

WHEN RECORDED RETURN TO:

Jed Stewart
Fieldstone Utah Investors, LLC
12896 S. Pony Express Rd. #400
Draper, UT 84020
(801) 568-2340
Jed.Stewart@fieldstone-homes.com

Tax ID No. 02-224-0001 thru 02-224-0025
02-226-0001 thru 02-226-0067

**AMENDMENT
TO
NEIGHBORHOOD DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS, AND RESERVATION OF EASEMENTS
FOR
PINEAE VILLAGE CONDOMINIUM**

This Amendment to Neighborhood Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for Pineae Village Condominium is made and executed by Fieldstone Homes of Utah, L.L.C., a Utah limited liability company, whose address is 1265 E. Fort Union Blvd., Suite 350, Midvale, UT 84047 (the "Successor Declarant").

RECITALS

- A. Whereas, the Master Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for Pineae Village, a planned unit development, was recorded in the office of the County Recorder of Davis County, Utah on April 27, 2007 as Entry No. 2265491 in Book 4271 at Pages 392-468 of the official records (the "Master Declaration").
- B. Whereas, the Neighborhood Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for Pineae Village Condominium was recorded in the office of the County Recorder of Davis County, Utah on April 27, 2007 as Entry No. 2265494 in Book 4271 at Pages 526-554 of the official records (the "Condominium Declaration").
- C. Whereas, under Article III, Section 16 of the Condominium Declaration, Declarant (and its successors in interest) expressly reserved the right to amend said Declaration.
- D. Whereas, Successor Declarant is the successor in interest to the Declarant and the development rights to the Project.
- E. Whereas, this amendment is intended to incorporate the legislative changes to the Utah Condominium Ownership Act, Utah Code Ann., ' '57-8-1 et seq. (1963) (the "Act") adopted by the Utah Legislature during the 2011 General Session.
- F. Whereas, this amendment affects the real property described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Property").

G. The Property is subject to the Declaration.

NOW, THEREFORE, for the reasons recited above, and for the benefit of the Property and the owners thereof, the Declarant hereby executes this Amendment to Neighborhood Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for Pineae Village Condominium.

1. **Name.** The name of the Association is and shall be "Pineae Village Condominium Homeowners Association, Inc."

2. **Legal Status of Association.** The Management Committee may unilaterally re-file the articles of incorporation of the Association if its status has been suspended or dissolved, and to adopt the prior bylaws.

3. **Registration With The Department of Commerce.**

(a) The Association shall register with the Utah Department of Commerce and pay the Registration Fee.¹ The registration will include: (1) the name and address of the Association; (2) the name, address, telephone number, and, if applicable, e-mail address of the President of the Association; (3) the name and address of each member of the Management Committee; (4) the name, address, telephone number, and, if the contact person wishes to use e-mail or facsimile transmission for communicating payoff information, the e-mail address or facsimile number, as applicable, of a primary contact person who will provide Association Payoff information.

(b) The Registration shall be updated within ninety (90) days after a change in any of the information provided.

(c) If the Association has failed to register or update its registration with the State of Utah may not record a notice of lien against a Unit or enforce a previous lien.

4. **Budget.** At least thirty (30) days prior to the Annual Homeowners Meeting, the Management Committee shall prepare and deliver to the Owners a proposed Budget:

(a) **Itemization.** The Budget shall set forth an itemization of the anticipated Common Expenses (including that portion earmarked for the reserve account(s) and the Association's proportionate share of the cost of maintaining the Recreation Amenity) for the twelve (12) month calendar year, commencing with the following January 1.

(b) **Basis.** The Budget shall be based upon advance estimates of cash requirements by the Management Committee to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas, including the Recreation Amenity, and regulation of the Association, which estimate shall include but is not limited to expenses of management, grounds maintenance, taxes and special

¹ Currently \$37.00

assessments, premiums for all insurance which the Management Committee is required or permitted to maintain, common lighting and heating, common water charges, trash collection, storm drain fees, common sewer charges, sewer maintenance costs, carpeting, painting, repairs and maintenance of the Common Areas, including the Recreation Amenity, and replacement of those elements of the Common Areas, including the Recreation Amenity, that must be replaced on a periodic basis, wages for Management Committee employees, legal and accounting fees, any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus or sinking fund, Capital Improvement reserve, and other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under and by reason of this Declaration. Until the Project is completed, and all Phases are added, this estimate may need to be adjusted periodically as each new Phase is completed.

