. Subsurface Drain System.** The MHOA shall maintain all subsurface drains or subsurface drain system, as approved by the City, in strict accordance with applicable City Ordinances, including, but not limited to, Chapter 9-4 of the current City Ordinances, as may be amended from time to time. MHOA shall prepare and maintain a detailed maintenance plan designating how the subsurface drain system will be adequately maintained, and a detailed financial plan showing how the subsurface drain system maintenance and operating expenses will be funded. The MHOA shall provide the permanent funding for and responsibility of the subsurface drain system within the Project, exclusive of those parts of the system expressly accepted by the City as a public facility. The MHOA shall include as part of its Master Assessment, an annual fee or other adequate funding mechanism to be assessed against affected Members or Owners within the Project for the maintenance of the subsurface drain system. The maintenance assessment shall be created as a lien on each affected Lot or Unit within the Project subject to enforcement procedures set forth in Article 9 regarding collection of Assessments. In the event the MHOA fails to perform its obligations hereunder, the City shall have the right, but not the obligation, to perform such duties in accordance with the provisions and procedures of Section 8.12. In addition to the provisions of Section 8.12, the City shall have the right, but not the obligation, to clean and maintain any subsurface drain or system deemed to be in disrepair, after 30 days' written notice to the responsible party or parties, and to charge the expense of such clean up or repair to the MHOA and/or the individual Members or Owners within the Project. Nothing herein shall be deemed to prevent the City, without notice, from cleaning or maintaining any subsurface drain or system or taking any other action deemed necessary in the event of an emergency, as determined by the City.

**8.12. Default.** The City shall have a right, but not any duty or obligation, of enforcement of the Master Association's rights and duties hereunder. For that purpose, the City is a third party beneficiary of this Agreement. In the event the MHOA does not maintain any of

the Common Area or Facilities or the subsurface drain system in accordance with the terms of this Master Declaration or the Development Agreement, the City may perform the required maintenance or other responsibility and recover all costs of such performance from the MHOA and/or each of its Members or Owners within the Project.

8.12.1 If the City hereafter reasonably determines that the Master Association has failed or refused to discharge properly any of its obligations with regard to the Common Area and Facilities, or that the need for maintenance, repair, replacement or insurance coverage of such is caused through the willful or negligent act of the Master Association, the City may, but shall not in any way be obligated to, provide such maintenance, repair, replacement or coverage at the sole cost and expense of the Master Association and the Neighborhoods, jointly and severally, and/or each Member or Owners within the Project, in their pro rata shares.

8.12.2 Except in an emergency situation, or in a situation where the Master Association has ceased to exist as a legal or practical matter, the City shall give the Master Association at least ten (10) days' prior written notice of its intent to act following a reasonable opportunity for the Master Association to remedy the default.

8.12.3 Any cost or expense incurred by the City as a result of the Master Association's failure to properly perform its duties under this Agreement shall constitute a lien on the interests of the Master Association and of the Neighborhoods in the Common Area and Facilities and all Common Areas and Facilities of any and all of the Neighborhoods, and the Lot or Unit of each Member or Owners within the Project, as their interests appear (collectively the "Lien Areas"). Such lien upon the Lien Areas is prior to all other liens and encumbrances, recorded or unrecorded, affecting the Lien Areas.

8.12.4 The Master Association and the Neighborhoods severally shall indemnify and hold the City and its officers and related parties harmless from any and all claims, actions, liabilities, damages, costs, expenses and fees (including reasonable attorneys fees) incurred by the City or such related parties in connection with the City's actions with respect to the Common Areas under this Section 8.12 unless such claims, etc. are attributable to the City's own gross negligence or intentional misconduct. All Members and Owners shall hold the City and its officers and related parties harmless from any and all claims, actions, liabilities, damages, costs, expenses, and fees (including reasonable attorneys fees) incurred by the City or related parties in connection with the City's actions with respect to performing any duties hereunder and the collection of reimbursement for costs associated with the same.

## **IX. ASSESSMENTS**

### **9. Master Assessments.**

9.1 **Obligation of Members of Master Association.** Each Member of the Master Association shall pay to the MHOA its share of the Master Assessments and Operating Expenses.

9.2 **Covenant to Pay.** Each Owner, by virtue of accepting a deed or other document of conveyance to a Lot or Unit, hereby covenants and agrees to pay his share of all Operating Expenses and Master Assessments.

9.3 **Neighborhood Assessments and Individual Assessments.**

9.3.1 **Neighborhood Assessments.** The Board of Directors may elect to incorporate into the billing for the Master Assessment any Neighborhood Assessment. Any Neighborhood Association may elect to have its Assessment incorporated into the Master Assessment.

9.3.2 **Individual Assessments.** The MHOA may levy Individual Assessments against a particular Owner of a Lot or Unit to pay the costs directly attributable to, or reimbursable by, that Owner, equal to the costs incurred by the Association for corrective action, performed pursuant to the provisions of this Master Declaration, plus interest, an administration fee of fifteen percent (15%) of the total cost of the corrective action, and attorney's fees. Fines and penalties levied by the Board of Directors pursuant to this Master Declaration and the Rules and Regulations may be assessed as an Individual Assessment. Individual Assessments may only be levied upon the vote of the Board of Directors after notice to the Member and an opportunity for a hearing. In addition to the foregoing, if a street lamp is located on a Lot or directly adjacent to a Lot and not on Common Area, then the electricity used to operate the street lamp will be the responsibility of such Owner and will be an Individual Assessment which may be included in the Master Assessment of the Owner.

9.4 **Computation of Master Assessments.** The MHOA shall base the annual Master Assessments upon budgeted estimates of the Operating Expenses expected to be incurred during the coming calendar year, plus amounts required to establish an adequate reserve.

9.5 **Apportionment of Operating Expenses.** The Operating Expenses shall be allocated equally among all of the Owners.

9.6 **Budget.** The MHOA shall prepare and furnish to each Owner an operating budget for the MHOA for the coming calendar year at least thirty (30) days prior to the beginning of each year. The MHOA shall also prepare and furnish to each Owner subject to a Neighborhood Assessment an operating budget for the Exclusive Common Area and Facilities and/or maintenance, repair and replacement of the exterior elements of attached Lots or Units for the coming calendar year at least thirty (30) days prior to the beginning of each year.

9.7 **Books and Records.** The MHOA shall (a) keep books and records in accordance with generally accepted accounting practices and (b) prepare monthly billing statements and/or ledgers for each Member detailing its share of the Operating Expenses and any other charges.

9.8 **Payment.** Neighborhood Assessments, Master Assessments and each Owner's share of the Operating Expenses shall be payable in twelve (12) equal monthly installments. Monthly invoices for each Member will be prepared by the MHOA. Payment of the

Assessments must be made to the MHOA within on the first day of each month. A late fee of \$15.00 or 5% of the monthly installment due, whichever is greater, may be assessed on all payments not received by the fifteen day of the month. Default interest at the rate of 1.5% per month may be charged on the outstanding balance on all delinquent accounts. The MHOA may elect to accelerate the entire Annual Master Assessment in the event of default.

**9.9 Reserves.** The MHOA shall establish and fund a reasonable reserve account or accounts for unforeseen operating expenses, major repairs, and capital improvements. In the event the reserve account(s) fall below an amount considered acceptable by the Board of Directors, then, in its sole discretion and without any additional approval required, the MHOA may restore or replenish the account(s) by an equitable increase in the monthly Master Assessment, a Master Special Assessment, or any combination.

**9.10 Capital Asset Table.** The Board of Directors shall establish and update at least annually a Capital Asset Table which shall list each major asset and physical improvement for which the MHOA is responsible, its expected useful life, the present cost of replacement; the estimated cost to replace the item at the end of its useful life, the percentage and amount of each Assessment designated for the reserve account to replace the item at the end of its useful life, and the amount of money currently set aside in the reserve account for the replacement of the item.

**9.11 Analysis Report.** The Board of Directors shall prepare and update at least every three years a written Reserve Account Analysis, and make the report(s) available to the Owners at the annual meeting of the Association. Any reserve account study shall include, at a minimum:

**9.11.1 MHOA Repair Obligations.** Identification of the major components which the MHOA is obligated to repair, replace, restore or maintain which, as of the date of the study, have a useful life of less than 30 years.

**9.11.2 Identification of Useful Life.** Identification of the probable remaining useful life of the components identified above, as of the date of the study.

**9.11.3 Cost Estimate.** An estimate of the cost of repair, replacement, restoration or maintenance of each major component identified above, during and at the end of its useful life.

**9.11.4 Estimate of Contribution.** An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore or maintain each major component during and at the end of its useful life, after subtracting total reserve funds as of the date of the study.

**9.11.5 Reserve Account Requirements.** For the purposes of this Section, the term "reserve account requirements" means the estimated funds which the Board of Directors has determined are required to be available at a specified point in time to repair, replace or restore those major components which the MHOA is obligated to maintain.

**9.12 Miscellaneous Provisions.** The making and collection of Master Assessments by the MHOA from Owners of Lots or Units and Memberships for their share of Operating Expenses shall be made as follows and subject to the following provisions:

**9.12.1 Distribution of Common Profits, Expenses and Voting Rights.** The common profits of the Property shall be distributed among, the common expenses shall be charged to, and the voting rights shall be available to the Owners on an equal basis regardless of size or value of the Lot or Unit.

**9.12.2 Creation of Funds.** At least two separate and distinct funds shall be created and maintained hereunder, one for operating expenses and one for reserve expenses.

**9.12.3 Master Assessments.** Master Assessments shall include both Regular Assessments and Special Assessments.

**9.12.4 Operating Expenses.** Until the MHOA makes an assessment for Operating Expenses, the Declarant shall pay all Operating Expenses.

**9.12.5 Assessments.** Assessments must be made at least annually, based on a budget adopted at least annually by the MHOA in accordance with the provisions of this Master Declaration and the Bylaws.

**9.12.6 Commencement of Assessments.** Assessments shall be levied against each separate Lot or Unit, and shall commence for each Lot or Unit in the Project on the first day of the month following the closing of the first sale of the said Lot or Unit.

**9.12.7 Changes in Assessments.** The Board of Directors may make equitable changes in the Assessments during any calendar year; provided, however, the MHOA shall provide notice, by first class mail to all Owners, of any increase in the Assessments not less than thirty (30) nor more than sixty (60) days prior to the date any modified Regular Common Assessment is due.

**9.12.8 Special Assessments.** In addition to the Assessments, the MHOA may levy in any fiscal year, Special Assessments applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any unforeseen expenditure or the construction or reconstruction, unexpected repair or replacement of a described capital improvement upon any Common Area and Facilities, including the necessary fixtures and personal property related thereto, and other costs, expenses of operation or shortfalls in the collection of Master Assessments from the Owners.

**9.12.9 Special Common Assessment.** Any Special Common Assessment levied against a particular Lot or Unit shall be levied on an equal basis.

