

PINE LAKES ESTATES

AGREEMENT

THIS AGREEMENT (this "Agreement") is made and entered into by and between **MHC OPERATING LIMITED PARTNERSHIP**, an Illinois limited partnership with an address of Two North Riverside Plaza, Suite 800, Chicago, Illinois 60606 ("MHC"), and **PINE LAKES ESTATES HOMEOWNERS ASSOCIATION, INC.**, a Florida not-for-profit corporation with an address of Post Office Box 3278, North Fort Myers, Florida 33918-3278 (the "Association").

WITNESSETH:

WHEREAS, the Association is the homeowners association for that certain property known as Pine Lakes Estates, which consists of 281 lots (the "Estates"), and is organized and operating pursuant to that certain Declaration of Covenants, Conditions and Restrictions recorded in Official Records Book 1920, Page 2370, Public Records of Lee County, Florida, as modified or amended from time to time (the "Declaration"); and

WHEREAS, the Estates is a part of a manufactured home community development commonly known as Pine Lakes Country Club, containing 866 lots. 585 lots are "rental" lots beneficially owned by MHC, and the remaining 281 lots are privately owned subdivision lots in the Estates. As used herein, the term "Pine Lakes Country Club" shall include, without limitation, the manufactured home community, golf course, roadways, clubhouse, and all other common areas and facilities associated with said development. The owners of lots within the Estates (each, a "Lot") desire to utilize the common areas, facilities, and amenities at Pine Lakes Country Club; and

WHEREAS, the Association and MHC desire to enter into an agreement whereby, in addition to the services and amenities that MHC provides to the Pine Lakes Country Club community as a whole, MHC will specifically agree to provide certain services and amenities with respect to the Estates, the Association and its members ("Members"), in return for a fee as more particularly set forth herein, and MHC is willing to provide such services and amenities in accordance with the terms and conditions contained in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1 – APPOINTMENT OF MHC

The Association hereby confirms the appointment of MHC as the exclusive provider of the services and amenities described herein (the "Services and Amenities") with respect to the Estates, the Association and its Members, on an independent contractor basis. MHC accepts such appointment in accordance with the terms and conditions contained herein. MHC will employ sufficient employees of its own to provide the Services and Amenities, and the parties acknowledge and agree that no such employee shall be considered an employee of the Association for any purpose. The Association's Board of Directors (the "Board") will designate a member of the Board to act as the Board's exclusive liaison with MHC.

ARTICLE 2 – GENERAL ADMINISTRATION

In addition to providing the Services and Amenities, MHC shall also assist and advise the Association and the Board as follows:

- 2.1 MHC shall prepare, and deliver to the President or Treasurer of the Association on or before November 1 and May 1 of each year, semi-annual invoices for the Services and Amenities Fee (as such term is hereinafter defined), which invoices shall be due and payable on February 1 and August 1, respectively, of each year. Unless otherwise directed by the Association in writing: by December 1 and June 1 of each year, the Association shall deliver to MHC a copy of its semi-annual assessment to its Members, copies of which MHC shall mail to the Association's Members by the following December 15 and June 15, respectively; MHC shall receive payments for said assessments from the Association's Members; MHC shall cause any such payments received by it to be deposited to an account designated by the Association; and MHC shall provide to the President or Treasurer of the Association by the following January 20 and July 20, respectively, a list of the Members from whom it received payments.
- 2.2 In conjunction with the Association's Architectural Review Committee or Deed Restriction Committee, MHC shall report to the Board any actual violations of the Association's governing documents which come to MHC's attention, and MHC may, but shall not be obligated to, take action within its scope of authority to prevent and correct such violations under the direction of the Board.
- 2.3 MHC shall have the right to approve all prospective residents of the Estates and Members as more particularly set forth in the Rules and Regulations governing Pine Lakes Country Club.