(c) The Owners may call a special meeting within forty-five (45) days of the meeting providing the proposed Budget to vote to disapprove the Budget, although to set it aside and to reject a proposed Budget requires the affirmative written consent of at least a majority of total ownership. If the new budget is disapproved, then the prior year's budget continues.

5. Reserve Analysis -- Reserve Fund.

(a) As used in this section, the term "reserve analysis" means an analysis to determine: (1) the need for a reserve fund to accumulate money to cover the cost of repairing, replacing, and restoring common areas and facilities that have a useful life of three years or more, but excluding any cost that can reasonably be funded from the general budget or other funds of the association of unit owners; and (2) the appropriate amount of any reserve fund.

(b) After the expiration of the Declarant's Period of Control, the Management Committee shall cause a reserve analysis to be conducted no less frequently than every five (5) years; and review and, if necessary, update a previously conducted reserve analysis no less frequently than every two (2) years.

(c) The Management Committee may conduct a reserve analysis itself or may engage a reliable person or organization, as determined by the Management Committee, to conduct the reserve analysis.

(d) The Management Committee may not use money in a reserve fund: (i) for daily maintenance expenses, unless a majority of the members of the Association vote to approve the use of reserve fund money for that purpose; or (ii) for any purpose other than the purpose for which the reserve fund was established.

(e) The Management Committee shall maintain a reserve fund separate from other funds of the Association.

(f) This Subsection (4) may not be construed to limit the Management Committee from prudently investing money in a reserve fund provided it is government insured.

(g) The Association shall: (1) annually, at the annual meeting of the Association or at a special meeting of the Association: (a) present the reserve study; and (b) provide an opportunity for Unit Owners to discuss reserves and to vote on whether to fund a reserve fund and, if so, how to fund it and in what amount; (2) prepare and keep minutes of each meeting so held and indicate in the minutes any decision relating to funding a reserve fund; provided, however, and anything to the contrary notwithstanding, the Association shall fund and maintain a reserve account sufficient to satisfy the requirements for certification by the US Department of Housing and Urban Development.²

(h) Anything to the contrary notwithstanding, this subsection (i) does not apply to an Association during the Period of Declarant's Control.

6. **Fair and Reasonable Notice.** Notice given in accordance with the provisions of the Revised Nonprofit Corporations Act, Title 16 Chapter 6a shall be considered fair and reasonable notice. The Association may give notice by text message, e-mail, text message, the Association website, or other electronic notice; provided, however an Owner may by making a written demand to the Association require written notice.

7. **Insurance.**

(a) Generally. The Association must maintain the following insurance coverage, at least to the extent it is reasonably available:

(1) Property insurance on ALL structures, including ALL Common Area and Facilities, and Units; and

(2) Public liability insurance.

(3) If any provision of this Section is held to be (a) inconsistent, incongruent or in conflict with the insurance requirements as set forth in the Act or (b) illegal, invalid, or unenforceable under any present or future law, then that provision will be fully severable. This Section will be construed and enforced as if the (a) inconsistent, incongruent or in conflict with the insurance requirements as set forth in the Act or (b) illegal, invalid, or unenforceable provision had never comprised a part hereof, and the remaining provisions of this Section will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Section. Furthermore, in lieu of each such (a) inconsistent, incongruent or in conflict with the insurance requirements as set forth in the Act or (b) illegal, invalid, or unenforceable provision, there will be added automatically, as a part of this Section, a provision as similar in terms to such (a) inconsistent, incongruent or in conflict with the insurance requirements as set forth in the Act or (b) illegal, invalid, or unenforceable provision as may be possible and be legal, valid and enforceable.

(b) Denial or Cancellation of Coverage. If property or liability insurance is not reasonably available, then fair and reasonable notice must be given to the owners within seven (7) days.

