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Alan Spriggs, Summit County Utah Recorder

08/26/2008 04:42:50 PM Fee \$22.00

By EQUITY-PARK CITY

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Recording Requested By And  
When Recorded Return To:

QVA Inc.  
PO Box 980120  
Park City, UT 84098

Tax Parcel No. QJPB-B-1

## ANNEXATION AGREEMENT AND NOTICE OF ANNEXATION

THIS ANNEXATION AGREEMENT AND NOTICE OF ANNEXATION ("Agreement") is made and entered into this 15 day of August, 2006 by and between the PINEBROOK MASTER ASSOCIATION, a Utah nonprofit corporation, ("PMA") and QVA, INC., a Utah corporation ("QVA")

### RECITALS

A. The Pinebrook Development ("Pinebrook") is a master planned development located in Summit County, Utah, consisting of multiple phases of development. It was originally owned and marketed by Gorgoza Pines Ranches, Inc., and then by successors Pinebrook Development Corporation and Willow Ranch Development Company, all Utah corporations (collectively, the "Declarant").

B. PMA is an association of homeowners created by the Declarant in 1991, after much of the land governed in the Pinebrook area had been sold by prior developers. The PMA was created pursuant to a Master Declaration of Covenants, Conditions and Restrictions of Pinebrook, a Master Planned Development (as amended from time to time, the "Master CC&Rs"), recorded against all Pinebrook lands then held by the Declarant on March 26, 1991. The intention of the Master CC&Rs and the PMA was to supplement the separate subdivision CC&Rs and "to provide for a common scheme of development with common or shared interests in the open spaces and improvements." The Master CC&Rs established a framework for the creation of defined Sub-Associations over subsequent development phases to work under the PMA "in order to allow for the common control, management and ownership of Master Association Property . . . for the benefit of all Phases of Developments to be developed on the Project as well as any Existing Developments . . ."

C. The Courtyards at Quarry Village ("Quarry Village") is a residential project being developed by QVA, as more particularly described on Exhibit A which is attached hereto and incorporated herein by this reference, which is located within the original

planned area of Pinebrook. Quarry Village qualifies for annexation into the PMA as "Other Property" as defined in the Master CC&Rs.

D. The purpose for which QVA, as record owner of Quarry Village, is entering into this Agreement is to enable all the members of the HOA ("HOA Members") to use the park, trails and other recreational facilities owned by PMA and located (or subsequently constructed) at Pinebrook ("Recreational Facilities"). Accordingly, the parties desire to annex Quarry Village into the PMA as allowed by Section 2.6 of the Master CC&Rs, as amended, and, subject to this Agreement, to require its homeowners' association to fulfill the responsibilities of a Sub-Association of the PMA, all as provided herein.

**AGREEMENT**

NOW THEREFORE, for and in consideration of the mutual covenants, conditions and terms hereof, QVA and PMA agree as follows:

1. **Annexation.** Quarry Village, and any additional land subsequently annexed in to Quarry Village, is hereby annexed in to the PMA as provided in Sections 2.6 and 2.7 of the Master CC&Rs, as amended. Following the legal formation of The Quarry Village Owners Association ("HOA"), all of QVA's rights, duties and obligations shall be assigned to and assumed by the HOA. Upon receipt by PMA of written notice of such assignment and assumption, QVA shall be released of all duties and obligations hereunder. Following such assignment and assumption, the HOA shall, subject to the terms of this Agreement, be deemed a Sub-Association for all purposes of the Master CC&Rs.

2. **Assessments.** HOA will collect all current and future common, special and all other assessments for, and guaranty payment of such assessments to, the PMA as if all HOA Members were members of the PMA. QVA acknowledges that a \$400 Recreational Facilities charge was paid by the first purchaser of each lot or unit in the PMA developed after 1991, and that a \$360 special assessment was later made by the PMA to complete park and trail improvements. QVA agrees to collect the amount of these two payments, a total of \$760, as a one-time charge at the time of the initial sale of each Quarry Village unit and to promptly remit it to the PMA. PMA agrees to accept such payments in lieu of past assessments, interest or late charges. PMA acknowledges that it will not acquire any right to lien or otherwise place a charge upon the lands of the HOA or HOA Members, and that the HOA collections of PMA assessments will be made in connection with, and as part of, the collection of other HOA assessments as provided in the HOA CC&Rs. Payment of such assessments to the PMA may not be required more often than once annually, to correspond with the customary collection schedule of HOA. Notwithstanding anything to the contrary in this Agreement, in no event shall the PMA assessments charged to the HOA or HOA Members: (i) exceed the amount of any assessments levied against other members of the PMA; and (ii) be used for any other purpose other than are the assessments levied against other members of the PMA.