ARTICLE 3 – SERVICES AND AMENITIES

3.1 MHC'S DUTIES

MHC will provide the following Services and Amenities:

- (a) Provide lawn mowing and trimming for all Lots within the Estates.
- (b) Maintain streets and street lighting within the Estates.
- (c) Provide and maintain a controlled access gate at or near the entrance to Pine Lakes Country Club located on U.S. 41 and Pine Lakes Boulevard, which gate may be automatic or manned at the sole discretion of MHC; however, the presence and maintenance of such controlled access gate shall not constitute a representation, warranty or guaranty by MHC regarding the security of any person or any property within the Estates and Pine Lakes Country Club.

- (d) Arrange and provide for garbage, recyclable and horticultural collection for all Lots within the Estates.
- (e) Provide for the use of the Pine Lakes Country Club clubhouse facilities by the Members, subject to the rules and regulations imposed from time to time by MHC; provided, however, nothing herein shall be deemed an acknowledgment that such use will include services for which a separate charge is assessed, including but not limited to, use of the golf course, food and merchandise, and fees charged for special events, shows, or social activities.
- (f) MHC shall keep in good repair the streets, street lighting, controlled access gate, other common areas, facilities, and amenities so as to maintain the same in good condition, in keeping with the standards of the community.

3.2 AUTHORIZATION BY THE ASSOCIATION

The Association authorizes MHC, for the Association's account and on its behalf, to perform any act and do anything necessary or desirable in order to carry out MHC's duties set forth in this Agreement. It is expressly understood and agreed that every act performed and everything done by MHC under the provisions of this Agreement shall be done by MHC as an agent of the Association.

3.3 DISBURSEMENTS

MHC shall not be obligated to make any advance to or for the account of the Association or to pay any amount except out of funds held or provided hereunder, nor shall MHC be obligated to incur any extraordinary liability or obligation unless the Association shall furnish MHC in advance with the necessary funds for the discharge thereof. If MHC shall voluntarily make advances to or for the Association's account for any amount as payment of any reasonable obligation or necessary expense connected with MHC's provision of the Services and Amenities or otherwise, the Association shall reimburse MHC therefor on demand.

ARTICLE 4 – ADMINISTRATION

4.1 ADMINISTRATION OF PERSONNEL

MHC shall solicit, evaluate, and hire qualified persons to provide the Services and Amenities. It shall be the administrative responsibility of MHC to instruct, train, supervise, and compensate all employees of MHC (except as set forth herein). The power to hire and to dismiss any and all such employees rests solely with MHC.

4.2 ADMINISTRATION OF CONTRACTORS AND VENDORS

Contractors and vendors providing services in connection with MHC's obligations under this Agreement shall be selected by MHC. MHC shall oversee the activities of such contractors and vendors, including but not limited to, as applicable, the receiving of certificates of insurance

and copies of bonds, manufacturer's warranties and releases of liens, review of the quality of workmanship, and enforcement of contractors' and vendors' warranties. Prior to any contractor or vendor providing services hereunder, MHC reserves the right to mandate that the contractor or vendor enter into a third party contract with MHC stating that the contractor or vendor shall indemnify, assume the defense of, and save harmless MHC from all claims, liability, loss, damage, or injuries (including death) of any kind directly or indirectly resulting from the provision of or failure to provide the services, and shall defend any and all suits which may be brought against MHC on account of any such claims, liability, loss, damage, or injuries (including death), and shall make good to and reimburse MHC for any expenditures that MHC may make by reason of same.

ARTICLE 5 – COMPENSATION

5.1 SERVICES AND AMENITIES FEE

In consideration for MHC providing the Services and Amenities and general administration as specified in Article 3 and Article 2 respectively, MHC shall be compensated by the Association at the rate of \$157.75 per Lot per month (the "Services and Amenities Fee") from the date hereof, as adjusted each year in the manner provided in Section 5.2 below. The Services and Amenities Fee shall be remitted to MHC semi-annually on February 1 and August 1 of each year during the term of this Agreement. The entire Services and Amenities Fee shall be due and payable for each Lot, even if the owner or occupant of such Lot elects not to use any particular Services or Amenities to be provided by MHC hereunder.