² Currently HUD requires a 10% reserve fund and a 10% contribution from annual assessments as they accrue.

(c) Additional Coverage. The Association may purchase additional or greater coverage.³

(d) Property Insurance. The Property Insurance coverage must include:

(1) All common area; and

(2) The Unit, including ALL fixtures, floor coverings, wall coverings, cabinets, heating and plumbing fixtures, windows, any (other) item permanently attached.⁴

(3) The Property Insurance must be for at least **100%** of the **FULL** replacement cost of the item at the time insurance is purchased and at the renewal date.

(4) The Association is not obligated to insure detached Units; that is, a Unit if the Unit is **NOT** physically attached to another Unit or to an above-ground structure that is part of the Common Area.

(5) When a claim is covered by the Association's Property Insurance AND the Unit Owner's Property Insurance, the Association's Property Insurance is considered PRIMARY.

(6) If a Unit Owner makes a claim on the Association's Property Insurance policy, then the Owner is responsible for the deductible. The Unit Owner's insurance may apply to the deductible.⁵

(7) If two (2) or more Unit Owner's make a claim arising out of a single event, then each Owner is responsible for payment of his or her portion of the deductible based upon his or her percentage of the loss .

(8) If a Unit Owner fails to pay his or her share of the loss/deductible, then the Association may assess an assessment against the Owner/Unit, and file a lien against the Unit to secure payment.

(9) For each such claim the Association must set aside the amount of the deductible or \$10,000.

(10) Also, the Association must give notice to ALL Unit Owners of (a) the amount of the deductible and (b) their obligation to pay the Association's deductible if a claim is filed, and (c) provide follow-up notice of any change to the amount of the deductible.

³ Such as Earthquake Insurance

⁴ The tongue and cheek rule of thumb is can it be removed in 10 minutes with a screw driver and pliers without damaging the structure.

⁵ Owners are encouraged to purchase a loss assessment rider or its equivalent to cover this contingency. Currently the premium for the rider is minimal (e.g., \$20 +/- per year).

(11) THE ASSOCIATION IS NOT OBLIGATED TO SUBMIT A CLAIM TO ITS PROPERTY INSURANCE CARRIER IF THE GOVERNING BOARD DETERMINES THAT IN ITS REASONABLE BUSINESS JUDGMENT THE AMOUNT OF THE CLAIM IS UNLIKELY TO EXCEED THE INSURANCE DEDUCTIBLE AND, IF SO, THE UNIT OWNER'S INSURANCE POLICY PROVIDES THE PRIMARY COVERAGE, OR IF THE UNIT OWNER IS UNINSURED, THEN HE OR SHE WILL BE LIABLE FOR THE LOSS UP TO THE AMOUNT OF THE DEDUCTIBLE.

(12) When the Association receives insurance proceeds from its Property Insurance carrier, the association receives the insurance proceeds in trust for the Owner(s) and the Association.

(e) Liability Insurance.

(1) The Association must obtain public liability insurance.

(2) The Association may purchase more public liability insurance than is required by the governing documents.

(3) Each Unit Owner is considered an "insured" under the public liability policy purchased by the Association

8. **Mortgagee Consent.** Any proposed action which would require the consent of a specified percentage of Mortgagees, if proper notice is given to a Mortgagee or other creditor, then a legal presumption is created that the Mortgagee and/or creditor consented, absent the delivery of a written objection within thirty (30) days of the date of delivery of the notice.

9. **Production of Records.** The Association shall: (a) keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the Common Areas and Facilities, specifying and itemizing the maintenance and repair expenses of the Common Areas and Facilities and any other expenses incurred; and (b) make those records available for examination by any Unit Owners at a convenient hour during the regular work week no later than fourteen (14) days after the Unit Owner makes a written request to examine the records.

10. **Flags, Signs, Religious and Holiday Displays.** The Association may not prohibit the display of a U.S. flag inside a Dwelling, Unit or Limited Common Area, if the care of the flag and display is consistent with federal law. The Association may control and restrict the display of a flag in the Common Area. The rights of Owners and occupants to display religious and holiday signs, symbols, and decorations on their Lots of the kinds normally displayed in residences located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt time, place, and manner restrictions regulating displays which are visible from outside the Unit.

