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DOC # 20210020906

Restrictive Page 1 of 54
Gary Christensen Washington County Recorder
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SC-6-2-9-440121

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Jenkins Bagley,
PLLC Attn: Bruce
C. Jenkins
285 W Tabernacle, Ste.
301 St. George, UT
84770

CHARTER OF DECLARATIONS, COVENANTS,
RESTRICTIONS, AND RESERVATION OF EASEMENTS
FOR
DESERT VILLAGE TOWNHOMES
(a Planned Unit Development)

Prepared by:



Attn: Bruce C. Jenkins
285 W. Tabernacle, Ste. 301
St. George, UT 84770

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**CHARTER OF DECLARATIONS, COVENANTS,
RESTRICTIONS, AND RESERVATION OF EASEMENTS
FOR
DESERT VILLAGE TOWNHOMES OWNERS ASSOCIATION
(a Planned Unit Development)**

PREAMBLE

This Charter of Declarations, Covenants, Restrictions, and Reservation of Easements for Desert Village Townhomes Owners Association (hereafter "Charter") affects the following real property, and such additional land from the Annexable Territory as may be annexed to the property hereafter, all located in Washington County, State of Utah:

Phase I – See Exhibit A attached hereto and incorporated herein.

Annexable Territory – See Exhibit B attached hereto and incorporated herein.

The terms contained in this Preamble and the Recitals below, which are hereafter defined in Article I, shall be given the meaning assigned to them in Article I.

The Community Association Act, Utah Code § 57-8a-101, et. seq. (the "Act"), as amended from time to time, shall supplement this Charter. If an amendment to this Charter adopts a specific section of the Act, such amendment shall grant a right, power, and privilege permitted by such section of the Act, together with all correlative obligations, liabilities and restrictions of that section. The remedies in the Act and the Charter -- provided by law or in equity -- are cumulative and not mutually exclusive.

RECITALS

- A. CW Desert Village Partnership, L.P., a Delaware Limited Partnership, as Founder will develop the real property described in Exhibit A as a planned unit development.
- B. Founder has established or will establish the Desert Village Townhomes Owners Association and the Association will be vested with powers of, among other matters, owning, maintaining and administering the Common Area, administering and enforcing the covenants and restrictions pertaining to the Properties, promulgating Rules and Regulations through its Board and Architectural Control Committee, and collecting and disbursing the assessments and charges hereinafter created.
- C. Founder also desires to expand the Development to include the Annexable Territory, all of which the Founder desires to be governed by this Charter.
- D. The Founder intends that the Properties and such portions of the Annexable Territory annexed into the Development, shall be maintained, developed and conveyed pursuant to a general plan for all of the Properties and subject to certain protective covenants, easements, equitable servitudes, liens and charges, all running with the Properties as hereinafter set forth.

E. The Founder hereby declares that all of the Properties shall be maintained, held, sold, conveyed, encumbered, hypothecated, leased, used, occupied, and improved subject to the following easements, restrictions, reservations, rights, covenants, conditions and equitable servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Properties, in furtherance of a general plan for the protection, maintenance, subdivision, improvement, and sale of the Properties or any portion thereof. The covenants, conditions, restrictions, rights, reservations, easements, and equitable servitudes set forth herein shall run with and burden the Properties and shall be binding upon all persons having or acquiring any right, title, or interest in the Properties, or any part thereof, their heirs, successors and assigns; shall inure to the benefit of every portion of the Properties and any interest therein; and shall inure to the benefit of and be binding upon and may be enforced by Founder, the Association, each Owner and their respective heirs, executors and administrators, and successors and assigns.

F. These Recitals shall be deemed covenants as well as recitals.

ARTICLE I **DEFINITIONS**

The definitions in this Charter are supplemented by the definitions in the Act. In the event of any conflict, the more specific and restrictive definition shall apply. Unless otherwise expressly provided, the following words and phrases when used herein shall have the meanings hereinafter specified.

1.1 **ACC**. ACC shall mean the Architectural Control Committee created pursuant to Article VIII hereof.

1.2 **ACC Restrictions and Rules**. ACC Restrictions and Rules shall mean such restrictions and rules as may be adopted and promulgated by the ACC pursuant to Article VIII, as such restrictions and rules may be amended from time to time.

1.3 **Annexable Territory**. Annexable Territory shall mean the real property depicted in Exhibit B attached hereto and incorporated herein by this reference, all or any portion of which may from time to time be made subject to this Charter pursuant to the provisions of Article XV hereof. Annexable Territory shall also mean any real property which the Founder desires to annex into the Development which is contiguous to the real property described in Exhibit A or B.

1.4 **Annual Assessment**. Annual Assessment shall mean the annual charge against each Owner and his Lot, representing a portion of the Common Expenses, which are to be paid by each Owner to the Association in the manner and proportions provided herein.

1.5 **Articles**. Articles shall mean the Articles of Incorporation of the Association filed with the State of Utah, Department of Commerce, Division of Corporations and Commercial Code, as such Articles may be amended from time to time.

1.6 **Association**. Association shall mean Desert Village Townhomes Owners Association, a corporation formed under the Utah Revised Nonprofit Corporation Act, its successors and assigns.

1.7 **Beneficiary.** Beneficiary shall mean a mortgagee under a mortgage or a beneficiary under a deed of trust, as the case may be, and the assignees of such mortgagee or beneficiary.

1.8 **Reserved.**

1.9 **Board.** Board shall mean the Board of Directors of the Association, elected pursuant to the Bylaws of the Association.

1.10 **Budget.** Budget shall mean a written, itemized estimate of the expenses to be incurred by the Association in performing its functions under this Charter.

1.11 **Bylaws.** Bylaws shall mean the Bylaws of the Association, as adopted by the Board, as such Bylaws may be amended by the Board from time to time.

1.12 **Charter.** Charter shall mean this Charter of Declarations, Covenants, Restrictions, and Reservation of Easements for Desert Village Townhomes, as may be amended from time to time.

1.13 **Close of Escrow.** Close of Escrow shall mean the completion of a real estate transaction whereby ownership is transferred from a seller to a buyer.

1.14 **Corrective Assessments.** Corrective Assessments shall mean a charge against a particular Owner and his Lot representing the costs to the Association incurred in taking corrective action against an Owner.

1.15 **Common Area.** Common Area means that portion of property owned by the Association, shown on the Plat as dedicated to the common use and enjoyment of the Owners and all improvements constructed thereon.

1.16 **Common Expenses.** Common Expenses shall mean those expenses for which the Association is responsible under this Charter, including the actual and estimated costs of maintenance, management, operation, repair, replacement and improvement of the Common Area, costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and other employees; the costs of all utilities; gardening; certain landscaping and Improvements on the Common Area, or portions thereof; and the costs of any other items incurred by the Association for any reason whatsoever, in connection with the Properties, for the benefit of all of the Owners.

1.17 **Community-Wide Standard.** Community-Wide Standard shall mean the standard of conduct, construction, architecture, maintenance, or other activity generally prevailing at the Properties, or the minimum standards established pursuant to the ACC Restrictions and Rules, Rules and Regulations, and Board resolutions, whichever is a higher standard. Founder shall initially establish such standard and it may contain both objective and subjective elements. The Community-Wide Standard may evolve as development progresses and as the needs and desires within the Properties change.

1.18 **Deed of Trust.** Deed of Trust shall mean a Mortgage or a Deed of Trust as the case may be.

1.19 **Development.** Development shall mean Desert Village Townhomes, according to the Plat.

1.20 **Dwelling Unit.** Dwelling Unit shall mean a single-family dwelling, with or without walls or roofs in common with other single-family dwelling units. The Dwelling Unit includes fee title to the real property lying directly beneath the single-family dwelling, and, subject to Sections 1.24, 1.25, and 2.14 below, such other land as shown as private property within Lot boundary lines on the Plat.

1.21 **Fiscal Year.** Fiscal Year shall mean the fiscal accounting and reporting period of the Association selected by the Board from time to time.

1.22 **Founder.** Founder shall mean CW Desert Village Partnership, L.P, a Delaware Limited Partnership, its successors and any Person to which it shall have assigned any rights hereunder, except that a party acquiring all or substantially all of the right, title and interest of Desert Village Townhomes in the Properties by foreclosure, judicial sale, bankruptcy proceedings, or by other similar involuntary transfer, shall automatically be deemed a successor and assign of Desert Village Townhomes Owners Association as Founder under this Charter.

1.23 **Founder (Declarant) Control Period.** Founder (Declarant) Control Period shall have the meaning assigned to it in Section 3.6.

1.24 **Government Assessments.** Government Assessments shall mean assessments required by local governmental authorities having jurisdiction over the Properties.

1.25 **Holidays.** Holidays shall mean Christmas, Thanksgiving and New Year's Day, and such other holidays as the Board may designate from time to time.

1.26 **Improvement.** Improvement shall mean any structure or appurtenance thereto of every type and kind, including but not limited to Dwelling Units and other buildings, walkways, sprinkler pipes, or areas, garages, roads, driveways, parking areas, fences, screening walls, block walls, retaining walls, stairs, decks, landscaping, ponds, antennae, hedges, wind-breaks, patio covers, railings, plantings, planted trees and shrubs, poles, signs, storage areas, exterior air conditioning and water-softening fixtures or equipment.

1.27 **Limited Common Area.** Limited Common Area means that portion of the property owned by the Association shown on the Plat as dedicated to the exclusive use and enjoyment of the Owner of the Lot to which such Limited Common Area is adjacent and/or appurtenant and as further provided for in Section 2.14.

1.28 **Lot.** Each Lot is owned in fee simple by the Owner. However, area within the surveyed Lot boundaries but outside the Dwelling Unit walls shall be treated as Limited Common Area for use purposes, and as exterior area for maintenance purposes. To the extent the Lot boundaries are larger than the Dwelling Unit, the purpose of laying out a Lot larger than the Dwelling Unit is to allow flexibility in the original construction. After the initial construction on a Lot, subsequent construction, if any, may occupy any portion of the surveyed Lot, subject to approval by the ACC and all other provisions of this Charter. An Owner may construct appurtenant structures and personal landscaping outside the boundaries of the Dwelling Unit and within the

rear area of the surveyed boundaries of the Lot or the Limited Common Area, subject to written approval in advance by the ACC.

1.29 **Manager.** Manager shall mean the Person appointed by the Association, if any, hereunder as its agent and delegated certain duties, powers or functions of the Association as further provided in this Charter and in the Bylaws.

1.30 **Member, Membership.** Member shall mean any Person holding a membership in the Association, as provided in this Charter. Membership shall mean the property, voting and other rights and privileges of Members as provided herein, together with the correlative duties and obligations contained in this Charter and the Articles, Bylaws, ACC Restrictions and Rules, and Rules and Regulations.

1.31 **Mortgage, Mortgagee, Mortgagor.** Mortgage shall mean any Recorded first mortgage or first deed of trust. The term "Deed of Trust" or "Trust Deed" when used herein shall be synonymous with the term "Mortgage." The term Mortgagee shall mean a person or entity to whom a Mortgage is made and shall include the beneficiary of a Deed of Trust. Mortgagor shall mean a Person who mortgages his, her, or its Lot to another (i.e., the maker of a Mortgage), and shall include the Trustor of a Deed of Trust. The term "Trustor" shall be synonymous with the term "Mortgagor," and the term "Beneficiary" shall be synonymous with the term "Mortgagee."