Payment of the first semi-annual installment of the Services and Amenities Fee, for the first half of 2002, in the total amount of \$265,966.50, shall be due and payable in full on or before May 17, 2002. Payment of the second semi-annual installment of the Services and Amenities Fee, for the second half of 2002, in the total amount of \$265,966.50, shall be due and payable in full on or before August 1, 2002.

5.2 ANNUAL INCREASE

The Services and Amenities Fee shall increase on January 1, 2003, and on each January 1 thereafter during the term of this Agreement, by an amount equal to the percentage increase in the Consumer Price Index, All Items, for All Urban Consumers, U.S. City Average (1984=100), as published by the United States Department of Labor, Bureau of Labor Statistics ("CPI"), during the twelve (12) month period ending 120 days prior to the applicable increase date. Notwithstanding the foregoing, however, if the percentage increase in the CPI for any such twelve (12) month period exceeds six (6) percent, then the percentage increase in the Services and Amenities Fee for the next succeeding calendar year shall be limited to six (6) percent, and the excess of the percentage increase in the Services and Amenities Fee that would have been due hereunder for the next succeeding calendar year but for such limitation shall accrue and remain an obligation of the Association (an "Accrual Amount"). For any subsequent calendar year thereafter, to the extent that the annual percentage increase in the Services and Amenities Fee calculated in accordance herewith is less than six (6) percent, the Services and Amenities Fee for such calendar year shall nonetheless be increased up to a percentage increase of six (6) percent until all Accrual Amounts have been recovered by MHC.

The parties acknowledge that the current Services and Amenities Fee may be less than the current market rate for the Services and Amenities to be provided hereunder. Accordingly, the Services and Amenities Fee provided for hereinabove will only be applicable to record Lot owners as of the date of this Agreement. Upon the transfer or conveyance of a Lot (or the home located thereon) after the date of this Agreement, which transfer or conveyance was not made pursuant to a written contract executed by both the buyer and the seller prior to July 1, 2002, the Services and Amenities Fee due for the Lot (or home) transferred or conveyed shall be initially set at the market rate for the Services and Amenities to be provided hereunder in effect at the time of such transfer or conveyance (the "Market Rate"), and shall be adjusted annually by the annual percentage increase in the CPI, calculated in accordance with the terms of the immediately preceding paragraph. The initial Market Rate for calendar year 2002 shall be \$195.00 per month per Lot, which initial Market Rate shall increase annually by the annual percentage increase in the CPI, calculated in accordance with the terms of the immediately preceding paragraph. Upon such transfer or conveyance, MHC shall accrue the additional amount of Services and Amenities Fee owing on account of such transfer or conveyance (prorated for the portion of the calendar year remaining subsequent to such transfer or conveyance), which amount shall be included in MHC's next succeeding semi-annual invoice.

5.3 NON-ROUTINE SERVICES

MHC shall invoice the Association for all reasonable fees and costs relating to all services provided by MHC (in its sole discretion) at the request of the Association (in writing signed by the Association's President or Vice President), other than the designated Services and Amenities, promptly following the provision of such services, which fees and costs shall be due and payable by the Association within thirty (30) days following the date of such invoice.

ARTICLE 6 – COMMENCEMENT AND TERMINATION

6.1 COMMENCEMENT; TERM

This Agreement shall commence (retroactively) as of January 1, 2002, and have a term of twenty (20) years from such date. This Agreement shall renew automatically for successive terms of five (5) years upon the expiration date of the initial term and any successive term, unless terminated by written notice delivered by one party to the other party at least sixty (60) days prior to each such renewal date.

6.2 TERMINATION

Neither party shall have the right to terminate this Agreement except as expressly set forth herein.