**9.12.10 Exclusive Common Area and Facilities.** Special Assessments for Exclusive Common Area and Facilities or Special Assessments for maintenance, repair and

replacement of exterior elements of attached Lots and Units may be levied by the Board of Directors in the same manner as Special Assessments.

**9.12.11 Allocation of Special Assessment.** These provisions with respect to the imposition or allocation of Special Assessments shall not apply when the special assessment is to pay an increase in real property taxes.

**9.12.12 Providing Notice.** The Board of Directors shall provide notice by first class mail to all Owners or Members of any Special Assessments not less than thirty (30) nor more than sixty (60) days prior to the date such Assessment is due.

**9.12.13 Payment by Declarant.** To the extent permitted by law, Declarant may pay the MHOA an amount less than its proportionate share of Operating Expenses or other permitted Master Assessments for which it owes, provided Declarant has executed a subsidy agreement requiring Declarant to pay monies which are sufficient, together with the Master Assessments paid by all other Owners, to enable the MHOA to timely pay all of the Operating Expenses. Any subsidy agreement shall require Declarant to pay its full proportionate share of all reserves for replacement and capital improvements assessed against the Lots, Town Homes or Units which it owns.

**9.12.14 Payment of Assessments.** All payments of Assessments shall be first applied to accrued interest and late fees, and then to the Assessment payment first due.

**9.12.15 Judgments.** All Master Assessments to pay a judgment against the MHOA may be made only against the Lots or Units in the Project at the time the judgment was entered, in proportion to their liabilities for Operating Expenses.

**9.12.16 Misconduct of Owner.** If any Operating Expense is caused by the misconduct of any Owner, the MHOA may assess that expense exclusively against such Owner's Lot or Unit.

**9.12.17 Unpaid Assessments.** There shall be a lien upon the applicable Lot or Unit for all unpaid Assessments, together with late fees, interest and costs (including attorneys fees) charged pursuant to this Master Declaration. All delinquent Assessments, late fees, interest and costs shall be paid before the release of any Lien.

**9.12.18 Lien for Unpaid Assessments.** The lien for unpaid Assessments and related charges shall be effective upon recordation in the Office of the County Recorder of a written notice of lien by the Board of Directors, the Manager, or the attorney for the MHOA.

**9.12.19 Notice of Lien.** The written notice of lien shall set forth the amount of the Assessment, the date(s) due, the amount remaining unpaid, the name of the Owner of the Lot or Unit and a description of the Lot or Unit.

9.12.20 **Priority of Lien.** Any Assessment levied against each Lot or Unit is a debt of the Owner and/or Member at the time the Assessment is made and is collectible as such. If any Owner or Member fails or refuses to pay an Assessment when due, that amount constitutes a lien on the Owner's Lot, Town Home and Unit, which lien is prior to all other liens and encumbrances, recorded or unrecorded, except:

(i) tax and special assessment liens on the Lot, Unit or Membership in favor of any assessing unit or special improvement district; and

(ii) encumbrances on the interest of the Owner or Member recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

Such lien may be enforced by sale or foreclosure conducted in accordance with the provisions of law applicable to the exercise of powers of sale or foreclosure in deeds of trust or mortgages or in any other manner permitted by law including specifically, but without limitation, the method recognized under the laws of the State of Utah for the enforcement of a mechanics lien which has been established in accordance with the provisions of Chapter 1, Title 38, Utah Code, as amended from time to time.

9.12.21 **Foreclosure.** In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys fees), and such costs and expenses shall be secured by the lien being foreclosed.

9.12.22 **Assessments During Foreclosure.** The Owner shall also be required to pay to the MHOA any Assessments against the Lot or Unit which shall become due during the period of foreclosure, and all such Assessments shall be secured by the lien being foreclosed.

9.12.23 **Authority of MHOA.** The Board of Directors shall have the right and power in behalf of the MHOA to bid in at any foreclosure sale and to hold, lease, mortgage or convey the subject Lot or Unit in the name of the MHOA.

9.12.24 **Action Against Owner.** In furtherance of such foreclosure rights, the MHOA may bring an action at law against the Owner personally obligated to pay the same or the MHOA may foreclose the lien in accordance with the provisions of Title 57, Chapter 1 of the Utah Code.

9.12.25 **Appointment of Trustee.** The MHOA and each Owner hereby appoint the MHOA's legal counsel as trustee for the purpose of exercising the power of sale in connection with non-judicial foreclosures as provided in Title 57, Chapter 1, Utah Code and made applicable hereto by Title 57, Chapter 8a, Utah Code.

9.12.26 **Appointment of Successor Trustee.** The MHOA reserves the right to substitute and appoint a successor trustee as provided for in Title 57, Chapter 1, Utah Code. Each Owner hereby conveys all of its right, title and interest in its Lot, Unit or Membership to



such trustee, in trust, with a power of sale, to secure each Owner's obligations under the Master Declaration, including but not limited to the obligation to pay all Master Assessments.

9.12.27 **Bid on Lot.** The MHOA may, through its duly authorized agents, bid on the Lot or Unit at any foreclosure sale and acquire, hold, lease, mortgage and convey the same.

9.12.28 **Superiority of Lien.** The lien of the MHOA shall be superior to all other liens and encumbrances except liens and encumbrances recorded before recordation of this Master Declaration, a First Mortgage on a Lot or Unit as provided for herein and Master Assessments, liens and charges in favor of the state or any political subdivision thereof, for taxes and other governmental Master Assessments or charges past due and unpaid on the Lot or Unit.

9.12.29 **Recovery.** The lien procedures described herein do not prohibit actions to recover sums for which this Master Declaration creates a lien or prohibit the MHOA from taking a deed in lieu of foreclosure.

9.12.30 **Unpaid Assessments.** The Board of Directors, upon written request, shall furnish to an Owner a statement setting forth the amount of unpaid Assessments against the Lot or Unit. This statement must be furnished within ten (10) business days after receipt of the request and is binding on the MHOA, the Board of Directors, the Common Area Manager and every Owner, in favor of all who rely on such statement in good faith.

9.12.31 **Common Assessment.** The amount of any Common Assessment against any Lot or Unit shall be the personal obligation of the Owner.

9.12.32 **Recovery of Judgment.** Suit to recover a money judgment for such personal obligation shall be maintainable by the MHOA without foreclosing or waiving the lien securing the same.

9.12.33 **Owner Waiver of Amenities.** No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Area and Facilities or by abandonment of his Lot or Unit or by waiving any services or amenities provided for in this Master Declaration.

9.12.34 **Recovery of Unpaid Assessments.** In the event of any suit to recover a money judgment of unpaid Master Assessments hereunder, the involved Owner shall pay the costs and expenses incurred by the MHOA in connection therewith, including reasonable attorneys fees.

9.12.35 **Conveyance.** In a voluntary sale, transfer, conveyance, exchange or assignment, the personal obligation of an Owner or Member to pay unpaid Master Assessments against his Lot or Unit shall also pass to his successors in title.

9.12.36 **Sale or Transfer Affecting Lien.** A lien to secure unpaid Assessments shall not be affected by the sale or transfer of the Lot or Unit unless foreclosure by a First Mortgagee is involved in which case the foreclosure will extinguish the lien for any Assessments that were payable before the foreclosure sale, but shall not relieve any subsequent Owner from paying further Assessments.

9.12.37 **Reserve Accounts.** The MHOA through the Board of Directors shall include in the Master Assessments amounts representing sums to be used for major Repairs, the replacement of or additions to capital items or improvements in the Project. Said amounts shall be dedicated for the uses provided in this Section and shall be set up as reserve accounts for each Lot or Unit.

9.12.38 **Purpose of Reserve Account.** The Board of Directors shall not expend funds designated as reserves for any purpose other than unforeseen expenses or the repair, restoration, replacement or maintenance of major components of the Common Area and Facilities for which the MHOA is responsible and for which the reserve fund was established or for litigation involving such matters.

9.12.39 **Management of Reserve Account Funds.** The Board of Directors shall exercise prudent fiscal management in the timing of restoring any transferred funds to the reserve account and shall, if necessary, levy a Special Common Assessment to recover the full amount of the expended funds within the time limit specified above.

9.12.40 **Notice to Owner.** If the Owner of a Lot who is leasing the Lot fails to pay an assessment for more than sixty (60) days after the assessment is due, the Board may demand that the tenant pay to the MHOA all future lease payments due to the Owner, beginning with the next monthly or other periodic payment, until the amount due to the MHOA is paid. The Manager or Board shall give the Owner written notice of its intent to demand full payment from the tenant under this subsection.

9.12.41 **Obligations of Owner.** No Owner or Member may waive or otherwise exempt himself or herself from liability for the payment of his share of the Operating Expenses or his Regular or Special Common Master Assessments provided for herein, including but not limited to his non-use or abandonment of his Lot or Unit or the Common Area and Facilities.

9.12.42 **Obligations of First Mortgagee.** Anything to the contrary notwithstanding, any first mortgagee who obtains title to a Lot or Unit pursuant to the remedies in the mortgage or trust deed or through foreclosure will not be liable for more than six (6) months of the unpaid regularly budgeted assessments, dues or charges accrued before acquisition of the title to the property by the mortgage, although the first mortgagee will also be liable for any reasonable attorneys fees or costs related to the collection of the unpaid dues. All other grantees who obtain title to a Lot or Unit in a voluntary conveyance or pursuant to the remedies in a mortgage or trust deed or through foreclosure shall be jointly and severally liable with the trustor or mortgagor for all unpaid assessments, late fees, default interest and collection costs, including a reasonable attorneys fee, against the Lot or Unit for its share of the Common

Expenses up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the trustor or mortgagor the amounts paid by the grantee.

9.12.43 **Initial Working Capital Fund.** Each initial Owner of a Lot shall make an initial contribution equal to two monthly Assessments. Such amounts paid shall not be deemed to be advance payments of the Master or any other Assessment, but shall be in addition thereto. Declarant expressly reserves the right to change the amount and allocations of the foregoing Working Capital contributions.

9.13 **Termination of Utilities and Right to Use Amenities for Non-Payment of Assessments.** If an Owner fails or refuses to pay any assessment when due, the Board of Directors may (a) terminate the Owner's right to receive utility services paid as a common expense; and (b) terminate the Owner's right of access and use of recreational facilities, after giving notice and an opportunity to be heard.

## **X. GRANT OF POWERS, OFFICERS, LIMITATION OF LIABILITY AND OTHER MISCELLANEOUS PROVISIONS REGARDING THE BOARD OF DIRECTORS**

10.1 **General.** The MHOA shall be governed by the following provisions:

10.2 **Board of Directors.** The management and maintenance of the Project and the administration of the affairs of the MHOA shall be conducted by a Board of Directors, who shall be elected as provided in this Master Declaration and in the Bylaws.

10.3 **Delegation of Powers.** The Board of Directors may appoint committees to assist the Board of Directors. Notwithstanding anything to the contrary, to the extent of any conflict between decisions of Board of Directors and any committee, the decision of the former shall in all respects govern and control.