1.32 **Notice of Board Adjudication.** Notice of Board Adjudication shall mean notice of the decision of the Board, delivered in person or in writing by mail or personal service, of its decision rendered at a hearing.

1.33 **Notice of Members Meeting.** Notice of meetings of the Members required or provided for in this Charter shall be in writing, shall satisfy the notice requirements set forth in the Bylaws.

1.34 **Reserved.**

1.35 **Owner.** Owner shall mean the Person or Persons, including Founder, who is the Owner of record (in the office of the County Recorder of Washington County, Utah) of a fee simple or an undivided fee simple interest in a Lot. Notwithstanding any applicable theory relating to a Mortgage, the term Owner shall not mean or include a Mortgagee unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

1.36 **Person.** Person shall mean a natural individual or any other entity with the legal right to hold title to real property.

1.37 **Phase I.** Phase I shall mean all of the real property described in the Plat for "DESERT VILLAGE TOWNHOMES – PHASE I."

1.38 **Phase of Development.** Phase of Development shall mean (a) Phase I, and (b) all the real property covered by a Supplemental Charter recorded pursuant to Article XV of this Charter.

1.39 Plans. Plans shall mean such plans and specifications as may be required by this Charter and by ACC Restrictions and Rules.

1.40 Plat. Plat shall mean "DESERT VILLAGE TOWNHOMES – PHASE I", a planned unit development Plat, executed and acknowledged by Founder and recorded in the records of the Washington County Recorder, as the same may be modified, amended, supplemented or expanded in accordance with the provisions of Article XV concerning amendments or supplements to this Charter in conjunction with annexations to the Properties as herein provided.

1.41 Project. Project shall include the real property identified in Exhibit A, together with the buildings, improvements, and permanent fixtures located thereon, and all easements and rights appurtenant thereto. The Project shall also include any land annexed into the Association and made subject to this Charter.

1.42 Properties. Properties shall mean (a) Phase I, and (b) each Phase of Development described in a Supplemental Charter and annexed to the Properties.

1.43 Record, Recorded, Filed, or Recordation. Record, Recorded, Filed, or Recordation shall mean, with respect to any document, the recordation of such document in the office of the County Recorder of Washington County, Utah.

1.44 Rules and Regulations. Rules and Regulations shall mean rules and regulations as may be adopted and promulgated by the Board pursuant to the Bylaws and this Charter, as the Board deems necessary or desirable (i) to aid it in administering the affairs of the Association, (ii) to ensure that the Properties are maintained and used in a manner consistent with the interests of the Owners, (iii) to regulate the use of the Common Areas and to regulate the personal conduct of the Members and their guests thereon, and (iv) to establish penalties for the infractions thereof, as such rules and regulations may be amended from time to time.

1.45 Recreational Vehicles. Recreational Vehicles shall mean all watercraft, travel trailers, campers, camper shells, tent trailers, motorhomes, snowmobiles, all-terrain-vehicles, off road motorcycles, and off-highway-vehicles (ATVs and OHVs, respectively), dune buggies, or devices similar to any of the foregoing and trailers that carry any of the foregoing.

1.46 Special Assessments. Special Assessments shall mean a charge against each Owner and his Lot, representing a portion of the costs to the Association of defraying any extraordinary expenses incurred or special projects approved as set forth in Article VI.

1.47 Special Founder Rights. Special Founder Rights shall have the meaning provided in Section 12.1.

1.48 Streets. Streets shall mean public or private streets and thoroughfares on the Properties.

1.49 Supplemental Charter. Supplemental Charter shall mean any supplemental Charter of covenants, conditions and restrictions and reservation of easements, or similar instrument, which extends the provisions of this Charter to all or any duly annexed portions of the Annexable

Territory and may contain such complementary or amended provisions for such additional land as are herein authorized by this Charter.

1.50 Trust Deed for Assessments. Trust Deed for Assessments shall mean the deed of trust created by this Charter in Article VII to further secure the Owner's obligation to pay Assessments and to provide the Association with the power of non-judicial trust deed foreclosure provided for in Utah Code Ann. § 57-1-19, et seq., as amended from time to time.

1.51 Vehicle. Vehicle shall mean any and all equipment or device (mobile or immobile, operable or inoperable) of any type, designed to transport persons, objects -- or are designed to be transported on wheels, skids, skis or tracks -- including, without limitation, dump trucks, cement mixer trucks, gas trucks, delivery trucks, buses, aircrafts, trailers, Recreational Vehicles, minivans, cars, pickup trucks, motorcycles, other devices or equipment similar to any of the foregoing, whether or not used for daily transportation.

ARTICLE IA **DESCRIPTION OF PROPERTY AND APPLICABILITY**

The real property which is associated with the Development and which has been and shall hereafter continue to be held, transferred, sold, conveyed and occupied subject to the provisions of this Charter consists of all the property described in Exhibit A hereto and the Annexable Territory; TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the described parcel of real property.

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 reservations and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which effect the above-described land or any portion thereof, including without limitation, any Mortgage; all visible easements and rights-of-way; all easements and rights-of-way of record; any easements, rights-of-way, encroachments, or discrepancies otherwise existing; an easement for each and every pipe, line, cable, wire, utility line, or similar facility which traverses or partially occupies the above-described land at such time as construction of all Development improvements is complete; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, line, cables, wires, utility lines, and similar facilities.

RESERVING UNTO FOUNDER, however, such easements and rights of ingress and egress over, across, through, and under the Properties and Annexable Territory, and any Improvements now or hereafter constructed thereon, as may be reasonably necessary for Founder (in a manner which is reasonable and consistent with the provisions of this Charter):

- (a) To construct and complete the Improvements as Founder deems to be appropriate, and to do all things reasonably necessary or proper in connection therewith;
- (b) To construct and complete, in additional phases of Development, on the Annexable Territory or any portion thereof, such Improvements as Founder shall determine to build in its sole discretion;

(c) To improve portions of the Properties with such other or additional Improvements, facilities, or landscaping designed for the use and enjoyment of all the Owners or Founder or as such assignee or successor may reasonably determine to be appropriate; and

(d) To develop, construct and improve lands adjacent to the Properties or the Annexable Territory.

If, pursuant to the foregoing reservations, the Properties, the Annexable Territory, or any Improvement thereon, is traversed or partially occupied by a permanent Improvement or utility line, a perpetual easement for such Improvement or utility line shall exist. Such easement shall be in favor of such utility as is providing the service. All sewer, water, telephone and electric lines shall be owned by the respective utilities serving the Properties.

ARTICLE II OWNERS' PROPERTY RIGHTS

2.1 Owners' Easements of Enjoyment. Each Owner shall have a right and easement of use and enjoyment including, but not limited to, the right of ingress and egress to and from his Lot and in and to the Common Area. Such right and easement shall be appurtenant to and shall pass with title to each such Lot and in no event shall be separated therefrom. Any Owner may grant the use and enjoyment described herein to any tenant, lessee, guest, or family member, and to a contract purchaser who resides on such Lot. All such rights are subject to this Charter.

2.2 Form for Conveyancing. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Lot shall describe the interest or estate involved substantially as follows:

All of Lot ___ of Desert Village Townhomes, a planned unit development, according to the official Plat thereof, subject to the Charter of Declarations, Conditions, Covenants, and Restrictions and Reservation of Easements, on file in the office of the Washington County Recorder.

Whether or not the description employed in any such instrument is in the above-specified form, however, all provisions of this Charter shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot.

2.3 Transfer of Title to Common Area. Founder represents that it will, on or prior to the first conveyance of a Lot, convey to the Association title to all Common Area. Founder further agrees that it will discharge all liens and encumbrances on said Common Area on or before the sale and Close of Escrow of the last Lot.

2.4 Limitations on Common Area Easement. An Owner's right and easement of use and enjoyment concerning the Common Area shall be subject to the following:

(a) Subject to the provisions of Article XIII of this Charter, the right of the Association to dedicate or transfer all or any part of the Common Area to any Person or public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association. Any such dedication or transfer must, however, upon Notice of Members Meeting be assented to

by (i) two-thirds (2/3) of the vote of the Owners present in person or by proxy or represented by ballot are entitled to cast at a meeting duly called for the purpose and (ii) the local municipal authority.

(b) The right of the Association, to be exercised by the Board, to establish uniform Rules and Regulations as set forth in Section 14.9;

(c) The right of Founder and its sales agents, representatives and prospective purchasers, to the nonexclusive use of the Common Area and any facilities thereon, without cost, to full access, ingress, egress, use and enjoyment, in order to show and dispose of the Properties and the Annexable Territory as provided herein, until the last Close of Escrow for the sale of a Lot in the Properties and the Annexable Territory; provided, however, that such use shall not unreasonably interfere with the rights of enjoyment of the other Owners as provided herein;

(d) The rights and reservations of Founder as set forth in Article IA of this Charter;

(e) The right of the Association, to be exercised by the Board, to reconstruct, replace or refinish any Improvement or portion thereof upon the Common Area in accordance with the original design, finish or standard of construction of such Improvement;

(f) The right of the Association to replace destroyed trees or other vegetation and plant trees, shrubs and ground cover upon any portion of the Common Area;

(g) The right of the Association, to be exercised by the Board, to reasonably restrict access to portions of the Common Area and to limit the number of guests and invitees of members using the Common Area;

(h) The easements shown on the Plat and those reserved or implied in this Charter, including without limitation, the easements set forth in Sections 2.6, 2.7, 2.8, and 2.11.

(i) The right of the Board to suspend a Member's voting rights as provided for in the Bylaws and the right to suspend a Member's right to the Common Areas and Facilities during any period of violation of any provision of this Charter, or the ACC Restrictions and Rules, or any Rule or Regulation of the Association;

(j) The right of the Association to enter into cross-use agreements, agreements or leases which provide for use of the Common Areas and Facilities by a similar Association in consideration for use of the Common Areas and Facilities of the other Association, or for cash consideration; and

(k) The right of the Association to be exercised by the Board, to take such steps as are reasonably necessary or desirable to protect the Common Area against foreclosure.

2.5 Parking Restrictions. In addition to the parking restrictions provided for in Section 10.6 (a), the Association, through its Board, is hereby empowered to establish "parking," "guest parking" and "no parking" areas within the portions of the Common Area improved as Streets, driveways, turnarounds or community parking areas. The Association, through its Board, is also empowered to include in the Rules and Regulations, the ability to enforce the parking restrictions

imposed pursuant to this Section 2.5 and those set forth in Section 10.6(a) by all means lawful for such enforcement, including the removal of any violating Vehicles at the expense of the Owner of the Vehicle and imposing fines.

2.6 Easements for Public Service Use. In addition to the foregoing easements over the Common Area, there shall be and Founder hereby reserves and covenants for itself and all future Owners within the Properties, easements for public services of the City of St. George in which the Properties are located, including but not limited to, the right of the police and fire departments to enter upon any part of the Common Area for the purpose of carrying out their official duties.