11. Providing Payoff Information.

(a) The Association may charge a fee for providing Association payoff information needed in connection with the closing of a Unit Owner's financing, refinancing, or sale of the Owner's Unit (the "Payoff Fee").

(b) The Association may not require that the Payoff Fee be paid before closing and the Payoff Fee may not exceed \$50.00 without a change in the statute.

(c) If the Association fails to provide the payoff information requested within five (5) business days after the closing agent requests the information may not enforce a lien against that Unit for money due to the association at closing; provided, however, a request shall not be considered effective unless the request is conveyed in writing to the designated contact person for the Association on record with the State of Utah and contains: (1) the name, telephone number, and address of the person making the request; and (2) the facsimile number or email address for delivery of the payoff information; and (3) is accompanied by a written consent for the release of the payoff information: (a) identifying the person requesting the information as a person to whom the payoff information may be released; and (b) signed and dated by an Owner of the Unit for which the payoff information is requested.

12. Foreclosure of Lien as Mortgage or Trust Deed. The lien for nonpayment of Assessments may be enforced by sale or foreclosure of the Owner's interest therein by the Management Committee. The sale or foreclosure shall be conducted in the same manner as foreclosures in deeds of trust or mortgages or in any other manner permitted by law. In any foreclosure or sale, the Owner shall pay the costs and expenses of such proceedings, including but not limited to the cost of a foreclosure report, reasonable attorney's fees, and a reasonable rental for the Unit during the pendency of the foreclosure action. The Association in the foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security. The Management Committee may bid for the Unit at foreclosure or other sale and hold, lease, mortgage, or convey the same.

(a) A Unit may be auctioned publically and sold through either a non-judicial foreclosure (like a bank foreclosing a deed of trust) or through judicial foreclosure. A court order of sale is required for a judicial foreclosure which includes a 6-month redemption period.

(b) For purposes of a non-judicial foreclosure, when a person accepts a deed or other document of conveyance to a Unit, it is considered the same, like a bank and a deed of trust, as conveying the Unit in trust to as trustee⁶ appointed by the Association to secure payment of all assessments and costs of collection.

⁶ Bank, Title Company or Utah attorney

(c) The Association must appoint a qualified trustee, by signing and recording in the office of the county recorder a written substitution of trustee form in order to foreclose upon a Unit non-judicially.⁷

(d) At least thirty (30) days prior to starting its non-judicial foreclosure, the Association must send written notice to the Owner informing him or her of the Association's intent to foreclose non-judicially and the Owner's right to demand judicial foreclosure. The notice must be in the form provided by the statute and sent by certified mail.⁸ The Owner may object to the non-judicial foreclosure by sending a written demand for judicial foreclosure. The Owner's objection and written demand must be sent within fifteen (15) days. The Owner's objection and written demand must also be sent by certified mail.

(e) The Association may not use a non-judicial foreclosure to enforce a lien if the Owner mails the Association a written demand for judicial foreclosure: (a) by U.S. mail, certified with a return receipt requested; (b) to the address stated in the Association's Notice of Non-judicial Foreclosure and Right to Demand Judicial Foreclosure under Subsection (4); and (c) within fifteen (15) days after the date of the postmark on the envelope of the Association's Notice of Non-judicial Foreclosure and Right to Demand Judicial Foreclosure.

(f) The Association must follow the provisions of the law applicable to the non-judicial foreclosure of deeds of trust.

13. **Enforcement.** The Management Committee may exercise its business judgment in deciding whether to impose sanctions or pursue legal action against violators and shall consider common concerns when taking or deciding not to take formal action, such as a weak legal position, conflict with current law, technical violations, minor or collateral issue, and whether or not it is in Association's best interests to pursue the matter and, if so, to what extent.

⁷ No redemption period. A notice of default is prepared and recorded. The Owner has 90 days to cure the default or the Unit may be sold by the Trustee. The notice of sale usually takes 30+ days. A non-judicial foreclosure takes approximately 120 days.