10.4 **Grant of Powers.** Except as otherwise expressly provided herein, the Board of Directors shall have all the powers, duties and responsibilities as are now or may hereafter be provided by this Master Declaration and the Bylaws, including but not limited to the following:

10.4.1 **Rules and Regulations.** To make and enforce all rules and regulations covering the operation and maintenance of the Project and the Lots and Units.

10.4.2 **Common Area and Facilities.** To make and enforce all rules and regulations governing the conduct of all persons upon the Common Area and Facilities, Limited Common Area and Facilities, the Lots and Units.

10.4.3 **Common Area Manager.** To engage the services of the Common Area Manager, accountants, attorneys or other employees or agents and to pay to said persons a reasonable compensation therefore.

10.4.4 **Operation of Common Area.** To operate, maintain, repair, improve and replace the Common Area and Facilities and Exclusive Common Area and Facilities.

10.4.5 **Payment of Operating Expenses.** To determine and pay the Operating Expenses.

10.4.6 **Assessments to Owners.** To assess and collect the proportionate share of Operating Expenses from the Owners.

10.4.7 **Neighborhood Assessments.** To assess and collect Neighborhood Assessments and Individual Assessments.

10.4.8 **Authority to Execute Documents.** To enter into contracts, deeds, leases and/or other written instruments or documents and to authorize the execution and delivery thereof by the appropriate officers.

10.4.9 **Bank Accounts.** To open bank accounts on behalf of the MHOA and to designate the signatories therefore.

10.4.11 **Conveyance of Lot/Unit.** To purchase, hold, sell, convey or mortgage any one or more Lots or Units in the name of the MHOA or its designee.

10.4.11 **Litigation.** To bring, prosecute and settle litigation for the MHOA and the Project.

10.4.12 **Insurance.** To obtain insurance for the MHOA, Neighborhood Associations, Lots, Units, the Common Area and Facilities and the Exclusive Common Area and Facilities, as well as worker' compensation insurance.

10.4.13 **Damage or Destruction.** To repair or restore the Project following damage or destruction or a permanent taking by the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation not resulting in the removal of the Project from the provisions of this Master Declaration.

10.4.14 **Disposal of Personal Property.** To own, purchase or lease, hold and sell or otherwise dispose of, on behalf of the Owners, items of personal property necessary to or convenient to the management of the business and affairs of the MHOA and the Board of Directors and to the operation of the Project, including without limitation furniture, furnishings, fixtures, maintenance equipment, appliances and office supplies.

10.4.15 **Books and Records.** To keep adequate books and records and implement the policies and procedures for the inspection of the books and records of the Project by Owners in accordance with the terms of the Bylaws. The MHOA or the Board of Directors shall make available to the Owners, Mortgagees and the holders, insurers and guarantors of the First Mortgage on any Unit current copies of the Master Declaration, Articles, Bylaws and other

rules governing the Project and other books, records and financial statements of the MHOA. "Available" shall mean available for inspection, upon request, during normal business hours or under other reasonable circumstances.

**10.4.16 All Other Accounts.** To do all other acts necessary for the operation and maintenance of the Project, including the maintenance and repair of any Unit if the same is necessary to protect or preserve the Project.

**10.4.17 Budgets.** To prepare, adopt, amend and disseminate budgets and other information from time to time in accordance with the terms of the Bylaws.

**10.4.18 Common Area Rights-of-Way.** To grant conveyances, easements and rights-of-way over the Common Area and Facilities and Exclusive Common Area and Facilities and to approve signage for the Project.

**10.4.19 Enforcement of Rules.** To enforce the rules, regulations, policies and procedures of the MHOA.

**10.4.20 Delegation of Committees.** Subject to the limitations of applicable law, the Board of Directors may delegate to a committee, a Neighborhood Association, or Common Area Manager by written agreement all or some of the foregoing powers, duties and responsibilities.

**10.5 Officers, Agents and Employees.** Members of the Board of Directors, the officers and any assistant officers, agents and employees of the MHOA shall not be liable to the Owners as a result of their activities as such for any mistake of judgment, negligence or otherwise, except for their own willful misconduct or bad faith; shall have no personal liability in contract to an Owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the MHOA in their capacity as such; shall have no personal liability in tort to any Owner or any person or entity, direct or imputed, by virtue of acts performed by them, except for their own willful misconduct or bad faith, nor for acts performed for and/or by them in their capacity as such; and shall have no personal liability arising out of the use, misuse or condition of the Project, which might in any way be assessed against or imputed to them as a result or by virtue of their capacity as such.

**10.6 Limitation of Liability.** When a member of the Board of Directors is sued for liability for actions undertaken in his or her role as a member of the Board of Directors, the MHOA shall indemnify him or her for losses or claims under such terms as are set forth in the Bylaws.

**10.7 Subcontracts.** The MHOA acting through the Board of Directors may enter into a contract or management agreement with a Neighborhood Association, Common Area Manager, or other Manager for the management of the Project, in whole or in part, which complies with the covenants, conditions and restrictions set forth herein. All such contracts shall be in writing signed by the parties. The person or entity so engaged shall be responsible for managing the

Project, or any portion thereof, for the benefit of the MHOA and the Owners or Members, and shall, to the extent permitted by law and by the terms of the agreement with the MHOA, be authorized to perform any of the functions or acts required to be performed by the MHOA itself. Any such contract or management agreement executed on or before the termination of the Period of Declarant's Control may be terminated by the Declarant with or without cause at any time.

**10.8 Reservation of Rights.** Declarant reserves the right, for a period of twenty (20) years following the recording of this Master Declaration, to unilaterally and without notice to or consent of the Owners or the MHOA, bind the Property and the Buildings or physical improvements to the utilization of the services of any service company, service district or improvement district or any entity or organization acting in a similar capacity, including Declarant, its affiliates, successors and assigns (collectively referred to as "Service District"), established for the purpose of providing utility service or quasi-utility services or similar common service to the Property and/or other adjacent or proximate parcels of property, and to include the charges and assessments from such Service District as a "Operating Expense" or "Neighborhood Expense," as the case may require.

## XI. TERMINATION

**11.1 Termination.** The Project may be terminated only by the unanimous agreement of all Owners, giving each Owner one (1) vote for each Lot or Unit owned by the Owner.

**11.2 Recording of Notice of Removal.** All of the Owners may remove the Project from the provisions of the Master Declaration by an instrument duly recorded to that effect, provided that the holders of all liens affecting any of the Lots or Units consent or agree by instruments duly recorded that their liens are transferred to the undivided ownership interest of the Owners in the Project. Provided further, as long as Declarant has ownership rights in the Project, its consent shall also be required to remove the Project from the provisions of this Master Declaration. Upon removal of the Project from the provisions of this Master Declaration, the Project shall be deemed to be owned in common by the Owners.

**11.3 Termination Agreement.** A termination agreement may provide that all of the Project shall be sold following termination. If, pursuant to the agreement, any real estate in the Project is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.

**11.4 Mortgagees.** Following termination, Mortgagees holding Mortgages on the Lots or Units which were recorded before termination may enforce those liens in the same manner as any lienholder.

**11.5 Common Area and Facilities.** In the event of the dissolution of the MHOA, the MHOA Property shall be transferred to a nonprofit corporation, trust, or other entity to be used for such similar purposes, and each owner shall continue to be obligated to make assessment payments for the maintenance and upkeep of the Common Area and Facilities and improvements on a pro rata basis which conforms substantially with the assessment procedure, terms and

conditions set forth herein. To the extent the foregoing is not possible, the Common Area and Facilities shall be sold or disposed of and the proceeds from the sale or disposition shall be distributed to Owners as tenants in common.

## XII. AMENDMENTS

12. **General.** Subject to the terms and conditions of the Development Agreement, and except as provided elsewhere in this Declaration, including by way of illustration but not limitation to sections pertaining to the annexation or withdrawal of land, any amendment to this Declaration shall require the affirmative written vote or consent of at least sixty-seven percent (67%) of the Total Votes of the Master Association cast either in person or by proxy at a meeting duly called for such purpose or otherwise approved in writing by such Owners without a meeting. Any amendment authorized pursuant to this Section shall be accomplished through the recordation in the Office of the County Recorder of Davis County, Utah of an instrument executed by the Master Association. In such instrument an officer or Director of the Master Association shall certify that the vote required by this Section for amendment has occurred.

12.1 **Initial Declarant Right to Amend.** The Declarant alone may amend or terminate this Declaration prior to the closing of a sale of the first Unit.

12.2 **Unilateral Right to Amend Under Certain Conditions.** Notwithstanding anything contained in this Declaration to the contrary, this Declaration may be amended unilaterally at any time and from time to time by Declarant if such Amendment is (1) necessary to correct typographical errors or inadvertent omissions; (2) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; or (3) reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Units subject to this Declaration; provided, however, any such Amendment shall not materially adversely affect the title to any Unit unless any such Owner shall consent thereto in writing.

12.3 **Declarant's Right to Amend Unilaterally Prior to Termination of Declarant's Right to Control.** Prior to the expiration of the Period of Declarant's Control, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such Amendment shall not materially adversely affect the substantive rights of any Owner hereunder, nor shall it adversely affect title to any property without the consent of the affected Owner.

12.4 **To Satisfy Requirements of Lenders.** Anything to the contrary notwithstanding, Declarant reserves the unilateral right to amend all or any part of this Declaration to such extent and with such language as may be requested by a State Department of Real Estate (or similar agency), FHA, VA, the FHLMC or FNMA and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration or approval of the sale of Units, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Unit, or any portions thereof. Any such amendment shall be effected by the recordation by Declarant of a written Amendment duly signed by the Declarant, specifying

the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the change, modification or amendment requested by such agency or institution. Recordation of such an Amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Amendment, when recorded, shall be binding upon all Units and all persons having an interest therein. It is the desire of Declarant to retain control of the Master Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of hereof deletes, diminishes or alters such control in any manner whatsoever in the opinion of Declarant, Declarant shall have the unilateral right to amend this Declaration to restore such control.

**12.5 Declarant's Rights.** No provision of this Declaration reserving or granting to Declarant the Developmental Rights shall be amended without the prior express written consent of Declarant, which consent may be withheld, conditioned or delayed for any reason or for no reason at Declarant's sole and exclusive discretion.