2.7 Easements for Water and Utility Purposes. In addition to the foregoing easements over the Common Area, there shall be and Founder hereby reserves and covenants for itself and all future Owners within the Properties, easements for public and private utility purposes, including but not limited to, the right of any public utility of ingress or egress over the Common Area for purposes of reading and maintaining meters, and using and maintaining fire hydrants located on the Common Area. The Lots shall also be subject to such public utility easements as shown on the Plat and as required by the City of St. George.

2.8 Easement for Encroachments. If any portion of a Dwelling Unit or other Improvement constructed by Founder, or if any portion of a Dwelling Unit or other Improvement reconstructed so as to substantially duplicate the Dwelling Unit or other Improvement originally constructed by Founder, encroaches upon the Common Areas, Limited Common Areas, or other Lots, as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the Properties, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists.

2.9 Founder Easement: Indemnification. For so long as (i) Founder owns any Lot in the Properties or (ii) Founder has the right to annex all or any portion of the Annexable Territory to the Properties, Founder hereby expressly reserves for its benefit, for the benefit of its agents, employees and contractors, and for the benefit of its successors and assigns, a nonexclusive easement appurtenant to the Annexable Territory, in, to, and over the Common Area for access, ingress, egress, use and enjoyment, in order to show the Properties or Annexable Territory to its prospective purchasers, or to develop, market, sell, lease or otherwise dispose of the Properties or the Annexable Territory.

2.10 Reserved.

2.11 Association Easement. The Association shall have an easement to be exercised during daylight hours, except in the case of an emergency as determined in the sole discretion, of the Board, to enter upon the Limited Common Areas and Lots for the purpose of carrying out and performing the functions of the Association as set forth in this Charter, the Bylaws, ACC Restrictions and Rules, or any Rule or Regulation of the Association.

2.12 Waiver of Use. No Owner may exempt himself from personal liability for assessments duly levied by the Association nor release the Lot or other property owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area or any Improvements thereon or by abandonment of his Lot or any other property in the Properties.

2.13 Taxes. Each Owner shall execute such instruments and take such action as may reasonably be specified by the Board to obtain a separate real estate tax assessment of each Lot. If any taxes or assessments may, in the opinion of the Board, become a lien on the Common Area, or any part thereof, they may be paid by the Association as a Common Expense, and the Association may levy against the Lot as a Corrective Assessment any amounts paid by the Association to rectify the problem.

2.14 Lot/Limited Common Area. Each Lot is owned in fee simple by the Owner. However, area within the surveyed Lot boundaries but beyond the Dwelling Unit walls shall be treated as Limited Common Area for use purposes and as exterior area for maintenance purposes. The purpose of laying out a Lot larger than the Dwelling Unit is to allow flexibility in the original construction. After the initial construction on a Lot, subsequent construction, if any, may occupy any portion of the surveyed Lot, subject to approval by the ACC and all other provisions of this Charter. An Owner may construct appurtenant structures and personal landscaping outside the boundaries of the Dwelling Unit and within the rear area of the surveyed boundaries of the Lot or the Limited Common Area, subject to written approval in advance by the ACC. The Board may adopt Rules and Regulations concerning the use of the Limited Common Areas.

2.15 Community-Wide Standard. Owners recognize that the Community-Wide Standard is for the benefit of the Properties and that it contains both objective and subjective standards, appearances, and other factors which may evolve over time. Owners further agree to abide by the Community-Wide Standard prevailing at the Properties at any given time.

2.16 Zoning of Adjacent Property. Each Owner, in perpetuity, by acceptance of a deed to a Lot waives and forfeits any right to object to, protest or support any protest or contest to the zoning or re-zoning sought by Founder -- for higher density residential, service business, recreational, commercial or such purposes (other than industrial) as are permitted by the City of St. George -- of property located adjacent to the Properties.

2.17 Display of the Flag. The Association may not prohibit an Owner from displaying the United States flag inside a dwelling or on the Owner's Lot or Limited Common Area appurtenant to the Owner's Lot if the display complies with United States Code, Title 4, Chapter 1. The Association may, by rule of the Board, restrict the display of a United States flag on the Common Area.

ARTICLE III

DESERT VILLAGE TOWNHOMES OWNERS ASSOCIATION

3.1 Organization of Association. Founder has caused or will cause the Association to be organized and the Articles filed with the State of Utah, Department of Commerce, Division of Corporations and Commercial Code.

3.2 Parties and Powers. The Association shall have such duties and powers as set forth in the Articles, Bylaws, and this Charter (and such other powers and duties as properly delegated or assigned through the ACC Restrictions and Rules and Rules and Regulations), as such documents are amended from time to time.

3.3 **Membership.** Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory and shall be appurtenant to the Owner's Lot.

3.4 **Transfer.** Membership in the Association is nontransferable and shall not be separated from the Lot to which it appertains.

3.5 **Non-Liability for Tort.** The Association shall not be liable, in any civil action brought by or on behalf of a Member, for bodily injury occurring to a Member, or a Member's guests, invitees, licensees or trespassers, on the Association's Common Area or Limited Common Area. This immunity from liability shall not be effective if the Association causes bodily injury to the Member on the Common Area or Limited Common Area by its willful, wanton, or grossly negligent act of commission or omission.

3.6 **Board Acts for Association.** Except as limited in the Charter or the Bylaws, the Board acts in all instances on behalf of the Association. Notwithstanding the foregoing, the Founder, shall exercise all of the of the powers and duties that would be otherwise exercised by the Board of Directors during the Founder (Declarant) Control Period. The Founder (Declarant) Control Period means the period of time commencing on the date this Chart affects the Property and continues until the termination of the Class B membership set forth in Section 4.1(b). During such period of Founder (Declarant) Control, the Directors shall be relieved of such power and duties.

ARTICLE IV **VOTING RIGHTS**

4.1 **Vote Distribution.** The Association shall have the following two classes of voting membership:

(a) **Class A.** Class A Members shall be all the Owners. Class A Members shall be entitled to one vote for each Lot which he or it owns. In no event, however, shall more than one Class A vote exist with respect to any Lot.

(b) **Class B.** The Class B member is the Founder. The Class B member is entitled to three (3) votes for each Lot owned. The Class B membership will cease and be converted to Class A membership 20 years after conveyance of the first Lot to a purchaser; or upon the earliest of the following events:

(i) Six (6) months after the date on which all of the Units have been conveyed to Persons other than Founder or its successors, assigns, and affiliates; or

(ii) The Founder executes and records a written waiver of its right to control the Association.

4.2 **Multiple Ownership.** In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Lot concerned, unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made,

the vote involved shall not be counted for any purpose whatsoever, other than to determine whether a quorum exists.

4.3 Expansion of Terms. As the Development is expanded through Supplemental Charters, the terms of this Article shall be expanded and extended to such additional lands. Specifically including, without limitation, the extension of Class B voting rights to the additional lands.

ARTICLE V **JURISDICTION OF ASSOCIATION**

The Association has been organized to provide for the operation, maintenance, preservation and architectural control of the Properties and Improvements and to administer the Common Areas of the Association. The Association shall have jurisdiction and authority over the Properties and the Members of the Association to the full extent allowed by law and also as provided for in this Charter and in the Articles, Bylaws, Community-Wide Standard, ACC Restrictions and Rules, and Rules and Regulations, as such documents may be modified from time to time. The Association may also maintain public areas within the Properties.

ARTICLE VI **COVENANT FOR ASSESSMENTS**

6.1 Creation of Assessment Obligation. Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (1) Annual Assessments for Common Expenses, (2) Special Assessments, (3) Corrective Assessments, (4) Government Assessments, Assessments, and (5) any other amount or assessment levied by the Board pursuant to this Charter; all such assessments to be established and collected as provided in this Charter. The Association shall not levy or collect any Annual Assessment, Special Assessment, Corrective Assessment, or Government Assessment that exceeds the amount necessary for the purpose or purposes for which it is levied. All such assessments, together with interest, costs and reasonable attorneys' fees for the collection thereof, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, if applicable, shall also be and remain the personal obligation of the Person who was the Owner of such property at the time when the assessment fell due. This personal obligation cannot be avoided by abandonment of a Lot or by an offer to waive use of the Common Area. The personal obligation for delinquent assessments liability shall not pass to any new Owner ("Purchaser") successors in title unless expressly assumed by such Purchaser.

6.2 Purpose of Annual and Special Assessments. The Annual and Special Assessments levied by the Association shall be used exclusively to promote the common health, safety, benefit and welfare of the Owners and for the improvement and maintenance of the Common Area including establishing and funding a reserve to cover major repair or replacement of Improvements within the Common Area and any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under this Charter or its Articles.

6.3 Annual Assessments. Annual Assessments shall be used to satisfy Common Expenses of the Association, as provided herein and in the Bylaws. The initial Annual Assessment shall be Seventy Dollars (\$70.00) payable in twelve (12) equal monthly installments due on the first day of each month. The Annual Assessment shall be based upon the Budget prepared by the Board. The Board shall authorize and levy the amount of the Annual Assessment upon each Lot, as provided herein, by a majority vote of the Board. The Common Expenses of the Association, and therefore the Annual Assessment, may increase because of, among other reasons, Common Facilities constructed in the sole discretion of Founder. Nothing herein shall obligate Founder to construct any Common Facilities.

6.4 Special Assessments. In addition to the Annual Assessment, a Special Assessment can be assessed to pay the costs of any one or more of the following:

(a) Approved by Board. Special Assessments for the following extraordinary expenses can be levied by the Board without Member approval:

- (i) An extraordinary expense required by an order of a court;
- (ii) An extraordinary expense necessary to repair or maintain the Common Area or any portion thereof for which the Association is responsible where a threat to personal safety on the Common Area is discovered. Prior to the imposition or collection of a Special Assessment pursuant to this subsection, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was necessary and was not or could not have been reasonably foreseen in the budgeting process. The resolution shall be distributed to the Members with the notice of Assessment;
- (iii) Taxes payable to Washington County as described in Section 7.2 of this Charter; and
- (iv) To protect the Common Areas against foreclosure; and
- (v) To cover other short falls, or other needs approved by the Board as being reasonably necessary for the protection or preservation of the Properties, provided that any such assessment levied under this subparagraph (v) does not exceed fifty percent (50%) of the current Annual Assessment.

(b) Approved by Association. Special assessments which must be assented to by more than fifty percent (50%) of all votes which Members represented in person, by proxy, or by ballot are entitled to cast at a meeting duly called and held for such purpose pursuant to the Bylaws involve:

- (i) the replacement or improvement of the Common Area or Improvement thereon; and
- (ii) an extraordinary expense necessary to repair or maintain the Common Area or any portion thereof for which the Association is responsible.

6.5 Corrective Assessments. In addition to the Annual Assessment and any Special Assessments, the Association may levy Corrective Assessments against a particular Owner and his Lot to pay the following: costs directly attributable to, or reimbursable by, that Owner, equal to the costs incurred by the Association for corrective action, plus interest, an administration fee of fifteen percent (15%) of the total cost of the corrective action, and other charges on such Corrective Assessments.

The Board shall deliver a Notice of Noncompliance and Right to Hearing to the Owner upon whom it intends to levy a Corrective Assessment. Corrective Assessments shall be due and

payable within forty-five (45) days following delivery of Notice of Board Adjudication and shall bear interest thereafter at the rate of eighteen percent (18%) per annum until paid in full.