ARTICLE 7 – MISCELLANEOUS

7.1 NOTICES

All notices to MHC hereunder shall be in writing and delivered to:

MHC Operating Limited Partnership
10200 Pine Lakes Blvd.
North Fort Myers, FL 33903
Attention: Community Manager

All notices to the Association hereunder shall be in writing and delivered to:

Pine Lake Estates Homeowners Association, Inc.
c/o its then current Registered Agent for the State of Florida

All notices given pursuant to this Agreement shall be hand-delivered or sent via overnight delivery or certified or registered mail, return receipt requested and postage paid. Notice shall be effective immediately upon hand-delivery, one (1) day after deposit with an overnight delivery service for delivery, or three (3) days after the postmark date, except for notice of a change of address, which shall be effective upon receipt.

7.2 DELINQUENT PAYMENTS

In the event that any payment of monies due to MHC hereunder is not received by MHC within ten (10) days after the date due, a late fee equal to one percent (1%) of such payment shall be assessed, and interest shall accrue at the maximum rate allowed under applicable law on the amount due and owing; provided, however, that if the semi-annual invoice delivered by MHC is delivered after November 1 or May 1 of a given calendar year, then the due date of the Association's payment due to MHC on the following February 1 or August 1 shall be extended by a number of days equal to the number of days by which MHC's invoice was delivered late. If the delinquency extends beyond thirty (30) days, MHC shall have the right (i) to suspend the provision of all Services and Amenities hereunder until MHC receives payment of such monies and all late fees and interest, and/or (ii) to terminate this Agreement. In addition, MHC may seek any and all remedies available at law or in equity, including but not limited to, filing suit and obtaining a judgment against the Association for the delinquent monies.

7.3 MODIFICATIONS AND STATUS

This writing is intended by the parties as a final expression of this Agreement and as a complete statement of the terms thereof. All negotiations, considerations, and representations between the parties with respect to the subject matter hereof have been incorporated herein. No variation, modification, or change of this Agreement shall be binding, unless made in writing and executed by both parties.

7.4 APPLICABLE LAW / VENUE

This Agreement shall be construed in accordance with the laws of the State of Florida. Venue for any suit or proceeding filed hereunder shall be in Lee County, Florida.

7.5 ASSIGNMENT

MHC may assign all or any portion of its rights and interests hereunder upon thirty (30) days prior written notice to the Association. MHC may also delegate or subcontract all or any portion of its duties and power under this Agreement to any other person or entity. The Association may not assign any of its rights or interests, or delegate any of its duties or obligations, hereunder.

7.6 INDEMNIFICATION

The Association agrees to indemnify and hold MHC harmless from and against any and all claims, costs, damages, liabilities, and expenses of any kind or nature whatsoever, including but not limited to attorneys fees and court costs, arising out of MHC's performance of its duties hereunder, or from damages for injuries (including death) to persons or damage to property resulting from any cause whatsoever in, on, or about the Estates and, at the Association's cost and expense, to defend any action or proceeding against MHC arising therefrom. Notwithstanding the foregoing, the Association shall not be required to indemnify MHC against claims or damages resulting from the negligence or willful misconduct of MHC, its employees or agents, or any other violation by MHC of any applicable statute, ordinance, law, or government rule or regulation, or any act by MHC outside of the authority granted to MHC pursuant to this Agreement.