**12.6 Consent of Eligible Mortgagee.** The consent of Eligible Mortgagees holding at least sixty seven percent (67%) of the undivided ownership interest of the Owners in the Tract in the Common Area and Facilities and shall be required to any amendment which would terminate the legal status of the Tract; and the consent of Eligible Mortgagees holding at least fifty-one (51%) percent of the undivided ownership interest of the Owners in the Tract in the Common Area and Facilities shall be required to add to or amend any material provision of this Declaration or the Final Plat which establishes, provides for, governs, or regulates any of the following, which are considered as "material":

12.6.1 voting rights;

12.6.2 increases in assessments that raise the previously assessed amount by more than twenty-five (25%) percent, assessment liens, or the priority of assessments liens;

12.6.3 reduction in reserves for maintenance, repair, and replacement of the Common Area and Facilities;

12.6.4 responsibility for maintenance and repairs;

12.6.5 reallocation of interests in the Common Area and Facilities, or rights to their use;

12.6.6 redefinition of any Unit boundaries;

12.6.7 convertibility of Units into Common Area and Facilities or vice versa;

12.6.8 expansion or contraction of the Tract, or the addition, annexation, or withdrawal of property to or from the Tract;



12.6.9 hazard or fidelity insurance requirements;

12.6.11 imposition of any restrictions on the leasing of Units;

12.6.11 imposition of any restrictions on an Owner's right to sell or transfer his Unit;

12.6.12 a decision by the Master Association to establish self-management if professional management had been required previously by the Tract Documents or by an Eligible Mortgage holder;

12.6.13 restoration or repair of the Tract (after damage or partial condemnation) in a manner other than that specified in the documents;

12.6.14 any provisions that expressly benefit mortgage holders, insurers or guarantors; and

12.6.15 any provisions required by Utah State Department of Real Estate (or similar agency), FHA, VA, the FHLMC or FNMA, any other federal, state or local governmental agency or a federally chartered lending institution, which in all respects shall govern and control.

12.7 **Material Amendment.** Any addition or amendment shall not be considered material for purposes of this Section if it is for the clarification only or to correct a clerical error.

12.8 **Notice to Eligible Mortgagee.** Notice of any proposed amendment to any Eligible Mortgagee to whom a written request to approve an addition or amendment to this Declaration or the Final Plat is required shall be mailed postage prepaid to the address for such Mortgagee shown on the list maintained by the Master Association. Any Eligible Mortgagee who does not deliver to the Board of Directors or the Master Association a negative response to the notice of the proposed amendment within thirty (30) days from the date of such mailing shall be deemed to have approved the proposal. The foregoing consent requirements shall not be applicable to amendments to this Declaration and the Final Plat or the termination of the legal status of the Tract as a planned residential development if such amendments or such termination are made or accomplished in accordance with the provisions of this Declaration regarding condemnation or substantial obsolescence.

### **XIII. DISPUTE RESOLUTION AND LIMITATION ON LITIGATION AGREEMENT TO AVOID COSTS OF LITIGATION**

13.1 **General.** The MHOA, Declarant, all Owners subject to this Master Declaration, by acceptance of a deed or other document of conveyance agree to encourage the amicable resolution of disputes involving the properties at the Project, and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Owner hereby covenants and agrees that all claims, grievances or disputes between him and any other Owner or the Association, including, without limitation, claims, grievances or disputes arising out of or

relating to the interpretation, application or enforcement of this Master Declaration or the Project Documents (collectively "Claim"), except for the following Claims ("Exempt Claims"), which shall be exempt from the provisions of hereof:

**13.2.1 Enforcement of Declaration.** Any suit by Declarant against any Bound Party to enforce the provisions of this Master Declaration or to enforce any of Declarant's developmental rights set forth in this Master Declaration, including any defensive or responsive actions by the party against whom this Master Declaration is taken; Any suit by the MHOA against any Bound Party to enforce the provisions of this Master Declaration, including any defensive or responsive actions by the party against whom this Master Declaration is taken;

**13.2.2 Temporary Restraining Order.** Any suit by the MHOA to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the MHOA's ability to enforce the provisions of this Master Declaration, including any defensive or responsive actions by the party against whom this Master Declaration is taken;

**13.2.3 Claims Exceeding \$20,000.00.** Any suit between Owners (other than the Declarant) seeking redress on the basis of a Claim which would constitute a cause of action under the law of the State of Utah in the absence of a claim based on the Project Documents, if the amount in controversy exceeds \$20,000.00; and

**13.2.4 Enforcement Regarding Mortgage.** Any suit or enforcement action or exercise of any right or remedy under or in respect of any Mortgage, any indebtedness secured by such Mortgage or any other document or agreement executed in connection with such Mortgage or in respect of any right provided herein with respect to such Mortgage.

Any Owner having a Claim ("Claimant") against any other Owner or resident ("Respondent") other than an Exempt Claim, shall not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of such Claim until he has used his best efforts to negotiate a settlement in good faith, attempted mediation and/or arbitration of the Claim. The decision of the arbiter shall be conclusive, binding and final. If the parties cannot otherwise agree, then the parties shall use an Arbiter appointed by and the Rules of Arbitration of the American Arbitration Association.

#### XIV. SECURITY

**14. Security.** The MHOA may, but shall not be obligated to, maintain or support certain activities within the Project designed to make the Project safer than they otherwise might be. Neither the MHOA, nor the Declarant shall in any way be considered insurers or guarantors of security within the Project, however, and neither the MHOA, nor the Declarant shall be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. All Owners and his, her or its tenants, Guests and invitees acknowledge that the Declarant, the MHOA and its Board of Directors do not represent or warrant that any fire protection system or burglar alarm system designated by or installed in the

Project may not be compromised or circumvented, that any fire protection or burglar alarm systems will prevent loss by fire, smoke, burglary, theft, hold-up, or otherwise nor that fire protection or burglary alarm systems will in all cases provide the detection or protection for which the system is designed or intended. Each Owner or his, her or its tenant, guest or invitee acknowledges and understands that the Declarant, the Board of Directors and the MHOA are not insurers and that each Owner or his, her or its tenant, guest and invitee assumes all risks for loss or damage to persons or property within the Project and further acknowledges that Declarant, the Board of Directors and the MHOA have made no representations or warranties nor has any Owner or his, her or its tenant, Guest or invitee relied upon any representations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire and/or burglar alarm systems recommended or installed or any security measures undertaken within the Project.

## **XV. ARCHITECTURAL REVIEW COMMITTEE AND RELATED ISSUES**

15.1 **Aesthetics.** Since aesthetics, the integrity and harmony of the original design, and the quality of construction and materials throughout the Project is important, all architectural designs, plans, specifications, construction materials, and construction must be (a) reviewed and approved by the Architectural Review Committee ("ARC") and (b) consistent with the governing documents, including but not limited to the Development Agreement and City Ordinances.

15.2 **Architectural Review Committee or ARC.** The Declarant has the sole right and exclusive authority to resolve all architectural issues and may, in its sole discretion, designate one or more persons from time to time to act on its behalf in reviewing applications hereunder as the ARC. At the termination of the Period of Declarant's Control, the Declarant shall transfer to the Board of Directors the exclusive right to appoint the members of the ARC, which may consist of (a) a single individual, architect or engineer, or (b) a committee comprised of architects, engineers or other persons who may or may not be Owners, or (c) a combination thereof. Any member of the ARC who fails on three (3) successive occasions to attend regularly scheduled meetings or who has failed to attend at least twenty-five percent (25%) of all regularly scheduled meetings held during any twelve (12) month period shall automatically forfeit his seat. Members of ARC may be compensated for their services and reimbursed for costs advanced.

15.3 **ARC Powers and Standing.** Any instrument executed by the ARC or its legal representative that recites facts which, if true, would establish the power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument. The ARC shall constitute a legal entity capable of dealing in its own name or in behalf of two or more Owners. The ARC shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions hereof.

15.4 **Procedures for Approval of Plans and Specifications.** The Declarant or ARC shall adopt written guidelines and procedures for the approval of plans and specification.

**15.5 Enforcement.** The ARC is hereby granted the power, authority and right to interpret and enforce the architectural and construction provisions set forth in the governing documents. Any construction, alteration, or other work done in violation of this Declaration shall be considered to be nonconforming. Upon written request from the ARC an Owner shall at his own cost and expense remove such non-conforming construction, alteration, or other work and shall restore the land to substantially the same condition as existed prior to the non-conforming construction, alteration, or other work. Should an Owner fail to remove and restore as required hereunder, the ARC shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as existed prior to the construction, alteration or other work, without being deemed to be a trespasser.

**15.6 Approval.** All approvals must be express and in writing.

**15.7 No Waiver of Future Approvals.** The approval of the ARC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such Board of Directors, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters whatever subsequently or additionally submitted for approval or consent.

**15.8 Variance.** The ARC may authorize variances from compliance with any of the architectural guidelines when circumstances such as topography, natural obstructions, hardship, aesthetic, or environmental considerations require, but only in accordance with its duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) stop the ARC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit or the terms of financing shall not be considered a hardship warranting a variance.

**15.9 Limitation of Liability.** Neither the Declarant nor the ARC, or any of their employees, agents, Representatives or consultants shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of this Declaration, nor for any structural or other defects in any work done according to such plans and specifications. By accepting a deed or other document of conveyance to a Lot, each Owner agrees to and shall defend, indemnify, save and hold the Declarant and the ARC, and their employees, agents, Representatives or consultants, harmless from any and all loss, damage or liability they may suffer, including defense costs and attorney fees, as a result of any claims, demands, actions, costs, expenses, awards or judgments arising out of their review or approval of architectural designs, plans and specifications.

## **XVI. MISCELLANEOUS**

**16.1 Covenants to Run with Land.** This Declaration and all of the covenants, provisions, and requirements hereof are intended to be and shall constitute covenants running

with the land or equitable servitudes, and shall be binding upon and shall inure to the benefit of the parties to this Declaration and any other party which has, acquires, or comes to have any interest in or which occupies or comes to occupy a Lot or Unit in any Neighborhood, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. This Declaration and all of the covenants, provisions, and requirements hereof shall be binding upon each Member, and all real property interests in each Neighborhood shall be subject to this Master Declaration and all of such covenants, provisions, and requirements. Each Owner or resident, by virtue of accepting a deed or other document of conveyance to, or possession of any Unit or Lot, hereby consents and agrees to be subject to and bound by this Master Declaration and all of the covenants, provisions and requirements hereof.

**16.2 Amendment.** Until the termination of the Declarant's Period of Control, this document may be modified by filing for record in the Office of the Davis County Recorder a written instrument amending the Declaration signed by each Declarant, and acknowledged. Thereafter, this document may only be amended with the unanimous consent of each Member expressed in a written instrument duly recorded.

**16.3 Partial Invalidity.** The invalidity or unenforceability of any portion of the Declaration shall not affect the validity or enforceability of the remainder hereof, and if any provision of this Declaration or the application thereof to any party to this Declaration, or circumstances should to any extent be invalid, the remainder of this Declaration or the application of such provision to any party to this Declaration, or circumstances other than those as to which a holding of invalidity is reached shall not be effected thereby (unless necessarily conditioned or dependent upon the provisions or circumstances as to which a holding of invalidity is reached), and each provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

**16.4 Effective Dates and Duration.** This Declaration and all of the provisions hereof (except any provisions which by their terms may cease to be effective at an earlier time) shall remain effective for a term of fifty (50) years, unless sooner terminated and extinguished by a written Termination of Declaration filed with the Davis County Recorder, and executed by all of the parties hereto. At the expiration of the initial term, the Declaration shall renew itself for additional ten (10) year periods unless terminated by the unanimous consent of all of the parties hereto. Notwithstanding the foregoing or any other provision of this Master Declaration, the restrictions prohibiting any future subdivision or development of the open space and Common Areas within the Project shall remain in full force and effect and shall be perpetual covenants running with the land.