6.6 Reserved.

6.7 Government Assessments. In addition to the annual assessments, special assessments, and corrective assessments, the Association shall levy such additional assessments as may be necessary from time to time for the purpose of repairing and restoring the damage or disruption resulting to streets or other Common or Limited Common Areas from the activities of the City of St. George in maintaining, repairing or replacing the City's utility lines and facilities thereon. It is acknowledged that the ownership of said utility lines, underground or otherwise, is in the City up to and including the meters for individual units, and that they are installed and shall be maintained to City specifications.

6.8 Uniform Rate of Assessment. Annual Assessments and Special Assessments imposed pursuant to subsections 6.2, 6.3, and 6.4(a), and (b) of this Charter shall be assessed equally and uniformly against all Owners and their Lots.

6.9 Date of Commencement of Annual Assessments. Annual Assessments shall commence on all Lots on the first day of the first calendar month following the first Close of Escrow for the sale of a Lot in the Properties. The first Annual Assessment shall be adjusted according to the number of months remaining in the Fiscal Year as set forth in the Bylaws. Written notice of any change in the amount of any Annual Assessment shall be sent to every Owner subject thereto, not less than thirty (30) days prior to the effective date of such change. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association, setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments against a Lot is binding upon the Association as of the date of its issuance.

6.10 Exempt Property. The following property subject to this Charter shall be exempt from the assessments herein:

- (a) All portions of the Properties dedicated to and accepted by a local public authority;
- (b) The Common Area owned by the Association in fee title; and

- (c) Any Properties held by Founder.

6.11 Notice of Members Meetings; Quorum Requirements. Before any Special Assessment is levied, the Board shall deliver a Notice of Members Meeting. The quorum required for any action authorized by Section 6.4(b) shall be as follows: at the first meeting called, the presence of Members or of proxies entitled to cast fifty percent (50%) of all outstanding votes shall constitute a quorum. If a quorum is not present at the meeting another meeting may be called by the Board issuing a Notice of Members Meeting at which a quorum shall be one-half (1/2) of the quorum which was required at such preceding meeting. The process of calling subsequent meetings may continue until a quorum is reached and the quorum requirement will continue to be reduced as provided for above at each subsequent meeting. No such subsequent meeting shall be held more than forty-five (45) days following such preceding meeting at which a quorum was not present.

6.12 Preparation of Budget. At least annually the Board shall prepare and adopt a budget for the Association and the Board shall present the budget at a meeting of the members. A budget presented by the Board is only disapproved if member action to disapprove the budget is taken in accordance with the limitations under Section 215 of the Act.

6.13 Reserve Fund. The Board shall, on behalf of the Association, cause to be funded through Annual Assessments or other periodic assessments an adequate reserve to cover the cost of reasonably predictable and necessary major repairs and replacements to the Common Areas. The Board shall cause a reserve analysis to be conducted no less frequently than every six (6) years and shall review and, if necessary, update a previously prepared reserve analysis every three (3) years. The Board may conduct the reserve analysis by itself or may engage a reliable person or organization to conduct the reserve analysis. The Board shall annually provide Owners a summary of the most recent reserve analysis or update and provide a complete copy of the reserve analysis or update to an Owner upon request. In formulating the budget each year, the Board shall include a reserve line item in an amount required by the governing documents, or, if the governing documents do not provide for an amount, the Board shall include an amount it determines, based on the reserve analysis, to be prudent. Unless a majority of the Association Members vote to approve the use of reserve fund money for that purpose, the Board may not use money in a reserve fund: (i) for daily maintenance expenses; or (ii) for any purpose other than the purpose for which the reserve fund was established. A Board shall maintain a reserve fund separate from other Association funds.

ARTICLE VII

NONPAYMENT OF ASSESSMENTS; REMEDIES

7.1 Nonpayment of Assessments; Remedies. Pursuant to Utah Code Ann. §§ 57-8a-301, *et seq.*, any assessment installment payment not paid when due shall, together with the hereinafter provided for interest and costs of collection, be, constitute, and remain a continuing lien on the Lot provided, however, that any such lien will be subordinate to the lien or equivalent security interest of any Mortgage on the Lot Recorded prior to the date any such installment payment on assessments become due. If any installment payment on the assessment is not paid within thirty (30) days after the date on which it becomes due, the amount thereof shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum plus a late payment

service charge of Ten Dollars (\$10.00) if the assessment is not paid within ten (10) days of when it is due, or such larger amount as set by the Board, provided the charge does not exceed twenty-five percent (25%) of the amount of the installment payment, and the Association may, in its discretion, bring an action either against the Owner or to foreclose the lien against the Lot judicially or non-judicially. Any judgment obtained by the Association and any foreclosure commenced shall include reasonable attorney fees, court costs, and each and every other expense incurred by the Association in enforcing its rights. If a monthly installment payment is not timely made, the Board may declare the entire Annual Assessment in default and accelerate the Annual Assessment and declare the entire amount of the Annual Assessment immediately due and owing.

7.2 Washington County Tax Collection. It is recognized that under the Charter the Association will own the Common Area and that it will be obligated to pay property taxes to Washington County. It is further recognized that each Owner of a Lot is a Member of the Association and as part of each Owner's assessment will be required to pay to the Association the Owner's pro rata share of such taxes. Notwithstanding anything to the contrary contained in this Charter, or otherwise, Washington County shall be, and is, authorized to collect such pro rata share (on an equal basis) of taxes directly from each Owner by inclusion of said share with the tax levied on each Lot. To the extent allowable, Washington County is hereby directed to do so. In the event that the assessor shall separately assess Common Areas to the Association, the Board may impose, in its discretion a Special Assessment to pay such taxes, or they may be incorporated into the Annual Assessment.

7.3 Lien. The Board may elect to file a claim of lien against the Lot of the delinquent Owner by Recording a notice ("Notice of Lien") setting forth (a) the amount of the claim or delinquency, (b) the interest and costs of collections which have accrued thereon, (c) the legal description of the Lot against which the lien is claimed, and (d) the name of the Owner thereof. Such Notice of Lien shall be signed and acknowledged by an officer of the Association or duly authorized agent of the Association. The lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or otherwise satisfied. When all amounts claimed under the Notice of Lien and all other costs and assessments which may have accrued subsequent to the Notice of Lien have been fully paid or satisfied, the Association shall execute and Record a notice releasing the lien upon payment by the Owner of a reasonable fee as fixed by the Board to cover the cost of preparing and recording the release of lien. Unless paid or otherwise satisfied, the lien may be foreclosed in a like manner as a mortgage or any other manner provided by law, including without limitation, a deed of trust as set forth in this Charter.

7.4 Trust Deed for Assessments. By acceptance of a deed for a Lot, each Owner as Trustor conveys and warrants to Trustee in trust for the Association as Beneficiary, with power of sale, the Owner's Lot and appurtenant Limited Common Area, and all Improvements thereon for the purpose of securing payment of all assessments (including basis of collection) provided for in this Charter. For purposes of this Section and Utah Code Ann. §§ 57-1-19, *et seq.*, as amended from time to time. The Association and each Lot Owner hereby conveys and warrants pursuant to Sections 212 and 302 of the Act, and Utah Code § 57-1-20, to attorney Bruce C. Jenkins, or any other attorney that the Association engages to act on its behalf to substitute for Bruce C. Jenkins, with power of sale, the Lot and all improvements to the Lot for the purpose of securing payment of assessments under the terms of the Charter. The Trustee shall mean the attorney for the

Association and the Association may provide notice and disclosure of the Trustee by recording an "Appointment of Trustee" on the records of the Washington County Recorder.

7.5 Perfection of Lien and Priority. Upon the recording of Notice of Lien by the Manager or Board, such lien constitutes a lien on the Lot Owner's interest in the property prior to all other liens and encumbrances, recorded or unrecorded, except:

- (a) tax and special assessment liens on the Lot in favor of any assessing Lot or special improvement district; and
- (b) encumbrances on the interest of the Lot Owner:
 - (i) recorded prior to the date of the recording of Notice of Lien; and
 - (ii) that by law would be a lien prior to subsequently recorded encumbrances.

The Manager or Board may enforce the assessment lien by sale or foreclosure of the Owner's interest. The Manager or Board may bid at a sale or foreclosure and hold, lease, mortgage, or convey the Lot that is subject to the assessment lien.

7.6 Discontinuance of Common Utility Service and Suspension of Common Facility Use. As used in this section, "Delinquent Member" means a Lot Owner who fails to pay an assessment when due.

- (a) The Board of Directors may terminate a Delinquent Member's right:
 - (i) to receive a utility service for which the Member pays as a common expense; or
 - (ii) of access to and use of recreational facilities.
- (b) (i) Before terminating a utility service or right of access to and use of recreational facilities under Subsection (a) the Manager or Board of Directors shall give the Delinquent Member notice. Such notice shall state:
 - (A) that the Association will terminate the Member's utility service or right of access to and use of recreational facilities, or both, if the Association does not receive payment of the assessment within fourteen (14) calendar days;
 - (B) the amount of the assessment due, including any interest or late payment fee; and
 - (C) the Member's right to request a hearing.
- (ii) A notice under Subsection b(i) may include the estimated cost to reinstate a utility service if service is terminated.
- (c) (i) The Delinquent Member may submit a written request to the Board of Directors for an informal hearing to dispute the assessment.

(ii) A request under Subsection c(i) shall be submitted within fourteen (14) days after the date the Delinquent Member receives the notice under Subsection b(i).

(d) The Board of Directors shall conduct an informal hearing requested under in accordance with the hearing procedures of the Association.

(e) If the Delinquent Member requests a hearing, the Association may not terminate a utility service or right of access to and use of recreational facilities until after the Board of Directors:

(i) conducts the hearing; and

(ii) enters a final decision.

(f) If the Association terminates a utility service or a right of access to and use of recreational facilities, the Association shall take immediate action to reinstate the service or right following the Member's payment of the assessment, including any interest and late payment fee.

(g) The Association may:

(i) levy an assessment against the Delinquent Member for the cost associated with reinstating a utility service that the Association terminates as provided in this section; and

(ii) demand that the estimated cost to reinstate the utility service be paid before the service is reinstated, if the estimated cost is included in a notice under Subsection 2(b).

7.7 Tenant Payment. The Board may require a tenant under a lease with a Lot Owner to pay the Association all future lease payments due to the Lot Owner if the Lot Owner fails to pay an assessment for a period of more than sixty (60) days after the assessment is due and payable, beginning with the next monthly or periodic payment due from the tenant and until the Association is paid the amount owing. Before requiring a tenant to pay lease payments to the Association, the Association's manager or Board shall give the Lot Owner notice, which notice shall state: (i) the amount of the assessment due, including any interest, late fee, collection cost, and attorney fees; (ii) that any costs of collection, including attorney fees, and other assessments that become due may be added to the total amount due and be paid through the collection of lease payments; and (iii) that the Association intends to demand payment of future lease payments from the Lot Owner's tenant if the Lot Owner does not pay the amount owing within fifteen (15) days.