7.7 TERMINATION OF PRIOR AGREEMENT

This Agreement is intended to replace that certain Management Agreement dated June 24, 1987 ("Prior Agreement"), by and between the Association and Pine Lakes Venture, a Florida general partnership ("PLV"). Pursuant to that certain Assignment and Assumption of Management Agreement dated as of November 1, 1994, the rights and interest of PLV under the Prior Agreement were assigned to MHC. Effective as of the execution and delivery of this Agreement by both parties, (i) MHC and the Association hereby acknowledge and agree that the Prior Agreement shall terminate without further action of the parties and be of no further force or effect, (ii) the Association does hereby, for and on behalf of itself, each of the Members, their respective successors and assigns, and the respective executors, administrators, attorneys, successors, and assigns of each (collectively, the "Association Parties"), release, remise, acquit, satisfy, and forever discharge MHC, its respective affiliates, parents, and subsidiaries, and the respective officers, directors, shareholders, partners, members, attorneys, successors, and assigns of each (collectively, the "MHC Parties"), of and from any and all manner of actions, causes, causes of action, suits, claims, and demands whatsoever, in law or in equity, which any of the Association Parties ever had or now has, or hereafter can, shall, or may have, against any of the MHC Parties, for, upon, or by reason of any and all claims asserted or assertable and arising out of, in connection with, or with respect to the Prior Agreement or the services and amenities provided by MHC thereunder, and (iii) MHC does hereby, for and on behalf of itself and the other MHC Parties, release, remise, acquit, satisfy, and forever discharge the Association Parties of and from any and all manner of actions, causes, causes of action, suits, claims, and demands whatsoever, in law or in equity, which any of the MHC Parties ever had or now has, or hereafter can, shall, or may have, against any of the Association Parties, for, upon, or by reason of any and all claims asserted or assertable and arising out of, in connection with, or with respect to the Prior Agreement or the services and amenities provided by MHC thereunder.

7.8 ARBITRATION


- (a) If either party (the "Notifying Party") believes that the other party (the "Responding Party") has breached this Agreement, the Notifying Party shall deliver written notice thereof to the Responding Party, and the Responding Party shall have thirty (30) days following receipt of such notice to cure the alleged breach. If after such thirty (30) day period the Notifying Party believes that such breach has not been cured, the Notifying Party shall deliver written notice to such effect to the Responding Party (a "Notice of Failure to Cure"), and either party may thereafter file a demand with the American Arbitration Association ("AAA") for arbitration of the matter pursuant to the AAA's Commercial Arbitration Rules. It is hereby agreed that, except as otherwise expressly provided in this Agreement, said arbitration procedure is the sole and exclusive legal remedy for alleged breaches of this Agreement. Notwithstanding anything to the contrary contained herein, however, MHC shall have all available rights and remedies at law and in equity in the event of any failure to pay any amounts due and owing to MHC hereunder.
- (b) Any decision of the Arbitrator shall be final and binding, but shall have no *res judicata* or collateral estoppel effect, and shall be binding only between the actual parties to such arbitration. The Arbitrator shall have the jurisdiction and authority to award any relief that a Circuit Court Judge would have the authority and jurisdiction to award, and no more.
- (c) Costs for the arbitration shall be borne equally by the parties, and shall be set by the Arbitrator. Said costs will be payable upon demand of the Arbitrator. Should either party fail to pay its share of said costs upon demand, the Arbitrator may either abate the arbitration proceedings pending receipt of said costs, or may proceed with the arbitration with or without the non-paying party in such manner as the Arbitrator deems appropriate. Attorneys' fees and other costs incurred shall not be awarded by the Arbitrator, but shall be borne by each party separately. However, attorneys' fees and court costs incurred in any judicial proceeding to compel arbitration or to obtain injunctive relief to which the Responding Party refused to stipulate in advance, or to abate subsequent disputes, or to confirm an arbitration award, shall be awarded to the prevailing party.


IN WITNESS WHEREOF, the Association and MHC have caused this Agreement to be duly executed as of the 7th day of May, 2002.

WITNESSES:


Print Name: David W. Fell

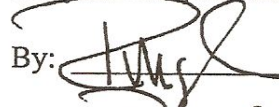

Print Name: Barbara Stange


Print Name: J. STOUT, M.D.


Print Name: L.R. COLLINS

MHC OPERATING LIMITED PARTNERSHIP
an Illinois limited partnership


By: Manufactured Home Communities, Inc., a Maryland corporation, its general partner

By: 

Name: ROGER MAYNARD

Title: Senior Vice President

PINE LAKES ESTATES HOMEOWNERS ASSOCIATION, INC., a Florida not-for-profit corporation

By: 

Name: LEON J. BEEKMAN

Title: PRESIDENT