**16.5 Professional Manager.** The MHOA and each Neighborhood Association (including any club or recreational amenity if it requires separate management) must at all times be managed by a professional manager, who must be selected or approved by the MHOA and, during the Period of Declarant's Control, the Declarant; provided, however, the Board of Directors may delegate some of their management responsibilities to a professional manager or company, and they may employ general laborers, grounds-crew, maintenance personnel, bookkeeping, administrative and clerical workers as necessary to perform their management

responsibilities. In the event of a conflict of opinion, the decision of the Declarant shall be conclusive, final and binding.

**16.6 Captions.** The captions or headings which precede the paragraphs of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed.

**16.7 Construction.** Whenever the context or circumstance so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders.

**16.8 Governing Law.** This Declaration shall be governed by and construed in accordance with the laws of the State of Utah.

**16.9 Enforcement and Attorneys Fees.** In the event of a material violation of this document, the Manager, Board of Directors or an aggrieved Owner may bring an action for injunctive relief or damages. If this agreement is referred to an attorney for interpretation or enforcement, the prevailing party shall be entitled to recover his reasonable attorneys fees and costs, regardless of whether arbitration is commenced or a lawsuit is filed.

**16.10 Registered Agent.** The initial registered agent of the MHOA is Quinn Mortensen. The initial registered office of the MHOA is at 7300 South 300 West, Suite 106, Midvale, Utah 84047.

**16.11 Professional Manager.** The Master Association must be managed by a professional manager, whom it shall select.

**16.12 Notices.** Any notice permitted or required to be delivered as provided herein may be delivered either personally, by first class mail, by express mail or overnight courier service providing proof of delivery, or by telecopy or facsimile transmission. Notice to Owners shall be addressed to each Owner at the address given by such Owners to the Board of Directors for the purpose of service of such notice or to the Lot or Unit of such Owner if no such address has been given to the Board of Directors. Notice shall be deemed given when actually received if personally delivered or sent by overnight courier; if faxed, when the fax is received, except that if the fax is received at a time other than the normal business hours of the office at which it is received, on the next regular business day; and if by mail, the earlier of the day actually received or the third business day after the notice is deposited in the Lot or United States Mail, properly addressed and postage prepaid. Such address may be changed from time to time by notice in writing to the Board of Directors.

Dated this 4<sup>th</sup> day of April, 2007.

DECLARANT:

CityView Pineae Village 227, L.P.,  
a Delaware limited partnership

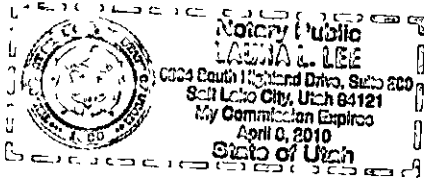
By: CityView Pineae Village, LLC  
a Delaware limited liability company  
Its: General Partner

By: [Signature]  
Name: Quinn Mortensen  
Title: Authorized Person

STATE OF UTAH )  
)ss:  
COUNTY OF SALT LAKE )

On the 4<sup>th</sup> day of April, 2007, personally appeared before me Quinn Mortensen, who by me being duly sworn, did say that he is the Authorized Person of CityView Pineae Village, LLC, a Delaware limited liability company, the General Partner of CityView Pineae Village 227, L.P., a Delaware limited partnership, and that the within and foregoing instrument was signed in behalf of said Partnership by authority of a resolution of its Partners or its Limited Partnership Agreement, and said Quinn Mortensen, duly acknowledged to me that said Limited Partnership executed the same.

[Signature]  
NOTARY PUBLIC  
Residing at: SALT LAKE CITY, UT  
My Commission Expires: 04/08/10



**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

**TOTAL SITE AREA FOR PINEAE VILLAGE**

The Land described in the governing documents as the Total Site Area for Pineae Village is located in Davis County, Utah and is described more particularly as follows:

BEGINNING AT A POINT WHICH IS NORTH 00° 24'15" EAST, 1033.69 FEET AND N89°35'45"W, 33.00 FEET SAID POINT BEING THE SOUTHEAST CORNER OF LOT 3, BLOCK "B" BIG CREEK PLAT CENTERVILLE TOWNSITE SURVEY AND NORTH 00°24'15" EAST, 75.25 FEET FROM A COUNTY MONUMENT LOCATED AT THE INTERSECTION OF PARRISH LANE AND MAIN STREET AND RUNNING THENCE NORTH 89°50'00" WEST, 832.44 FEET;THENCE SOUTH, 567.17 FEET;THENCE WEST 69.30 FEET;THENCE NORTH 00°04'57" EAST, 242.94 FEET;THENCE NORTH 89°39'51" WEST, 861.63 FEET;THENCE NORTH 00°07'35" EAST, 907.83 FEET;THENCE NORTH 89°49'43" EAST, 276.16 FEET;THENCE NORTH 00°05'01" EAST, 0.52 FEET;THENCE EAST 587.28 FEET;THENCE CONTINUE EASTERLY ALONG SAID LINE, A DISTANCE OF 66.50 FEET; THENCE NORTH 89°30'06" EAST, 700.55 FEET;THENCE SOUTH, 100.32 FEET;THENCE NORTH 88°59'28" WEST, 20.00 FEET;THENCE SOUTH 275.29 FEET;THENCE EAST, 150.63 FEET;THENCE SOUTH 209.42 FEET; THENCE SOUTH 00°24'15 WEST 13.83 FEET TO THE POINT OF BEGINNING.

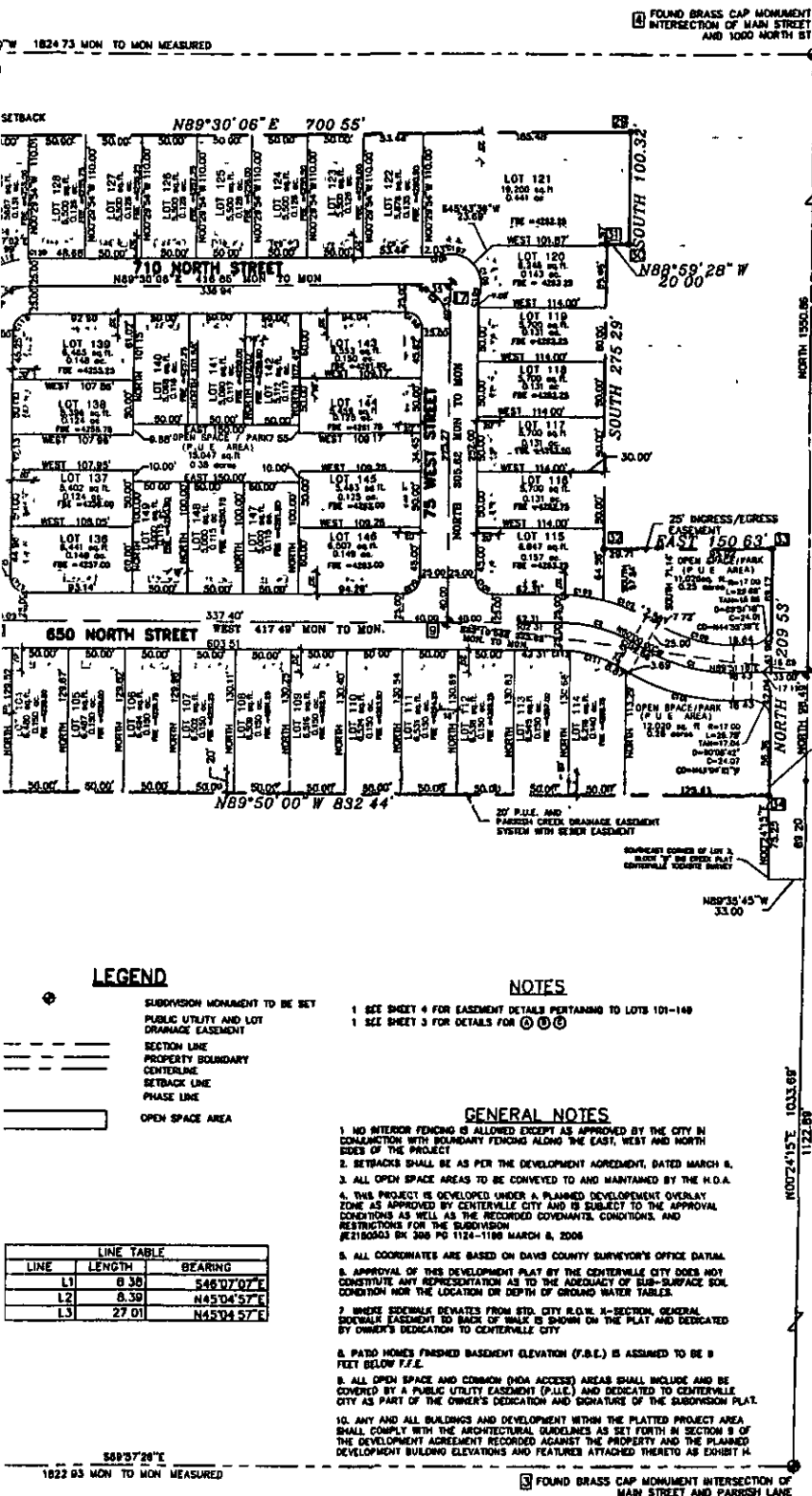
CONTAINS 1,304,778 SQUARE FEET OR 29.95 ACRES, MORE OR LESS.