If a Lot Owner fails to pay the amount owing within fifteen (15) days after the Association's manager or Board gives the Lot Owner notice, the Association's manager or Board may exercise the Association's rights by delivering a written notice to the tenant. The notice to the tenant shall state that: (i) due to the Lot Owner's failure to pay an assessment within the required time, the Board has notified the Lot Owner of the Board's intent to collect all lease payments until the amount owing is paid; (ii) the law requires the tenant to make all future lease payments, beginning with the next monthly or other periodic payment, to the Association, until the amount owing is paid; and (iii) the tenant's payment of lease payments to the Association does not

constitute a default under the terms of the lease with the Lot Owner. The manager or Board shall mail a copy of this notice to the Lot Owner.

A tenant to whom notice is given shall pay to the Association all future lease payments as they become due and owing to the Lot Owner: (i) beginning with the next monthly or other periodic payment after the notice is delivered to the tenant; and (ii) until the Association notifies the tenant under Subsection (6) that the amount owing is paid. A Lot Owner shall credit each payment that the tenant makes to the Association under this section against any obligation that the tenant owes to the Owner as though the tenant made the payment to the Owner; and may not initiate a suit or other action against a tenant for failure to make a lease payment that the tenant pays to an Association as required under this section.

Within five (5) business days after the amount owing is paid, the Association's manager or Board shall notify the tenant in writing that the tenant is no longer required to pay future lease payments to the Association. The manager or Board shall mail a copy of this notification to the Lot Owner. The Association shall deposit money paid to the Association under this section in a separate account and disburse that money to the Association until the amount owing is paid; and any cost of administration, not to exceed Twenty-Five Dollars (\$25.00), is paid. The Association shall, within five (5) business days after the amount owing is paid, pay to the Lot Owner any remaining balance.

7.8 Statement of Account. The Manager or Board shall issue a written statement indicating any unpaid assessment with respect to a Lot covered by the request, upon the written request of any Owner, and payment of a reasonable fee not to exceed Ten Dollars (\$10.00). The written statement shall be binding in favor of any person who relies in good faith on the written statement upon the (i) remaining Owners; (ii) Manager; and (iii) Board. Unless the Manager or Board complies with such request within ten (10) days, any unpaid assessment that became due prior to the date the request was made is subordinate to a lien held by the person requesting the statement.

7.9 Payment by Encumbrancer. An encumbrancer holding a lien on a Lot may pay any unpaid assessment due with respect to the Lot. Upon such payment, the encumbrancer has a lien on the Lot for the amounts paid.

7.10 Cumulative Remedies. The assessment liens and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.

7.11 Mortgage Protection. Notwithstanding all other provisions hereof, no lien created under this Article VII, nor any breach of this Charter, nor the enforcement of any provision hereof shall defeat or render invalid the rights of the Beneficiary under any Recorded First Deed of Trust (meaning any deed of trust with first priority over other deeds of trust) upon a Lot made in good faith and for value; provided that after such Beneficiary or some other Person obtains title to such Lot by judicial foreclosure or by means of the powers set forth in such Deed of Trust or through a deed in lieu of foreclosure, such Lot shall remain subject to the Charter and the payment of all

installments of Assessments accruing subsequent to the date such Beneficiary or other Person obtains title.

7.12 Rent After Foreclosure. In the event the Association takes title to a Dwelling Unit through foreclosure, the Board may elect to allow the occupant to remain in the Dwelling Unit and the occupant shall be required to pay a reasonable rental to the Association for the Dwelling Unit.

ARTICLE VIII ARCHITECTURAL CONTROL

8.1 Members of Committee. The ACC shall consist of three (3) to five (5) members. The Board shall have the power to appoint and remove all of the members of the ACC. Persons appointed to the ACC by the Board need not be Members of the Association. If the ACC is not appointed, the Board itself shall perform the duties required of the ACC. Individual Board members may also serve as ACC members.

8.2 ACC General Powers. The ACC may promulgate reasonable standards against which to examine any request made pursuant to this Article, in order to ensure that the proposed Plans conform harmoniously to the exterior design and existing materials of the Improvements on the Properties. This power shall include the power to issue ACC Restrictions and Rules which, among other provisions, may set forth procedures for the submission of Plans for approval, and state additional factors which it will take into consideration in reviewing submissions.

8.3 Review of Plans and Specifications. The ACC shall consider and act upon any and all Plans and specifications submitted for its approval under this Charter and perform such other duties as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with Plans and specifications approved by the ACC. No exterior construction, alteration, removal, relocation, repairing, demolition, addition, modification, external decoration or redecoration, or reconstruction of a Dwelling Unit or Improvement, including landscaping, in the Properties shall be commenced or maintained, until the Plans and specifications therefor showing the nature, kind, shape, height, width, color, materials and location of the same shall have been submitted to the ACC and approved in writing by the ACC. The ACC shall approve Plans and specifications submitted for its approval only if it deems that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area or the Properties as a whole, that the appearance of any structure affected thereby will be in harmony with the Community-Wide Standard, the surrounding structures, and that the construction thereof will not detract from the beauty, wholesomeness and attractiveness of the Lots and the Common Area or the enjoyment thereof by the Members, and that the upkeep and maintenance thereof will not become a burden on the Association.

The Association may charge a plan fee that is equivalent to the cost of reviewing and approving the plans. As used in this section, "plans" mean any plans for the construction or improvement of a Lot which are required to be approved by the Association before the construction or improvement may occur.

8.4 Meetings of the ACC. The ACC shall meet from time to time as necessary to perform its duties hereunder. The vote of a majority of the ACC, shall be sufficient to enact resolutions or motions of the ACC. The attendance of a majority of the members at any meeting shall constitute a quorum.

8.5 No Waiver of Future Approvals. The approval by the ACC of any proposals or Plans for any work done or proposed or in connection with any other matter requiring the approval and consent of the ACC, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, Plans or matters subsequently or additionally submitted for approval or consent.

8.6 Compensation of Members. The members of the ACC shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder.

8.7 Inspection of Work and Costs of Correction. The ACC may, from time to time, enter upon the Lot to determine if the work is proceeding according to the approved plans.

8.8 Scope of Review. The ACC shall review and approve, conditionally approve or disapprove all Plans submitted to it for any proposed Improvement, alteration or addition, solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and the Properties generally. The ACC shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar architectural features, all as may be required by the ACC Restrictions and Rules. The ACC's approval or disapproval shall be based solely on the considerations set forth in this Article VIII, and the ACC shall not be responsible for reviewing, nor shall its approval of any Plan or design be deemed approval of, any Plan or design from the standpoint of structural safety or conformance with building or other codes. Each Owner shall be responsible for obtaining all necessary permits and for complying with all City of St. George, Utah, requirements with respect to the implementation of such Plans.

8.9 Limitation on Liability. Neither the ACC, the Board nor Founder, nor any member thereof, acting in good faith shall be liable to the Association or to any Owner for any damage, loss, or prejudice suffered or claimed on account of (i) the approval or rejection of, or the failure to approve or reject, any Plans, drawings, specifications, or variance requests (ii) the construction or performance of any work, whether or not pursuant to approved Plans, (iii) the development or manner of development of any of the Properties, or (iv) any engineering or other defect in approved Plans, drawings and specifications.

8.10 Founder's Rights. The Founder shall not be required to comply with the provisions of this Article in the initial construction of the Properties.

ARTICLE IX MAINTENANCE AND REPAIR OBLIGATIONS

9.1 Maintenance Obligations of Owners. An Owner shall not commit any act which shall detract from the appearance of the Dwelling Unit. Each Owner shall be responsible for the

repair and maintenance of the Improvements permitted by the ACC and constructed by the Owner on the Limited Common Area and all exterior glass surfaces, HVAC and garage doors.

Each Owner shall keep the interior of his Unit, including, without limitation, interior walls and utility lines therein, doors, windows, ceilings, floors, and permanent fixtures and appurtenances thereto, in a clean and sanitary condition and in good state of repair. In the case of common utility lines shared by two Units, such obligations for maintenance and repair shall be shared equally by the two Unit Owners, unless, it is established that the damage or disrepair was the result of an intentional or negligent act of only one Owner, in which case such Owner shall be entirely responsible for the repairs. In the event that any such Unit shall develop an unclean or unsanitary condition or fall into a state of disrepair, and in the event that the Owner of such Unit shall fail to correct such condition or state of disrepair promptly following written notice from the Association, the Association shall have the right, at the expense of the Owner and without liability to the Owner for trespass or otherwise, to enter said Unit and correct or eliminate said unsanitary or unclean condition or state of disrepair; provided, however, that the Association shall in no event have the obligations to correct or eliminate any such condition or state of disrepair. All such costs incurred by the Association shall be collected by the Association as a Corrective Assessment.

The Association and its duly authorized agents shall have the right to enter any and all of the Dwelling Units in case of an emergency originating in or threatening such Dwelling Unit or any other part of the Project, whether the Owner or occupant thereof is present at the time or not.

9.2 Maintenance Obligations of Association. No improvement, excavation or work which in any way alters the Common Area shall be made or done by any person other than the Association or its authorized agents after the completion of the construction or installation of the Improvements thereon by Founder. The Association shall provide for the maintenance, planting, as applicable, repair, and replacement of the Common Area, excluding Limited Common Area, and all Improvements thereon in a safe, sanitary and attractive condition, and in good order and repair, and shall likewise provide for the commonly metered utilities serving the Common Area, if any. The Association shall maintain the exterior of the Dwelling Units, except for glass surfaces, HVAC and garage doors. The Association shall be authorized, but shall not be required, to maintain any lands within the Properties which have been dedicated to and accepted for maintenance by a state, local or municipal governmental agency or entity. All of the foregoing obligations of the Association shall be discharged when and in such manner as the Board shall determine in its judgment to be appropriate.

9.3 Damage to Dwelling Units - Reconstruction. If all or any portion of any Lot or Dwelling Unit is damaged or destroyed by fire or other casualty, the Owner of such Lot shall, at the Owner's election, either (i) rebuild, repair or reconstruct the Lot and the Dwelling Unit on such Lot in a manner which will restore them substantially to their appearance and condition immediately prior to the casualty or as otherwise approved by the ACC or (ii) restore the Lot by removing from the Properties all damaged or destroyed building materials. The Owner of any damaged Lot or Dwelling Unit and the ACC 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 his reasonable control. A transferee of title to the Lot which is damaged or upon which is located a damaged Dwelling Unit shall commence and

complete reconstruction of the Dwelling 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 of the Dwelling Unit or restoration of the Lot in less than thirty (30) days from the date such transferee acquired title to the Lot.

9.4 Access at Reasonable Hours. Except as otherwise provided for in this Article IX, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot or Limited Common Area at reasonable hours for the purpose of performing the maintenance required by this Article.

9.5 Alteration of Certain Maintenance Duties by Rules. The duty of maintenance for the area of a Lot outside the walls of the Dwelling Units, and the Limited Common Areas adjacent and appurtenant to the Dwelling Units may be altered by rule of the Association.