⁸ **Error! Main Document Only.**NOTICE OF NONJUDICIAL FORECLOSURE AND RIGHT TO DEMAND JUDICIAL FORECLOSURE

The (insert the name of the association of unit owners), the association for the project in which your unit is located, intends to foreclose upon your unit and allocated interest in the common areas and facilities using a procedure that will not require it to file a lawsuit or involve a court. This procedure is being followed in order to enforce the association's lien against your unit and to collect the amount of an unpaid assessment against your unit, together with any applicable late fees and the costs, including attorney fees, associated with the foreclosure proceeding. Alternatively, you have the right to demand that a foreclosure of your property be conducted in a lawsuit with the oversight of a judge. If you make this demand and the association prevails in the lawsuit, the costs and attorney fees associated with the lawsuit will likely be significantly higher than if a lawsuit were not required, and you may be responsible for paying those costs and attorney fees. If you want to make this demand, you must state in writing that "I demand a judicial foreclosure proceeding upon my unit", or words substantially to that effect. You must send this written demand by first class and certified U.S. mail, return receipt requested, within fifteen (15) days after the date of the postmark on the envelope in which this notice was mailed to you. The address to which you must mail your demand is (insert the address of the association of unit owners for receipt of a demand).

14. **Conflict With Master Declaration.** In the event of any conflict, inconsistency or incongruity between the provisions of the Master Declaration and this Fifth Amended First Supplement, the former shall in all respects govern and control.

15. **Conflict With Condominium Declaration.** In the event of any conflict, inconsistency or incongruity between the provisions of the Condominium Declaration and this Fifth Amended First Supplement, the latter shall in all respects govern and control.

16. **Disclaimer.** Successor Declarant hereby disclaims any and all liability for the acts or omissions of the original Declarant or prior successors in interest.

17. **Amendments to Satisfy Requirements of Lenders.** The Successor Declarant reserves to itself and is hereby granted 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), HUD, 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 Successor Declarant of a written Amendment duly signed by the Successor 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 Successor Declarant to retain control of the 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 Successor Declarant, Successor Declarant shall have the unilateral right to amend this Declaration to restore such control.

18. **Reinvestment Fee.** The Association may charge a reinvestment or community improvement fee in accordance with Utah law.

19. **Effective Date.** The effective date of this Fifth Amended First Supplement to the Declaration and the Final Plat shall be the date on which said instruments are filed for record in the Office of the County Recorder of Davis County, Utah.

IN WITNESS WHEREOF, the Declarant has hereunto set his hand this 8th day of November, 2011.

DECLARANT:
FIELDSTONE HOMES OF UTAH, L.L.C.

By: [Signature]
Its: Manager

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

On the 8th day of November, 2011, personally appeared before me Jed Stewart, who by me being duly sworn, did say that he is the Manager of Fieldstone Homes of Utah, L.L.C., a Utah limited liability company, and that the within and foregoing instrument was signed in behalf of said Company by authority of a resolution of its Members or its Articles of Organization and Operating Agreement, and said Jed Stewart duly acknowledged to me that said Company executed the same.

[Signature]
NOTARY PUBLIC

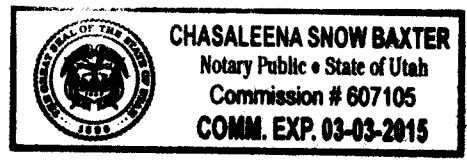


EXHIBIT "A"
LEGAL DESCRIPTION

The land described in the foregoing document is located in Davis County, Utah and is described more particularly as follows:

All of PINEAE VILLAGE CONDO, PLAT I, according to the Official Plat thereof as recorded in the Office of the Davis County Recorder, State of Utah.

Tax ID No. 02-224-0001 thru 02-224-0025

All of PINEAE VILLAGE PLAT III, LOTS 151 A-F, according to the Official Plat thereof as recorded in the Office of the Davis County Recorder, State of Utah.

Tax ID No. 02-226-0001 thru 02-226-0067