# AGE P.U.D.

ST QUARTER OF  
(RTH, RANGE 1)  
D MERIDIAN



FOUND BRASS CAP MONUMENT INTERSECTION OF MAIN STREET AND 1000 NORTH ST

FOUND BRASS CAP MONUMENT INTERSECTION OF MAIN STREET AND PARRISH LANE

### LEGEND

- SUBDIVISION MONUMENT TO BE SET
- PUBLIC UTILITY AND LOT DRAINAGE EASEMENT
- SECTION LINE
- PROPERTY BOUNDARY
- CENTERLINE
- SETBACK LINE
- PHASE LINE
- OPEN SPACE AREA

### NOTES

- 1 SEE SHEET 4 FOR EASEMENT DETAILS PERTAINING TO LOTS 101-149
- 2 SEE SHEET 3 FOR DETAILS FOR

### GENERAL NOTES

- 1 NO INTERIOR FENCING IS ALLOWED EXCEPT AS APPROVED BY THE CITY IN CONJUNCTION WITH BOUNDARY FENCING ALONG THE EAST, WEST AND NORTH SIDES OF THE PROJECT
- 2 SETBACKS SHALL BE AS PER THE DEVELOPMENT AGREEMENT, DATED MARCH 8, 2006
- 3 ALL OPEN SPACE AREAS TO BE CONVEYED TO AND MAINTAINED BY THE H.O.A.
- 4 THIS PROJECT IS DEVELOPED UNDER A PLANNED DEVELOPMENT OVERLAY ZONE AS APPROVED BY CENTERVILLE CITY AND IS SUBJECT TO THE APPROVAL CONDITIONS AS WELL AS THE RECORDED COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE SUBDIVISION (RECORDS BY 2006 PD 1124-1180 MARCH 8, 2006)
- 5 ALL COORDINATES ARE BASED ON DAVIS COUNTY SURVEYOR'S OFFICE DATUM.
- 6 APPROVAL OF THIS DEVELOPMENT PLAN BY THE CENTERVILLE CITY DOES NOT CONSTITUTE ANY REPRESENTATION AS TO THE ADEQUACY OF SUB-SURFACE SOIL CONDITIONS NOR THE LOCATION OR DEPTH OF GROUND WATER TABLES.
- 7 WHERE SIDEWALK DEVIATES FROM STD. CITY R.O.W. X-SECTION, GENERAL SIDEWALK EASEMENT TO BACK OF WALK IS SHOWN ON THE PLAT AND DEDICATED BY OWNER'S DEDICATION TO CENTERVILLE CITY
- 8 PAVED HOMES FINISHED BASEMENT ELEVATION (F.B.E.) IS ASSUMED TO BE 8 FEET BELOW F.F.E.
- 9 ALL OPEN SPACE AND COMMON (HOA ACCESS) AREAS SHALL INCLUDE AND BE COVERED BY A PUBLIC UTILITY EASEMENT (P.U.E.) AND DEDICATED TO CENTERVILLE CITY AS PART OF THE OWNER'S DEDICATION AND SIGNATURE OF THE SUBDIVISION PLAT.
- 10 ANY AND ALL BUILDINGS AND DEVELOPMENT WITHIN THE PLATTED PROJECT AREA SHALL COMPLY WITH THE ARCHITECTURAL GUIDELINES AS SET FORTH IN SECTION 8 OF THE DEVELOPMENT AGREEMENT RECORDED AGAINST THE PROPERTY AND THE PLANNED DEVELOPMENT BUILDING ELEVATIONS AND FEATURES ATTACHED THERETO AS EXHIBIT H.

LINE	LENGTH	BEARING
L1	6.30	S48°07'07"E
L2	6.39	N45°04'37"E
L3	27.01	N45°04'37"E

### SURVEYOR'S CERTIFICATE

I, C. DAVID MCKINNEY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR AS PROVIDED UNDER THE LAWS OF THE STATE OF UTAH AND THAT I HOLD LICENSE NO. 5251295. FURTHER CERTIFY THAT A PLANNED UNIT DEVELOPMENT WAS MADE OF THE PROPERTY DESCRIBED BELOW, AND THE FINDINGS OF THAT SURVEY ARE AS SHOWN HEREON

C. DAVID MCKINNEY  
LIC. 5251295

DATE

### BOUNDARY DESCRIPTION

BEGINNING AT A POINT WHICH IS NORTH 00°24'15" EAST, 1033.69 FEET AND N89°35'45" W, FEET SAID POINT BEING THE SOUTHEAST CORNER OF LOT 3, BLOCK "B" BIG CREEK PLAT, CENTERVILLE TOWNSHIP SURVEY AND NORTH 00°24'15" EAST, 75.25 FEET FROM A COUNTY MONUMENT LOCATED AT THE INTERSECTION OF PARRISH LANE AND MAIN STREET AND RUN THENCE NORTH 89°50'00" WEST, 832.44 FEET, THENCE SOUTH, 567.17 FEET, THENCE WEST 69 FEET, THENCE NORTH 00°04'37" EAST, 242.84 FEET; THENCE NORTH 89°39'51" WEST, 861.63 FEET, THENCE NORTH 00°07'35" EAST, 907.83 FEET; THENCE NORTH 89°49'43" EAST, 276.16 FEET, THENCE NORTH 00°05'01" EAST, 0.52 FEET THENCE EAST 567.28 FEET; THENCE CONTINUING EASTERLY ALONG SAID LINE, A DISTANCE OF 86.50 FEET, THENCE NORTH 89°30'08" EAST, 7 FEET, THENCE SOUTH, 100.32 FEET, THENCE NORTH 88°59'28" WEST, 20.00 FEET, THENCE SOUTH FEET, THENCE EAST, 150.83 FEET, THENCE SOUTH 209.53 FEET, THENCE SOUTH 00°24'15" WEST FEET TO THE POINT OF BEGINNING.

CONTAINS 1,304,778 SQUARE FEET OR 29.95 ACRES, MORE OR LESS.

### OWNER'S DEDICATION

Known all men by these presents that City View Pineae Village, LLC, a Delaware limited liability company, its general partner Quinn Mortensen of the above tract, having caused said tract to be subdivided into lots and streets to be hereafter known as Pineae Village PUD do hereby dedicate to Centerville City the perpetual use of the public utility easements and parcels of land of this plat as intended for public use and all easements shown on this plat or intended for use by all suppliers of utility or other necessary services, and do hereby warrant, defend and save Centerville City harmless against any easements or encumbrances on the dedicated streets, easements and parcels which interfere with the use, operation, and maintenance thereof by the city

In witness whereof I have set my hand this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Authorized Person: Quinn Mortensen

### ACKNOWLEDGMENT

CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a Utah Corporation sole participates in this plat to establish the boundaries of the parcel known as Lot 150 and to dedicate to the public the parcels of land shown by the plat as intended for use. Said corporation does not participate in this plat to the extent that it creates parcels other than lot 150, nor has it participated in planning or engineering those portions of the plat.

CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a Utah corporation sole

By: Authorized Agent

STATE OF UTAH }  
COUNTY OF DAVIS } S S

On this \_\_\_\_\_ day of \_\_\_\_\_, 2000, personally appeared before me \_\_\_\_\_ personally known to me to be the Authorized Agent of CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a Utah corporation sole, who acknowledged before me that he signed the foregoing instrument as Authorized Agent for the CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a Utah corporation sole, and that the seal impressed on the within instrument is the seal of said Corporation, and that said instrument is the free and voluntary act of said Corporation, of its own accord and purpose therein mentioned, and an oath stated that he was authorized to execute said instrument on behalf of said corporation and that said Corporation executed the same

WITNESS my hand and official seal

Notary Public for the State of Utah

### ACKNOWLEDGMENT

STATE OF UTAH }  
COUNTY OF DAVIS } S S

On the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 20\_\_\_\_ personally appeared before me, the undersigned Notary Public, in and for said County of Davis said State of Utah, the signer ( ) of the above Declaration, who acknowledged to me that he signed the within instrument as Authorized Agent for the CORPORATION OF THE PRESIDING BISHOP OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a Utah corporation sole, and that said instrument is the free and voluntary act of said Corporation, of its own accord and purpose therein mentioned, and an oath stated that he was authorized to execute said instrument on behalf of said corporation and that said Corporation executed the same

NOTARY PUBLIC  
RESIDING IN DAVIS COUNTY

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, A.D. 20\_\_\_\_ BY THE

## PINEAE VILLAGE P.U.D.

LOCATED IN THE NORTHWEST QUARTER OF SECTION 7 TOWNSHIP 2 NORTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN

CENTERVILLE CITY DAVIS COUNTY, UTAH

SCALE 1" = 80 FEET

SURVEYOR'S SEAL	NOTARY PUBLIC SEAL	CITY-COUNTY ENGINEER SEAL	CLERK-RECORDING
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### DAVIS COUNTY RECORDER

ENTRY NO. \_\_\_\_\_ FILED FOR RECORD AND RECORDED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_\_\_  
TIME \_\_\_\_\_ BOOK \_\_\_\_\_ PAGE \_\_\_\_\_  
DATE \_\_\_\_\_ TIME \_\_\_\_\_ BOOK \_\_\_\_\_ PAGE \_\_\_\_\_

DAVIS COUNTY RECORDER

BY: \_\_\_\_\_ DEPUTY RECORDER



### APPROVED FOR APPROVAL

\_\_\_\_\_ DAY OF \_\_\_\_\_ A.D. 20\_\_\_\_ BY \_\_\_\_\_ PLANNING COMMISSION

### CITY COUNCIL APPROVAL

PRESENTED TO CITY COUNCIL OF CENTERVILLE CITY, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ A.D. 20\_\_\_\_ AT WHICH TIME THIS STREET DEDICATION WAS APPROVED AND ACCEPTED

CITY RECORDER ATTEST

MAYOR CENTERVILLE CITY

MISSION

PAGE

**EXHIBIT "B"**  
**LEGAL DESCRIPTION**

**FOR PINEAE VILLAGE CONDOMINIUM**

The Land described in the governing documents as the Pineae Village Condominium is located in Davis County, Utah and is described more particularly as follows:

All of Lots 151, 152 and 153, PINEAE VILLAGE, a Planned Unit Development, according to the official plat thereof as recorded in the office of the County Recorder of Davis County, Utah, together with all open space and public utility easements ("PUE") appurtenant thereto and designated as "open space/PUE" on said Plat.<sup>1</sup>

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<sup>1</sup> Pursuant to Article VIII of the Pineae Village Master Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements the Master Association is responsible for the maintenance of the open space/PUE.

**EXHIBIT "C"**  
**LEGAL DESCRIPTION**

**PINEAE VILLAGE PATIO HOMES**

The Land described in the governing documents as the Pineae Village Patio Homes is located in Davis County, Utah and is described more particularly as follows:

All of Lots 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148 and 149, PINEAE VILLAGE, a Planned Unit Development, according to the official plat thereof as recorded in the office of the County Recorder of Davis County, Utah, together with all open space and public utility easements ("PUE") appurtenant thereto and designated as "open space/PUE" on said Plat.<sup>2</sup>

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<sup>2</sup> Pursuant to Article VIII of the Pineae Village Master Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements the Master Association is responsible for the maintenance of the open space/PUE.

**EXHIBIT "D"**  
**LEGAL DESCRIPTION**

**PINEAE VILLAGE TOWN HOMES**

The Land described in the governing documents as the Pineae Village Town Homes is located in Davis County, Utah and is described more particularly as follows:

All of Lots 154, 155, 156 and 157, PINEAE VILLAGE, a Planned Unit Development, according to the official plat thereof as recorded in the office of the County Recorder of Davis County, Utah, together with all open space and public utility easements ("PUE") appurtenant thereto and designated as "open space/PUE" on said Plat.<sup>3</sup>

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<sup>3</sup> Pursuant to Article VIII of the Pineae Village Master Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements the Master Association is responsible for the maintenance of the open space/PUE.

**EXHIBIT "E"**  
**LEGAL DESCRIPTION**

**CHURCH SITE**  
**(Approximately 3.57 Acres)**

The Land described in the governing documents as the Church Site is located in Davis County, Utah and is described more particularly as follows:

All of Lot 150, PINEAE VILLAGE, a Planned Unit Development, according to the official plat thereof as recorded in the office of the County Recorder of Davis County, Utah, together with all open space and public utility easements ("PUE") appurtenant thereto and designated as "open space/PUE" on said Plat.<sup>4</sup>

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<sup>4</sup> Lot 150 has been excluded and is exempt from the provisions of the Pineae Village Master Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements and, as a result, will NOT be maintained by the Master Association, nor is the Owner of said Lot 150 a member of either the Master Association or any Neighborhood Association.