9.6 Party Walls.

(a) 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, including common walls between Dwelling Units and patios, fences, 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.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use. However, any utilities (including without limitation water, power and sewer) within the wall and principally serving one Dwelling Unit shall be the responsibility of that Dwelling Unit's Owner, including without limitation all costs of maintenance, repair, and replacement. Any damage resulting from or associated with the utilities principally serving a particular Dwelling Unit shall be the responsibility of the Owner thereof. The Association, through the Board, has the right, but not the obligation, to make repairs associated with or caused by such utility services, and the Association may levy a Corrective Assessment for the cost of the repairs against the Dwelling Unit of the responsible Owner. Further, if the Association's insurance provides any coverage for the damage, the responsible Owner shall pay the deductible and, if such Owner fails to pay the deductible, the Association may also levy a Corrective Assessment against the Owner's Dwelling Unit for the amount of the deductible.

(c) 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.

(d) 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.

(e) 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.

(f) 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 the Association shall select an arbitrator for the refusing party.

9.7 Shared Roof Maintenance. By acceptance of a deed to a Lot, each Owner hereby acknowledges, agrees, and understands that it is essential that the shared roofs be maintained in good condition and repair to preserve the integrity of the Dwelling Units as they are used and occupied by Owners. Each Owner hereby covenants and agrees not to do anything or to erect any barrier that will hinder, delay, or limit the maintenance of the shared roof appurtenant to their Dwelling Unit. If the need for maintenance or repair of a shared roof is caused through the willful or negligent act of any Owner or his/her occupant, the cost of such maintenance or repairs shall be the sole and exclusive expense of such Owner. With respect to structural components of the shared roofs, except as may be otherwise provided herein, the Owners benefitted by a shared roof agree to share equally in the cost of maintenance and upkeep thereof in good condition and repair, including the replacement thereof as necessary. If there is a dispute over the responsibility for maintenance or repair of a shared roof, the Association may, but shall not be required to, intervene and determine each Owner's responsibility.

9.8 Mold. Whether or not you as an Owner experience mold growth depends to a great extent on how you manage and maintain your Dwelling Unit. You are hereby given notice to take all reasonable means to detect and prevent growth and infestation of mold and other similar agents. The Founder will not be responsible for any damages, and as Owner you waive any claim to damages, caused by mold, or by some other agent, that may be associated with customary construction practices in the area, to include but not be limited to property damage, personal injury, loss of income, emotional distress, death, loss of use, loss of value, and adverse health effects, or any other effects or losses. Any implied warranties, including but not limited to an implied warranty of workmanlike construction, an implied warranty of habitability, an implied warranty of merchantability or an implied warranty of fitness for a particular purpose, are hereby waived and disclaimed by you as the Owner.

ARTICLE X USE RESTRICTIONS

All real property within the Properties shall be held, used and enjoyed subject to such limitations and restrictions set forth below.

10.1 Residential Use. Each Dwelling Unit shall be used as a residence. The Dwelling Unit shall not be partitioned physically or otherwise and rented as individual rooms.

10.2 Accountability of Members. As more fully provided in Article XI(d), each Member shall be liable to the Association for any damage to the Common Area sustained by reason of the negligence or willful misconduct of said Member or the Persons deriving their right and easement of use and enjoyment of the Common Area from said Member, or of his respective family and guests, both minor and adult.

10.3 Business or Commercial Activity. Subject to the following exceptions, no part of the Properties shall ever be used or caused to be used or allowed or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storage, vending or other such nonresidential purposes without the prior written approval of the Board; provided, however, that the Founder, its successors and assigns, may use any portion of the Properties for a model home site, display and sales office in connection with the sale of Lots on the Properties by Founder. Upon written consent from the Board, which consent may contain reasonable restrictions, occupations without external evidence thereof -- including without limitation, traffic generation which are merely incidental to the use of the Dwelling Unit as a residential home -- are permitted for so long as such occupations are conducted in conformance with all applicable governmental ordinances shall be permitted.

10.4 Signs. Except for one professional quality "For Rent" or "For Sale" sign of not more than four (4) square feet, no advertising signs, billboards, objects of unsightly appearance, or nuisances shall be erected, placed, or permitted to remain on any Lot. Such sign may be placed on the Limited Common Areas. The foregoing restrictions shall not apply to the commercial activities, signs and billboards, if any, of the Founder or its agents during the construction and sales period or by the Association in furtherance of its powers and purposes set forth hereinafter and in its Articles of Incorporation, Bylaws, ACC Restrictions and Rules, and Rules and Regulations, as the same may be amended from time to time.

10.5 Quiet Enjoyment. No noxious or offensive activity or noise shall be carried on upon any part of the Properties, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners or which shall in any way increase the rate of insurance.

10.6 Parking and Vehicular Restrictions.

(a) Parking:

(i) Garages. Each Owner shall maintain his garage in a manner which ensures that it is capable of accommodating at least two (2) cars. All garage doors must remain closed, except when necessary for ingress or egress.

(ii) Streets. There shall be no parking on the streets, except Owners and their guests may temporarily park on the streets for the purpose of loading and unloading only and in no case overnight.

(iii) Guest Parking Areas. The guest parking shall be accommodated for on the driveway on the Lot.

(b) Vehicle Maintenance. No Person shall conduct repairs or restorations of any Vehicle or Recreational Vehicle upon any portion of the Properties, except as specifically provided in this subparagraph (b). However, repair and restoration shall be permitted within an Owner's garage when the garage door is closed, provided that such activity may be prohibited entirely if the Board determines in its discretion that such activity constitutes a nuisance. Owners may wash the exteriors of any Vehicle or Recreational Vehicle, provided that any debris from the washing is promptly removed.

10.7 Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any of said Lots, 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 Lot Owners. All pets must be kept within an enclosed area of the Lot (such enclosure being approved by the ACC in advance) or on a leash attended to by a person when in the Common Areas. Such pets may not be kept in the Limited Common Areas 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 Association.

10.8 Insurance and Governmental Requirements. No Owner shall permit or cause anything to be done or kept on the Properties, or on any Street visible from the Properties, which may increase the rate of insurance on the Properties, or result in the cancellation of such insurance, or which will obstruct or interfere with the rights of other Owners, nor commit or permit any nuisance thereon or violate any law. Each Owner shall comply with all of the requirements of the local or state health authorities and with all other governmental authorities with respect to the occupancy and use of a Dwelling Unit.

10.9 Lighting/Noise. Each Owner will use his best efforts to avoid lighting that will shine directly into an adjacent Lot or Dwelling Unit. No Owner shall permit noise that might disturb the peace and tranquility of the surrounding Owners including, without limitation, loud radios, exterior speakers, horns, whistles, bells, and firearms.

10.10 Temporary Buildings. No outbuilding, tent, shack, shed or other temporary building or Improvement of any kind (except portable outhouses and dumpsters with lids or covers during construction) shall be placed upon any portion of the Properties either temporarily or permanently.

10.11 Reserved.

10.12 Further Subdivision; Lease Provisions. No Owner shall further partition or subdivide his Lot or the rooms in the Dwelling Unit and Limited Common Area, including without limitation any division of his Lot into time-share estates, time-share uses, or creation of additional living quarters; provided, however, that this provision shall not be construed to limit the right of

an Owner (1) to rent or lease his entire Lot to a single family by means of a written lease or rental agreement; (2) to sell his Lot; or (3) to transfer or sell any Lot to more than one person to be held by them as tenants-in-common, joint tenants, tenants by the entirety or some other form of joint ownership. The terms of any such lease or rental agreement shall be made expressly subject to this Charter and the Bylaws of the Association. Any failure by the lessee of such Lot to comply with the terms of this Charter, the Bylaws of the Association, the ACC Restrictions and Rules, or the Rules and Regulations shall constitute a default under the lease or rental agreement.

10.13 Drainage. There shall be no interference with or alteration of the established drainage pattern over any Lot on the Properties, unless an adequate alternative provision is made for proper drainage – including without limitation, removal of excess water to gutters in the streets, preventing excess water from traveling onto adjacent Lots and Common Area. For the purposes hereof, “established drainage pattern” is defined as the drainage which exists at the time that such Lot is conveyed to a purchaser from Founder, and shall include drainage from the Lots onto the Common Area. Founder shall be held harmless from and against any causes of action related to an alteration in the “established drainage pattern.”

10.14 Reserved.

10.15 External Apparatus. No Lot Owner shall cause or permit anything (including, without limitation, awnings, canopies or shutters) to hang, be displayed or otherwise affixed to or placed on the exterior walls or roof or any part thereof, or on the outside of windows or doors, without the prior written consent of the ACC.

10.16 Limited Common Area Restrictions. The garages may only be used to park vehicles and store such belongings as may fit and still provide for the parking of the number of vehicles for which the garage is designed. Only clean, neat patio furniture may be kept on the patios.

10.17 Trash Receptacles. Owners shall keep trash receptacles in the garage or on the patio, except when placing the receptacles at the curb for pick up. The Board may pass additional Rules and Regulations governing trash receptacles.

10.18 Reserved.

10.19 Garbage Removal. All rubbish, trash and garbage shall be regularly removed from the Lots and shall not be allowed to accumulate thereon. Garbage should be placed in proper containers.

10.20 FCC Antenna and Dish Policy. Owners are encouraged to use cable service for television and internet. Satellite dishes and antennas not regulated by the FCC are prohibited. Satellite antennas, such as Direct Broadcast Satellite (DBS) antennas (dishes) one meter in diameter or less, and designed to receive direct broadcast satellite service, including direct-to-home satellite service, or receive or transmit fixed wireless signals via satellite, may be installed; provided the FCC regulated dish is placed in a location screened from view of the streets. Location of a FCC approved dish may not be restricted by the Association so as to cause unreasonable delay in installation; unreasonably increases the cost of the equipment or its installation, maintenance, or use; or preclude reception of an acceptable quality signal. No dish may encroach upon the

Common Area or the property of another Owner. The dish must comply with all applicable city, county and state laws, regulations and codes. The Association must be provided with a copy of any applicable governmental permits. Installation must be pursuant to the manufacturer's instructions.

ARTICLE XI
DAMAGE AND CONDEMNATION

Damage to or destruction of all or any portion of the Common Area and condemnation of all or any portion of the Common Area shall be handled in the following manner:

(a) If the Common Area is damaged or destroyed, the Association shall first utilize insurance proceeds and second reserve funds to cause the same to be repaired and reconstructed substantially as they previously existed.

(b) If the cost of effecting total restoration of such Common Area exceeds the amount of insurance proceeds and reserve funds, the Association shall, if and to the extent a Special Assessment is approved as provided for in Section 6.4(b), cause the same to be repaired and reconstructed substantially as they previously existed, and the difference between the insurance proceeds and the actual cost shall be levied as a Special Assessment against each Lot and its respective Owner.

(c) To the extent of funds available for restoration, any restoration or repair of such Common Area shall be performed substantially in accordance with the original plans and specifications subject to such changes within the scope of such original plans and specifications as may be approved by the Board.