3. **Access to PMA Facilities.** PMA hereby confirms that the HOA Members and their family members, tenants, guests and invitees, will have the same perpetual, non-exclusive right to access and use the Recreational Facilities enjoyed by all other PMA members.

4. **Voting Rights.** After annexation, all HOA Members shall be deemed Class A Members of the PMA, and shall be allowed all voting rights of Class A Members as established by Sections 4.2 and 4.3 of the Master CC&Rs. The HOA shall be a separate Delegate District (as defined in the Master CC&Rs) and shall exercise all other voting rights and powers of a Sub-Association.

5. **Common Areas.** Nothing in this Agreement shall be deemed to bring any open space, common areas or other land separately owned by HOA or HOA Members within the control or jurisdiction of the PMA, nor does it grant members of the PMA any rights or privileges in those common areas. Furthermore, in no event shall the open space, common areas or other land separately owned by the HOA be considered "Master Association Property" as such term is defined in the Master CC&Rs. Similarly, nothing in this Agreement shall be deemed to grant HOA or HOA Members any rights, privileges, or access to the parks, tennis courts, play areas, trails or other land separately owned by other Sub-Associations.

6. **Inapplicable Provisions in the Master CC&Rs:** The following provisions in the Master CC&Rs shall not apply to the HOA:

(i) Notwithstanding Section 4.4 of the Master CC&Rs, an HOA Member shall have the right to delegate his/her/its rights of use and enjoyment of the Recreational Facilities to a lessee even if the term of the lease between such HOA Member and lessee is less than six months.

(ii) Notwithstanding Section 6.11(f) of the Master CC&Rs, the PMA shall not have the authority to file a Statement of Lien or foreclose on any land or interest in Quarry Village.

(iii) Notwithstanding Article VII of the Master CC&Rs, the PMA shall not have any architectural/design review control over Quarry Village.

(iv) Notwithstanding Article VIII of the Master CC&Rs, no use restrictions implemented by the PMA or set forth in the Master CC&Rs shall apply to Quarry Village.

7. **Other Agreements.** This Agreement shall not be construed to alter or amend the HOA Bylaws or Articles of Incorporation or any other agreements executed by HOA, except that any such documents executed after the date of this Agreement shall be consistent with the terms hereof.

8. **Covenant for Further Assurances.** The parties to this Agreement agree to cooperate with each other in effectuating the terms and conditions of this Agreement and agree to execute such further agreements, conveyances and other instruments as may be reasonably necessary to carry out the intents and purposes of this Agreement.

9. **Representations and Warranties of PMA.** PMA represents and warrants to QVA that: (i) this Agreement complies with the Master CC&Rs, the bylaws, articles of incorporation, rules and regulations and other documents governing the Master HOA ("Governing Documents"); (ii) PMA has obtained the necessary consents and approvals from the members of the PMA to enter into this Agreement and to perform its obligations hereunder and; and (iii) the individual(s) signing this Agreement on behalf of PMA are duly authorized and have the corporate power to execute and deliver this Agreement.

10. **Definitions and Titles.** Terms used in this Agreement shall have those meanings defined in the Master CC&Rs, unless specific definitions or context indicate otherwise. The titles of the various paragraphs of this agreement are for convenience only and are not to be considered limitations or modifications of the language of the Agreement.

11. **No Third-party Beneficiaries.** The benefits of this Agreement shall extend to PMA and QVA and, except for those rights that HOA Members shall acquire as members of PMA, there are no third-party beneficiaries to this Agreement.

12. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto.

13. **Attorneys' fees.** In the event of default on the part of any party to this Agreement, the defaulting party shall be liable for all costs and expenses, including attorneys' fees, incurred by the non-defaulting party in enforcing this Agreement, whether or not legal action is commenced.

14. **Governing Law.** This Agreement shall be governed in all respects by the laws of the State of Utah.

15. **Modification of Agreement.** No waiver, alteration, modification, or cancellation of any of the provisions of this Agreement shall be binding unless made in writing and signed by the parties.

16. **Other Agreements.** This Agreement supersedes all previous oral and written contracts, correspondence, representations, warranties, guarantees, documentation and/or instruments in any way relating to the annexation of Quarry Village into the PMA.