**EXHIBIT "F"**  
**BYLAWS OF THE**  
**PINEAE VILLAGE MASTER ASSOCIATION, INC.**  
A Utah Nonprofit Corporation

**ARTICLE I**  
**NAME AND LOCATION**

**Section 1 .01 Name and Location.** The name of the Master Association is the Pineae Village Master Association (the "Master Association"). The principal office of the corporation shall be located at 7300 South 300 West, Suite 106, Midvale, Utah 84047. Meetings of Members and Board of Directors may be held at such places within the State of Utah, as may be designated by Board of Directors.

**ARTICLE II**  
**DEFINITIONS**

**Section 2.01 Definitions.** Except as otherwise provided herein or as may be required by context, all terms defined in Article 1 of the Declaration shall have such defined meanings when used in these Bylaws.

**ARTICLE III**  
**MEETINGS OF MEMBERS OF THE MASTER ASSOCIATION**

**Section 3.01 Annual Meeting.** The Board of Directors shall meet as often as it deems reasonably necessary but not less than annually at a convenient time and place.

**Section 3.02 Special Meetings.** Special meetings of the Master Association may be called at any time by the President or by a majority of the Members of the Board of Directors.

**Section 3.03 Notice of Meetings.** Written notice of each meeting of the Master Association shall be given to each Owner by or at the direction of the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, no more than thirty (30) and at least ten (10) days before such meeting to said Owner addressed to the Owner's address last appearing on the books of the Master Association, or supplied by such Owner to the Master Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

**Section 3.04 Quorum.** Twenty-five percent (25%) of the Owners present in person or by proxy shall constitute a quorum for any action except as otherwise expressly provided in Project Documents.

**Section 3.05 Proxies.** At all Master Association meetings, each Owner may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every

proxy shall be revocable and shall expire, if not previously revoked, eleven (11) months after the date it is given by the Owner. Proxies delivered prior to the commencement of the meeting shall be considered valid.

**ARTICLE IV  
BOARD OF DIRECTORS AND TERM OF OFFICE**

**Section 4.01 Number.** The affairs of the Master Association shall be managed by a Board of Directors comprised of at least three (3) and no more than seven (7) natural persons. Each Director must be duly qualified and appointed or elected.

**Section 4.02 Replacement.** If a Director resigns or is otherwise unable or unwilling to serve, then the remaining Directors shall appoint a replacement to complete his term of office.

**Section 4.03 Term of Office.** Each Director on the Board of Directors shall serve a term of at least one (1) year.

**Section 4.04 Compensation.** No Director shall receive compensation for any service he may render to the Master Association as a Director of the Board of Directors, although he may be reimbursed for his actual expenses incurred in the performance of his duties and may enter into an independent contract to provide other services. A Director may enter into a separate and independent contract with the Master Association to provide additional services for a fee.

**Section 4.05 Action Taken Without a Meeting.** The Board of Directors shall have the right to take any action in the absence of a meeting which it could take at a meeting by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Board of Directors.

**Section 4.06 Voting.** Each Director shall have one (1) vote.

**Section 4.07 Objections.** Objections to the qualification or election of Directors of the Board of Directors are barred unless made in writing within one (1) year of the election.

**ARTICLE V  
POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

**Section 5.03 Powers.** The Master Association shall have all of the powers of a Utah non-profit corporation, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, the Bylaws and this Declaration. The Master Association shall have the power to perform any and all lawful acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Master Association. Without in any way limiting the generality of the foregoing, the Master Association may act through its Board of Directors and shall specifically have the powers and duties set out in this Article V, including



**Section 5.03.1 Assessments.** The power, authority and right to charge Assessments and to collect payment in accordance with the Declaration.

**Section 5.03.2 Master Association Property.** The power, authority and right to own and/or lease property owned by the Master Association. The duty to maintain and manage the Common Area and Facilities and improvements thereon. In particular the Master Association shall:

- a. Maintain and repair in an attractive, safe and functional condition the Common Area and Facilities;
- b. Pay all taxes and assessments levied upon the Common Area and Facilities and all taxes and assessments payable by the Master Association;
- c. Obtain any water, sewer, gas and electric services needed for the Common Area and Facilities; and
- d. Do each and every other thing reasonable and necessary to protect and preserve the Common Area and Facilities, and to manage the Master Association.

## **ARTICLE VI OFFICERS AND THEIR DUTIES**

**Section 6.01 Enumeration of Officers.** The officers of the Master Association shall be a President and Secretary, plus such other officers as the Board of Directors may from time to time by resolution create. The same individual may not concurrently hold the office of President and Secretary. The officers need not be Directors.

**Section 6.02 Election of Officers.** The Board of Directors shall elect or appoint officers at the first meeting of the Board of Directors during each calendar year.

**Section 6.03 Term.** Each officer of the Master Association shall hold office for one (1) year unless he shall sooner resign, or shall be removed or otherwise disqualified to serve.

**Section 6.04 Special Appointments.** The Board of Directors may elect such other officers as the affairs of the Master Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board of Directors may from time to time determine.

**Section 6.05 Resignation and Removal.** Any officer may be removed from office with or without cause by a majority vote of the Board of Directors. Any officer may resign at any time by giving written notice to the Board of Directors, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**Section 6.06 Vacancies.** A vacancy in any office may be filled by appointment by the Board of Directors. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

**Section 6.07 President.** The President shall (a) preside at all meetings of the Board of Directors, (b) see that orders and resolutions of the Board of Directors are carried out and (c) sign all contracts.

**Section 6.08 Secretary.** The Secretary shall (a) record the votes and keep the minutes of all meetings and proceedings of the Board of Directors and of the Master Association, (b) keep the corporate seal of the Master Association and affix it on all papers requiring said seal, (c) serve notice of meetings of the Board of Directors and of the Master Association, (d) keep appropriate current record, showing the Members of the Master Association together with their addresses and (e) perform such other duties as may be required by the Board of Directors.

## **ARTICLE VII COMMITTEES**

**Section 7.01 Committees.** The Board of Directors may appoint such committees as deemed appropriate in carrying out its purpose.

## **ARTICLE VIII BOOKS AND RECORDS**

**Section 8.01 Books and Records.** The books and records shall be kept with detailed accounts of the receipts and expenditures affecting the Tract, and the administration of the Tract, specifying the maintenance, repair and any other expenses incurred. The books and records, including any invoices, receipts, bills, proposals, documents, financial statements, and vouchers accrediting the entries thereupon shall be available for examination by the Owners, their duly authorized agents or attorneys, during general business hours on working days at the times and in the manner that shall be set and announced by the Board of Directors for the general knowledge of the Owners. All books and records shall be kept in accordance with generally accepted accounting practices.

**Section 8.02 Signatures.** All checks, drafts, contracts, and legally binding agreements must be signed by at least two (2) persons, one of whom must be the president or secretary, and the other the professional property manager.

**Section 8.03 Bookkeeping.** The accounting and financial statements for Master Association must be kept and prepared by either the property manager or an independent bookkeeper or accountant, who may not be a member of the Board of Directors or an officer of the Master Association. A monthly profit and loss statement, balance sheet, and check register shall be sent or delivered designee by the bookkeeper or accountant to

each Member and Master Association or their designee. The accountant or bookkeeper shall prepare and file all tax returns for the Master Association.

**Section 8.04 Audit.** A majority vote of either the Members of the Board of Directors or the Owners shall be necessary and sufficient to require either a Compilation Report, Reviewed Statement or Audited Statement of the Master Association.

**ARTICLE IX  
AMENDMENTS**

**Section 9.01 Amendment to Bylaws.** These Bylaws may be amended unilaterally by the Developer until the expiration of the Period of Developer's Control or thereafter by the affirmative vote of a majority of the Members of the Board of Directors.

**Section 9.02 Conflict Between Articles, Bylaws and Declaration.** In the case of any conflict between the Declaration and these Bylaws, the Declaration shall in all respects govern and control.

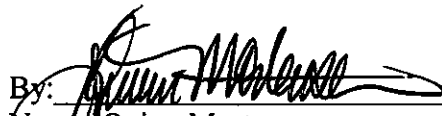
**ARTICLE X  
MISCELLANEOUS**

**Section 10.01 Miscellaneous.** The fiscal year of the Master Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

IN WITNESS WHEREOF, the Declarant has hereunto set his hand this 4<sup>th</sup> day of April, 2007.

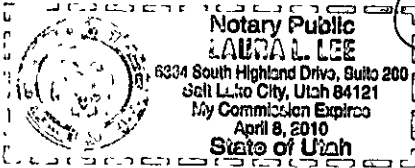
DECLARANT:  
CityView Pineae Village 227, L.P.,  
a Delaware limited partnership

By: CityView Pineae Village, LLC  
a Delaware limited liability company  
Its: General Partner

By:   
Name: Quinn Mortensen  
Title: Authorized Person

STATE OF UTAH                    )  
  )ss:  
COUNTY OF SALT LAKE        )

On the 4<sup>th</sup> day of April, 2007, personally appeared before me Quinn Mortensen, who by me being duly sworn, did say that he is the Authorized Person of CityView Pineae Village, LLC, a Delaware limited liability company, the General Partner of CityView Pineae Village 227, L.P., a Delaware limited partnership, and that the within and foregoing instrument was signed in behalf of said Partnership by authority of a resolution of its Partners or its Limited Partnership Agreement, and said Quinn Mortensen, duly acknowledged to me that said Limited Partnership executed the same.

 *Laura L. Lee*  
NOTARY PUBLIC  
Residing at: SALT LAKE CITY, UT  
My Commission Expires: 04/08/10

**CERTIFICATION**

I, the undersigned, do hereby certify:

THAT I am the duly elected and acting secretary of Master Association.

THAT the foregoing document constitutes the Bylaws of said Master Association, as duly adopted at a meeting of the Board of Directors thereof, held on the 22nd day of March, 2007.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 4<sup>th</sup> day of April, 2007.

  
\_\_\_\_\_  
Secretary

**ARTICLES OF INCORPORATION  
OF  
PINEAE VILLAGE MASTER HOMEOWNERS ASSOCIATION, INC.**

In compliance with the requirements of the Utah Nonprofit Corporation and Cooperative Association Act, the undersigned, residents of Salt Lake County, State of Utah, being of full age, have this day voluntarily formed a corporation not for profit, and do hereby certify:

**ARTICLE I  
NAME**

The name of the corporation is the PINEAE VILLAGE MASTER HOMEOWNERS ASSOCIATION, INC., (hereafter referred to as the "Association").

**ARTICLE II  
PRINCIPAL OFFICE**

The principal office of the Association is located at 7300 South 300 West, Suite 104, Midvale, Utah 84047.

**ARTICLE III  
REGISTERED AGENT**

The President of the Association, Quinn Mortensen, of 7300 South 300 West, Suite 104, Midvale, Utah 84047, is hereby appointed the initial Registered Agent of the Association.