(d) Each Member shall be liable to the Association for any damage to the Common Area or Improvement thereon sustained by reason of the negligence or willful misconduct of said Member or the Persons deriving their right and easement of use and enjoyment of the Common Area from said Member, or of his respective family and guests, both minor and adult. In the event of such damage to the Common Area or Improvement thereon the Board may either assess a penalty under the Rules and Regulations established by the Board in an amount sufficient to pay all costs of the Association attributable to such damage, including deductibles and increase in insurance premiums, if any, or the Board may repair the damage to the Common Area or Improvement thereon with the proceeds from the Association's insurance and assign to the Association's insurance company, its claims against the Member who, by his own acts or the acts (both minor and adult) of his family member, guest, invitee, or assignee, damaged the Common Area or Improvement thereon. In the case of joint ownership of a Lot, the liability of the Owners thereof shall be joint and several, except to the extent that the Association has previously contracted in writing with such joint Owners to the contrary. All such expenses may be levied by the Association as a Corrective Assessment.

(e) If at any time the Common Area, or any part thereof, shall be taken or condemned by any authority having the power of eminent domain, the Association shall represent the Lot Owners in these proceedings, negotiations, settlements or agreements. All compensation and damages shall be payable to the Association and shall be used promptly by the Association to the

extent necessary for restoring and replacing any Improvements on the remainder of the Common Area. Upon completion of such work and payment in full therefor, any proceeds of condemnation then or thereafter in the hands of the Association which are proceeds for the taking of any portion of the Common Area shall be disposed of in such manner as the Association shall reasonably determine.

ARTICLE XII
SPECIAL FOUNDER RIGHTS

12.1 Special Founder Rights. Special Founder Rights are those rights reserved for the benefit of the Founder in this Charter and shall include, among others, and regardless of anything in the Charter to the contrary, the following rights, which shall remain in effect during the entire Founder (Declarant) Control Period, or for the maximum period allowed by law:

- (a) the right to maintain sales offices, model Dwelling Units, and signs advertising the Project or any Dwelling Unit at any location in the Project;
- (b) the right to use easements through the Common Areas as set forth in this Charter and to grant easements through the Common Areas to others;
- (c) the right to dedicate the roads and streets within the Project and utility facilities therein for and to public use, to grant road and utility easements with respect thereto, and to allow such street or road or utility facilities to be used by owners of adjacent land;
- (d) the right to convert any part of the Project to a different regime of residential ownership;
- (e) the right to create or designate additional Common Area or Limited Common Areas within the Project;
- (f) the right to convey, dedicate, or encumber any portion or interest in the Common Area or Limited Common Area, or to withdraw any portion or interest in the Common Area or Limited Common Area as such;
- (g) the exclusive right to act as the Board of Directors, or appoint or remove members of the Board in Founder's sole discretion, during the Founder (Declarant) Control Period;
- (h) the right to withdraw land from the Project for up to fifteen (15) years from the date this Declaration is Recorded;
- (i) the right to set all assessments for the Association including annual, special, and individual assessments;
- (j) the right to set all fines and fees for the Association including but not limited to collection fees, architectural review fees, and fines for violations of Association Rules;
- (k) the exclusive right to amend the Charter, Bylaws, Plat, and Rules of the Association without approval from any Members; and

(l) the right to exert any right allowed to the Board or the Association pursuant to this Declaration.

12.2 Exercising Special Founder Rights. Founder may exercise the Special Founder Rights at any time prior to the expiration of the Founder (Declarant) Control Period. Founder may exercise its Special Founder Rights in any order, and no assurance is given as to the order in which Founder will exercise them. If Founder exercises any Special Founder Right with respect to any portion of the Project, Founder may, but is not obligated to, exercise that Special Founder Right with respect to any other portion of the Project. Notwithstanding anything to the contrary contained in this Charter, Founder may exercise any Special Founder Right described in this Article and any other right reserved to the Founder in this Charter, without the consent of the Association or any of the Owners.

12.3 Interference with Special Founder Rights. Neither the Association nor any Owner may take any action or adopt any Rules that interfere with or diminishes any Special Founder Right contained in this Charter without Founder's prior written consent. Any action taken in violation of this Section shall be null and void and have no force or effect.

12.4 Limitation on Improvements by Association. Until such time as the earlier of the following events occur: (a) termination of the Founder (Declarant) Control Period, or (b) such time as Founder chooses, neither the Association nor the Board shall, without the written consent of Founder, make any improvement to or alteration in any of the Common Areas created or constructed by Founder, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Areas as originally constructed or created by Founder.

12.5 Transfer of Special Founder Rights. The Founder may transfer, convey, or assign its rights created or reserved under this Charter to any Person in whole or in part. The Founder's successor shall enjoy any and all Founder rights as set forth in the Charter regardless of whether such rights are stated to be transferable. All references in the Bylaws and this Charter equally apply to Founder's successors. A contract transferring the Founder's rights may, but shall not be required to, be recorded in the office of the Wasatch County Recorder.

12.6 Changes by Founder. Nothing contained in this Charter shall be deemed to affect or limit in any way whatsoever the right of the Founder, its successors or assigns, to sell or to change the location, design, method of construction, grade, elevation, or any other part or feature of a Lot and Dwelling Unit prior to the contracting for the conveyance of the Lot to a purchaser.

12.7 Voting. During the Founder (Declarant) Control Period, any matter voted upon by the Owners shall not become effective unless the matter is approved in writing by the Founder.

12.8 Easements Reserved to Founder.

(a) The reservation to Founder, its successors and assigns, of non-exclusive easements and rights of way over those strips or parcels of land designated or to be designated on the Plat as public utility easements or otherwise designated as an easement area over any road or Common Area on the Project, and over those strips of land running along the front, rear, side and other Lot lines of each Lot shown on the Plat.

(b) An easement for the installation, construction, maintenance, reconstruction and repair of public and private utilities to serve the Project and the Lots therein, including but not limited to the mains, conduits, lines, meters and other facilities for water, storm sewer, sanitary sewer, gas, electric, telephone, cable television, and other public or private services or utilities deemed by Founder necessary or advisable to provide service to any Lot, or in the area or on the area in which the same is located.

(c) Easement granting the privilege of entering upon the Common Areas for such purposes and making openings and excavations thereon, which openings and excavations shall be restored in a reasonable period of time, and for such alterations of the contour of the land as may be necessary or desirable to affect such purposes.

(d) The reservation to the Founder and its successors and assigns, of a non-exclusive easement and right-of-way in, through, over and across the Common Area for the storage of building supplies and materials, parking of construction vehicles, erection of temporary structures, trailers, improvements or signs necessary or convenient to the development of the Project, and for all other purposes reasonably related to the completion of construction and development of the Project and the provision of utility services, and related services and facilities.

(e) The Founder reserves unto itself and its successors and assigns, the right to dedicate all of said roads, streets, alleys, rights of way, or easements, including easements in the areas designated as "open space" and storm water management reservation, to public use all as shown on the Plat. No road, street, avenue, alley, right of way or easement shall be laid out or constructed through or across any Lot or Lots in the Project except as set forth in this Charter, or as laid down and shown on the Plat, without the prior written approval of the Founder.

(f) Founder further reserves unto itself and its successors and assigns, the right at or after the time of grading of any street or any part thereof for any purpose, to enter upon any abutting Lot and grade a portion of such Lot adjacent to such street, provided such grading does not materially interfere with the use or occupancy of any structure built on such Lot, but Founder shall not be under any obligation or duty to do such grading or to maintain any slope.

12.9 No Modification of Founder Rights. The Special Founder Rights in this Charter or the Bylaws, and specifically in this Article, shall not be substantively or procedurally altered, amended, or removed with the written consent of the Founder until at least six (6) years have passed after the Founder (Declarant) Control Period has ended, at which time the Founder's approval shall no longer be required. Any document or amendment attempted without obtaining proper consent shall be void ab initio to the extent it attempts to alter the rights of the Founder or any provision of this Article without the consent of the Founder.

ARTICLE XIII INSURANCE

13.1 Types of Insurance. The Association shall obtain and keep in full force and effect at all times all insurance required pursuant to Utah Code § 57-8a-401, et. Seq. of the Act and any other relevant sections of the Act. In addition to any insurance coverage or limit of coverage provided in this Article and subject to the requirements of this Article, the Association may, as the

Board considers appropriate, obtain any additional type of insurance than otherwise required or a policy with greater coverage than otherwise required. The Association shall maintain to the extent reasonably available the following types of insurance:

(a) Property Insurance. Subject to Utah Code § 57-8a-403 of the Act, blanket property insurance or guaranteed replacement cost insurance on the physical structures in the Townhome Project, including the Common Areas and Facilities and the Dwelling Units, insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils. The total amount of coverage provided by blanket property insurance or guaranteed replacement cost insurance may not be less than one hundred percent (100%) of the full replacement cost of the insured property at the time the insurance is purchased and at each renewal date, excluding items normally excluded from property insurance policies. Property insurance shall include coverage for any fixture, improvement, or betterment installed at any time to a Dwelling Unit or to Limited Common Areas associated with a Dwelling Unit, whether installed in the original construction or in any remodel or later alteration, including a floor covering, cabinet, light fixture, electrical fixture, heating or plumbing fixture, paint, wall covering, window, and any other item permanently part of or affixed to a Dwelling Unit or to Limited Common Areas associated with a Dwelling Unit. Each Owner shall be an insured person under the property insurance policy. If a loss occurs that is covered by the Association's property insurance and another property insurance policy in the name of an Owner, the Association's policy provides primary insurance coverage. However, the Owner is responsible for the deductible of the Association's building property coverage, often referred to as coverage A, of the Owner's policy applies to that portion of the loss attributable to the Association's policy deductible.

(i) As used in this Article, "covered loss" means a loss, resulting from a single event or occurrence, that is covered by the Association's property insurance. "Dwelling Unit damage" means damage to a Dwelling Unit or to Limited Common Areas appurtenant to that Dwelling Unit, or both. "Dwelling Unit damage percentage" means the percentage of total damage resulting in a covered loss that is attributable to Dwelling Unit damage.

(ii) An Owner that has suffered Dwelling Unit damage as part of a covered loss is responsible for an amount calculated by applying the Dwelling Unit damage percentage for that Dwelling Unit to the amount of the deductible under the Association's property insurance. If an Owner does not pay the amount required under this subsection (ii) within thirty (30) days after substantial completion of the repairs to the Dwelling Unit or Limited Common Areas appurtenant to that Dwelling Unit, the Association may levy an assessment against the Owner for that amount.

(iii) The Association shall set aside an amount equal to the amount of the Association's property insurance policy deductible or, if the policy deductible exceeds Ten Thousand Dollars (\$10,000), an amount not less than Ten Thousand Dollars (\$10,000). Owners are hereby notified that the Association's current deductible is Ten Thousand Dollars (\$10,000). The Board may, by resolution, increase or decrease the amount of the Association's policy deductible. The Association shall provide as provided in the Bylaws, or as otherwise provided in Utah Code § 57-8a-4214 of the Act, to each Owner of the Owner's obligation under this subsection (iii) for the Association's policy deductible if there is any change in the amount of the deductible. If the Association fails to provide

notice of any change in the deductible, the Association is responsible for the portion of the deductible that the Association could have assessed to an Owner, but only to the extent that the Owner does not have insurance coverage that would otherwise apply. However, if the Association fails to provide notice of a later increase in the amount of the deductible, the Association is responsible only for the amount of the increase for which notice was not provided. The failure of the Association to provide notice as provided in this subsection (iii) shall not be construed to invalidate any other provision in this Charter.