17. **Notices.** Any notice, demand, request, covenant, approval or other communication to be given by one party to the other, shall be given by personal service, facsimile, express mail or mailing through the United States Postal Service, postage

prepaid, return receipt requested, registered or certified mail, addressed to the respective parties at the following locations:

If to QVA: 1563 W. Old Ranch Road  
P.O. Box 982344  
Park City, Utah 84098  
Attn: R. Scott Webber  
Fax: (435) 658-0500

If to PMA: 2700 Toll Creek Village, Suite 1600  
Park City, Utah 84098  
Attn: Curt K. McNeely  
Fax: (435) 649-1838

With a copy to: Edwin C. Barnes  
Clyde Snow Sessions & Swenson  
210 So. Main, 13<sup>th</sup> Floor  
Salt Lake City, Utah 84111  
Fax: (801) 322-2516

Any such notice shall be deemed to have been delivered and received (i) upon actual delivery, if personally served or served by any airborne or overnight delivery, or if given by facsimile upon receipt of verification of successful transmission; or (ii) if mailed, upon receipt or the expiration of three (3) business days, whichever is the earlier. Either party may, from time-to-time change the address at which it desires to receive notice, upon giving written notice of such request to the other party.

18. Counterparts. This Agreement may be executed in a number of identical counterparts. If so executed, each of such counterparts is to be deemed an original for all purposes, and all such counterparts shall, collectively, constitute one agreement, but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

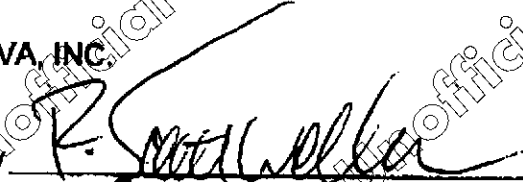
PINEBROOK MASTER ASSOCIATION

QVA, INC.

By  
Its


  
\_\_\_\_\_  
President

By  
Its

  
\_\_\_\_\_  
President

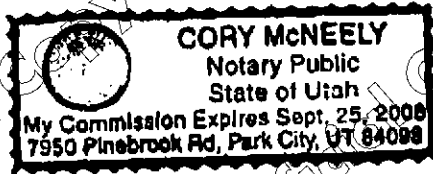
STATE OF UTAH )  
 ):ss.  
COUNTY OF SUMMIT )

The foregoing instrument was acknowledged before me this 25<sup>TH</sup> day of SEPTEMBER, 2006, by R Scott Webber, the President of QVA, Inc., a Utah corporation.

  
NOTARY PUBLIC  
Residing at: 7950 PINEBROOK RD.  
PARK CITY, UT 84098


My Commission Expires:

9/25/08



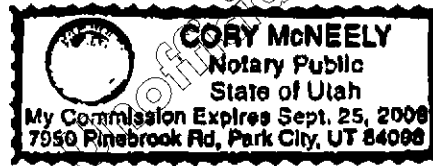
STATE OF UTAH )  
 ):ss.  
COUNTY OF SUMMIT )

The foregoing instrument was acknowledged before me this 25<sup>TH</sup> day of SEPTEMBER, 2006, by Daniel R. Schofield, the President of Pinebrook Master Association, a Utah nonprofit corporation.

  
NOTARY PUBLIC  
Residing at: 7950 PINEBROOK RD.  
PARK CITY, UT 84098

My Commission Expires:

9/25/08



**EXHIBIT A****Legal Description of Quarry Village**

A PARCEL OF LAND LOCATED IN THE EAST HALF OF SECTION 11, TOWNSHIP 1 SOUTH, RANGE 3 EAST, SALT LAKE BASE AND MERIDIAN, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT LOCATED ON THE SOUTHERLY BOUNDARY OF THE QUARRY JUNCTION AT PINEBROOK PLAT "A", A COMMERCIAL SUBDIVISION; THENCE NORTH 2886.69 FEET AND WEST 1126.54 FEET FROM THE EAST QUARTER CORNER OF SAID SECTION 11; THENCE SOUTH 41°18'59" EAST, 42.00 FEET; THENCE SOUTH 48°41'01" WEST, 46.49 FEET TO THE ARC OF A CURVE LEADING SOUTHWESTERLY; THENCE SOUTHWESTERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 188.00 FEET, AN ARC DISTANCE OF 130.58 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 28°47'08" WEST, 127.97 FEET TO THE POINT OF TANGENCY OF SAID CURVE; THENCE SOUTH 08°53'15" WEST, 544.65 FEET; THENCE NORTH 80°53'30" WEST, 72.54 FEET TO THE ARC OF A CURVE LEADING NORTHERLY; THENCE NORTHERLY, ALONG AND AROUND THE ARC OF SAID CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 420.00 FEET, AN ARC DISTANCE OF 1041.29 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF NORTH 07°58'27" EAST, 794.36 FEET TO THE POINT OF TANGENCY OF SAID CURVE; THENCE NORTH 63°03'06" EAST, 72.15 FEET; THENCE SOUTH 41°18'59" EAST, 267.46 FEET; THENCE NORTH 48°41'01" EAST, 125.00 FEET BACK TO THE POINT OF BEGINNING.

CONTAINING 6.88 ACRES, MORE OR LESS.