**ARTICLE IV  
PURPOSE AND POWERS OF THE ASSOCIATION**

The Association is organized as a nonprofit corporation and does not contemplate pecuniary gain or profit to its members. PINEAE VILLAGE is a Utah planned development consisting of approximately 30 acres of real property located at approximately 675 North Main Street in Centerville, Utah, and central open space and amenities which will be managed by a Master Association, privately owned lots or units, and separate sub-associations or neighborhood associations for the Patio Homes, Town Homes and Condominiums. The specific purposes for which the Association is formed is to (a) maintain all of the central open space and amenities at PINEAE VILLAGE as set forth in the Development Agreement with Centerville City and the Master Declaration of Covenants, Conditions and Restrictions for PINEAE VILLAGE (the "Master Declaration") which are incorporated by this reference, (b) interpret and enforce the covenants, conditions, and restrictions governing PINEAE VILLAGE, (c) promote the health, safety, and welfare of the residents of PINEAE VILLAGE, and (d) take any other action and to enter into any other transactions which may be reasonably necessary to accomplish the foregoing.

Date: 04/05/2007  
Receipt Number: 2090224  
Amount Paid: \$38.00

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**ARTICLE V  
MEMBERSHIP**

All of the unit owners of PINEAE VILLAGE shall be members of the Association. No shares of stock or membership certificates will be issued.

**ARTICLE VI  
VOTING RIGHTS**

Each member shall have one (1) vote based upon his or her percentage of ownership interest in the common areas and facilities at PINEAE VILLAGE as set forth in the Master Declaration.

**ARTICLE VII  
BOARD OF DIRECTORS**

The affairs of the Association shall be managed by the Board of Directors which shall consist of at least three (3) and no more than nine (9) members, based upon the requirements of the Master Declaration, who must be individual unit owners or the legal agents or representatives of institutional unit owners, unless otherwise expressly allowed by the Master Declaration. The names and addresses of the persons who are to act in the capacity of members of the Board of Directors until the selection of their successors are:

Quinn Mortensen  
7300 South 300 West, Suite 104  
Midvale, Utah 84047

Kristen Nilssen  
7300 South 300 West, Suite 104  
Midvale, Utah 84047

Thomas Messina  
7300 South 300 West, Suite 104  
Midvale, Utah 84047

Members shall be elected for two (2) year terms.

**ARTICLE VIII  
DISSOLUTION**

The incorporated Association may be dissolved in accordance with Utah law and the Master Declaration. Upon dissolution, the assets of the corporation shall be either dedicated to a public body or conveyed to a qualifying non-profit corporation with similar purposes.

**ARTICLE IX  
DURATION**

The Association shall exist perpetually.

**ARTICLE X  
AMENDMENTS**

The affirmative vote of at least 2/3rds of the owners of the Units at PINEAE VILLAGE shall be required and shall be sufficient to amend these Articles. Any amendment so authorized shall be accomplished through the recordation or filing of an instrument executed by the President and Secretary of the Association. In such instrument the Committee shall certify that the vote required by this Section has occurred.

**ARTICLE XI  
INCORPORATOR**

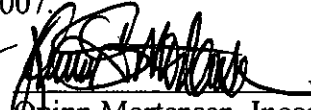
The name and address of the incorporator of the Association is:

Quinn Mortensen  
7300 South 300 West, Suite 104  
Midvale, Utah 84047

**ARTICLE XII  
DEFINITIONS**

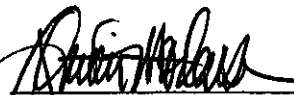
Except as otherwise provided herein or as may be required by context, all terms used in these Articles shall have the meanings given them by the Master Declaration and By-Laws.

IN WITNESS WHEREOF, for the purpose of forming this corporation under the laws of the State of Utah, the undersigned, as incorporator of the Association, has executed these Articles of Incorporation this 4th day of April, 2007.

  
\_\_\_\_\_  
Quinn Mortensen, Incorporator

**ACKNOWLEDGMENT OF REGISTERED AGENT**

The undersigned hereby acknowledges his appointment as the initial Registered Agent of the Association.

  
\_\_\_\_\_  
Quinn Mortensen

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**MINUTES OF INITIAL MEETING OF INCORPORATOR  
OF  
PINEAE VILLAGE MASTER HOMEOWNERS ASSOCIATION, INC.**

On March 22, 2007, at 7300 South 300 West, Suite 104, Midvale, Utah 84047, a meeting of the organizer and proposed incorporator of the above-named corporation was held at which the following person was present: Quinn Mortensen of 7300 South 300 West, Suite 104, Midvale, Utah 84047.

Quinn Mortensen was elected Chairman of the meeting and kept the minutes.

The Chairman announced that the object of the meeting was to take the necessary steps to organize a corporation under the laws of the State of Utah, for the purpose of creating a non-profit corporation to manage, maintain, operate and regulate the easements and enforce the restrictive covenants at the PINEAE VILLAGE and to do everything required thereby and allowed by law. The corporation is to be known as PINEAE VILLAGE MASTER HOMEOWNERS ASSOCIATION, INC. Each member shall own one share in the corporation equal to his or her percentage of ownership interest in the common areas and facilities at the PINEAE VILLAGE as set forth in the Master Declaration, although the corporation shall not issue shares of stock.


The Chairman presented a draft of the Articles of Incorporation and By-Laws of the corporation to be formed, and the draft was thereupon approved in substance and in form by all persons present, and was signed and duly acknowledged by the incorporator named therein, in the manner required by law.

On motion duly made, seconded, and unanimously carried, the Chairman, being the incorporator, elected to have legal counsel file the Articles of Incorporation with the State of Utah.

It was unanimously agreed that additional meetings of the organizer would be held on call of the Chairman, upon not less than twenty-four (24) hours written notice to each organizer, at the place of the present meeting.

There being no further business to come before the meeting, upon a motion duly made, seconded, and carried, the same was duly adjourned.

DATED the day and year first above written.

  
\_\_\_\_\_  
Quinn Mortensen, Incorporator

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**MINUTES  
OF THE INITIAL MEETING OF THE BOARD OF DIRECTORS  
OF  
PINEAE VILLAGE MASTER HOMEOWNERS ASSOCIATION, INC.**

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**INITIAL MEETING:**

The initial meeting of the PINEAE VILLAGE MASTER HOMEOWNERS ASSOCIATION, INC. was held at the offices of the corporation on March 22, 2007, pursuant to personal notice to each Director.

**DIRECTORS PRESENT:**

Quinn Mortensen  
7300 South 300 West, Suite 104  
Midvale, Utah 84047

Kristen Nilssen  
7300 South 300 West, Suite 104  
Midvale, Utah 84047

Thomas Messina  
7300 South 300 West, Suite 104  
Midvale, Utah 84047

**WAIVER OF NOTICE:**

The Chairman then stated that all Directors must sign a Waiver of Notice of the time and place of this meeting. All persons at the meeting then stated their understanding and consent that the signature of each Director of the corporation of the Minutes of this meeting, acknowledges and constitutes receipt of notice of the time and place of the meeting and the Waiver of the same.

**ELECTION OF OFFICERS:**

On motion duly made and carried, and by the unanimous vote of all present, the following officers were elected:

**PRESIDENT :**

Quinn Mortensen  
7300 South 300 West, Suite 104  
Midvale, Utah 84047

SECRETARY/TREASURER:

Kristen Nilssen  
7300 South 300 West, Suite 104  
Midvale, Utah 84047

COMMITTEE MEMBER AT LARGE:

Thomas Messina  
7300 South 300 West, Suite 104  
Midvale, Utah 84047

:

BANK ACCOUNTS:

On motion duly made, seconded and carried, it was unanimously:

RESOLVED, that the Treasurer be, and she is hereby authorized to open a bank account at such bank or banks to be selected by the officers of the corporation, from which funds are to be withdrawn only by check signed by an officer of the corporation; a copy of the printed form of Bank resolution and signature cards shall be executed and the same is hereby ordered filed with the permanent records of the corporation.

APPROVAL OF MINUTES OF THE FIRST MEETING OF INCORPORATORS:

On motion duly made, seconded and carried, the Board approved, confirmed and ratified the minutes of the First Meeting of Incorporator and Subscriber held on the March 22, 2007, at the offices of the corporation.

APPROVAL OF BY-LAWS:

The Chairman then proposed that the proposed By-Laws be adopted. The proposal was seconded, considered and approved unanimously.

PAYMENT OF INCORPORATING EXPENSES:

Upon motion duly made, seconded and carried, the following resolution was adopted:

RESOLVED, that the Treasurer be, and she is hereby authorized to pay all fees and expenses incident to and necessary for the organization of the corporation.

COMPENSATION OF OFFICERS:

Upon motion duly made and seconded, it was unanimously:

RESOLVED, that the officers of the corporation shall be reimbursed for their expenses incurred on behalf of the corporation, but shall not receive any other compensation for such service.

FISCAL YEAR:

Upon motion duly made, seconded and unanimously carried, the following resolution was adopted:

RESOLVED, that the fiscal year of the corporation shall end December 31.

AUTHORIZATION TO EXECUTE INSTRUMENTS OR DOCUMENTS:

It was then deemed advisable to give general authority to the President and Secretary to execute all necessary instruments or documents on behalf of the corporation required for the conduct of its business in the State of Utah; provided, however, all documents shall be signed by at least two officers, one of whom shall always be the President or the Secretary.

Upon motion duly made, seconded and unanimously carried, the following resolution was adopted:

RESOLVED, the President, Vice-President, Secretary and/or Treasurer be and they are hereby authorized to execute on behalf of the corporation any and all employment agreements, deeds, leases, contracts, purchase orders, notes, mortgages, and other instruments or documents which may be necessary or desirable in connection with the conduct of the business or corporation.

REGULAR MEETING FOR BOARD OF DIRECTORS:

The Board then determined that it shall hold a regular meeting as determined by the President, but at least on a semi-annual basis.

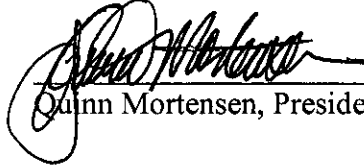
On motion duly made, seconded and carried, it was decided that the corporation would not issue any certificates of membership.

MANAGEMENT:

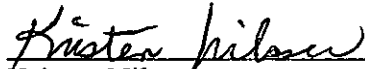
The Board determined that the Association should be self-managed until such time as a majority of the members elect to hire a professional manager or management company.

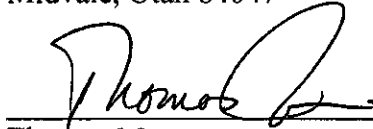
ADJOURNMENT:

There being no further business to come before the meeting, the same was declared adjourned.

  
\_\_\_\_\_  
Quinn Mortensen, President

APPROVED BY:

  
\_\_\_\_\_  
Kristen Nilssen  
7300 South 300 West, Suite 104  
Midvale, Utah 84047

  
\_\_\_\_\_  
Thomas Messina  
7300 South 300 West, Suite 104  
Midvale, Utah 84047