(iv) If, in the exercise of the business judgment rule, the Board determines that a covered loss is likely not to exceed the property insurance policy deductible of the Association and until it becomes apparent the covered loss exceeds the deductible of the property insurance of the Association and a claim is submitted to the Association's property insurance insurer: (a) a Unit Owner's policy is considered the policy for primary coverage for a loss occurring to the Unit Owner's Unit or to Limited Common Areas appurtenant to the Unit; (b) the Association is responsible for any covered loss to any Common Areas and Facilities; (c) a Unit Owner who does not have a policy to cover the damage to the Unit Owner's Unit and appurtenant Limited Common Areas is responsible for that damage, and the Association may recover, as provided for in subsection (ii) above, any payments the Association makes to remediate that Unit and the appurtenant Limited Common Areas; and (d) the Association need not tender the claim to the Association's insurer.

(v) An insurer under a property insurance policy issued to the Association shall adjust with the Association's loss covered under the Association's policy. Notwithstanding this subsection (v), the insurance proceeds for a loss under the Association's property insurance policy: (a) are payable to an insurance trustee that the Association designates or, if no trustee is designated, to the Association; and may not be payable to a holder of a security interest. An insurance trustee or the Association shall hold any insurance proceeds in trust for the Association, Owners, and lien holders. If damaged property is to be repaired or restored, insurance proceeds shall be disbursed first for the repair or restoration of the damaged property. After the disbursements described herein are made and the damaged property has been completely repaired or restored or the Dwelling Unit Project terminated, any surplus proceeds are payable to the Association, Owners, and lien holders based on the Undivided Interest of each Dwelling Unit.

(vi) An insurer or the insurer's authorized agent that issues a property insurance policy under this Section 12.1(a) shall issue a certificate or memorandum of insurance to: (a) the Association; (b) an Owner, upon the Owner's written request; and (c) a holder of a security interest, upon the holder's written request. A cancellation or nonrenewal of a property insurance policy under Section 12.1(a) is subject to the procedures stated in Utah Code § 31A-21-303, as may be amended and supplemented.

(vii) A Board that acquires from an insurer the property insurance required in this Section 12.1(a) is not liable to Owners if the insurance proceeds are not sufficient to cover one hundred percent (100%) of the full replacement cost of the insured property at the time of the loss.

(viii) Nothing in this Section 12.1(a) shall prevent a Person suffering a loss as a result of damage to property from asserting a claim, either directly or through subrogation, for the loss against a Person at fault for the loss.

(ix) All policies of property insurance must provide that notwithstanding any provision affording the insurer the right to elect to restore damage in lieu of a cash settlement, such option shall not be exercisable without the prior written approval of the Association (or any insurance trustee) or when in conflict with the provisions of any insurance trust agreement to which the insurance may be a party, or any requirement of law.

(b) Liability Insurance. Subject to Utah Code § 57-8a-406 of the Act, liability insurance covering all occurrences commonly insured against for death, bodily injury, and property damage, including water damage, liability for non-owned or hired automobile, liability for property of others, and such other risks as shall customarily be covered with respect to projects similar in construction, location, and use arising out of or in connection with the use, ownership, or maintenance of the Common Areas and Facilities. The limits of the liability insurance policy shall be in an amount determined by the Association, but not less than One Million Dollars (\$1,000,000.00) for all claims for personal injury or property damage arising out of a single occurrence. Each Owner is an insured person under the liability insurance policy the Association obtains, but only for liability arising from: (i) the Owner's ownership interest in the Common Areas and Facilities; (ii) maintenance, repair, or replacement of Common Areas and Facilities; and (iii) the Owner's membership in the Association. Such policies shall be issued on a comprehensive liability basis, shall provide a cross-liability endorsement pursuant to which the rights of the named insured as between themselves are not prejudiced, and shall contain "a severability of interest" clause or endorsement to preclude the insurer from denying the claims of an Owner because of negligent acts of the Association or other Owners.

(c) Availability. If the Association becomes aware that property insurance under Section 12.1(a) above or liability insurance under Section 12.1(b) above is not reasonably available, the Association shall, within seven (7) days after becoming aware, give all Units Owners notice as provided in the Bylaws, or as otherwise specified in Utah Code § 57-8a-214 of the Act, that the insurance is not reasonably available.

(d) Workers' Compensation Insurance. If the Association has any employees, it shall obtain and maintain for the benefit of and on behalf of the Association, Workers' Compensation, employer's liability insurance, and all other similar insurance with respect to employees of the Association in the amounts and in the forms now or hereafter required by the Act or other law.

(e) Fidelity Bond. The Association shall purchase a fidelity bond to protect against dishonest acts of members of the Board, officers, Manager, Association employees (if any), and all others (including volunteers) who handle or are responsible for handling Association funds. This fidelity bond shall name the Association as the insured and shall be written in an amount equal to at least three (3) months' assessments plus all reserve funds. The fidelity bond shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression. The fidelity bond shall also provide that it may not be canceled or substantially modified (including cancellation for

nonpayment of premiums) without at least thirty (30) days prior written notice to the Association and all Mortgagees.

(f) Directors and Officers Insurance. The Association shall acquire Directors and Officers errors and omissions insurance to satisfy the Association's indemnification responsibilities.

13.2 Additional Insurance Provisions. The following additional provisions shall apply with respect to insurance:

(a) All insurance policies shall be written by a company holding a financial rating of Class VI or better as designated in Best's Insurance Reports. Each insurer must be specifically licensed to transact business in Utah. Policies are unacceptable where (i) under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against the borrower or the Mortgagee; or (ii) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders, or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent the Mortgagee or the borrower from collecting insurance proceeds.

(b) The Association shall have the authority to adjust losses.

(c) Insurance secured and maintained by the Association shall not be brought into contribution with insurance held only by Unit Owners or their Mortgagees.

(d) Each insurance policy obtained by the Association for the benefit of the Association shall provide: (i) a standard mortgagee clause commonly accepted by private institutional mortgage investors in the area in which the Property is located; (ii) a waiver (if available) of the insurer's subrogation rights with respect to the Association; members of the Board; Association officers; the Manager; each Owner; any Person residing with an Owner if the Owner resides in the Unit; and each Owner's servants, agents, and guests; (iii) that it cannot be canceled, suspended, or invalidated due to the conduct of any member of the Board, officer, or employee of the Association or of the Manager without a prior written demand that the defect be cured; (iv) that any "no other insurance" clause therein shall not apply with respect to insurance held only by Owners; and (v) a mortgagee clause endorsement, which must provide that the insurance carrier shall notify in writing any and all insureds, including the servicers on behalf of Mortgagees thereof at least thirty (30) days in advance of the effective date of any substantial modification or cancellation of the policy.

(e) Insurance coverage required by this Article shall not be prejudiced or voided by: (i) an Owner's act or omission, unless the Owner is acting within the scope of the Owner's authority, or (ii) any failure of the Association to comply with any warranty or condition regarding any portion of the Property over which the Association has no control, such as the personal property of Owners.

13.3 Premiums. All insurance premiums shall be Common Expenses.

13.4 Owner's Insurance. No insurance policy issued to the Association may prevent an Owner from obtaining insurance for the Owner's own benefit. The Association shall have no responsibility to insure personal property of Owners and their installed fixtures.

ARTICLE XIV
MORTGAGEE PROTECTION CLAUSE

Notwithstanding any other provision of this Charter, the following provisions concerning the rights of first Mortgagees shall be in effect:

14.1 Notice of Matters Affecting Security. The Association shall give written notice to any first Mortgagee of a Lot requesting such notice wherever:

(a) there occurs any substantial damage to or destruction of any Dwelling Unit or any part of the Common Area involving an amount in excess of, or reasonably estimated to be in excess of \$15,000.00. Said notice shall be given within ten (10) days after the Association learns of such damage or destruction; or

(b) there is any condemnation proceedings or proposed acquisition of a Dwelling Unit or of any portion of the Common Area within ten (10) days after the Association learns of the same the Association plans to abandon or terminate the planned unit development established by this Charter.

14.2 Notice of Meetings. The Association shall give to any first Mortgagee of a Lot requesting the same, notice of all meetings of the Association, and such first Mortgagee shall have the right to designate in writing a representative to attend all such meetings.

14.3 Right to Examine Association Records. Any first Mortgagee shall have the right to examine the books, records and audit financial statements of the Association.

14.4 Right to Pay Taxes and Charges. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any portion of the Common Area, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Area; and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Founder, for the Association as Owner of the Common Areas, hereby covenants and the Association by acceptance of the conveyance of the Common Areas, whether or not it shall be so expressed in such conveyance, is deemed to covenant and agree to make such reimbursement.

14.5 Rights Upon Foreclosure of Mortgage. Each holder of a first Mortgage (or Deed of Trust) on a Lot and any purchaser from it who comes into possession of the Lot by virtue of foreclosure of the mortgage, or by deed or assignment in lieu of foreclosure, or pursuant to a power of sale or otherwise will take the Lot free of all assessment claims, and shall not be liable for any claims for unpaid assessments and charges against the Lot which accrue prior to the time such holder comes into possession of the Lot.

14.6 **Deemed Consent.** If a security holder's consent is a condition for amending the Charter or Bylaws, the security holder's consent is presumed given, even if not actually given, if the Association complies with § 57-8a-210 of the Act.

ARTICLE XV
GENERAL PROVISIONS

15.1 **Enforcement.** Subject to the provisions of Sections 14.11 through 14.14, this Charter may be enforced by the Association, Founder, and any Owner as follows:

Breach of any of the provisions contained in the Charter and the continuation of any such breach may be enjoined, abated or remedied by appropriate legal proceedings instituted by any Owner, including Founder so long as Founder owns a Lot in the Development, and by the Association. The offending party is entitled to such notice and rights to a hearing as provided for in the Bylaws.

Any judgment rendered in any action or proceeding pursuant hereto shall include a sum for attorneys' fees in an amount as the court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and court costs.

(a) The result of every act or omission whereby any of the provisions contained in this Charter are violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance either public or private shall be applicable against every such result and may be exercised by any Owner, by the Association, and by the Founder for so long as Founder owns a Lot.

(b) The remedies herein provided for breach of the provisions contained in this Charter shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

(c) The failure of the Association to enforce any of the provisions contained in this Charter shall not constitute a waiver of the right to enforce the same thereafter.

(d) Any breach or amendment of the provisions contained in this Charter, the Articles or the Bylaws shall not affect or impair the lien or charge of any first Mortgage made in good faith and for value on any Lot or the Improvements thereon, provided that any subsequent Owner of such property shall be bound by such provisions of the Charter, Articles and Bylaws, whether such Owner's title was acquired by foreclosure in a trustee's sale or otherwise.

(e) The Association, through its Board, shall have the power to levy fines for violations of the Association's governing documents and fines may only be levied for violations of the governing documents. In addition to the levy of fines, the Board may also elect to pursue other enforcement remedies and/or damages permitted under the governing documents. Furthermore, pursuant to Utah Code § 57-8a-218(2)(b), a tenant shall be jointly and severally liable to the Association with the Owner leasing to such tenant for any violation of the governing documents by the tenant. The Board shall adopt a rule for the procedure to enforce the governing documents and levy fines, including a schedule of fines.

15.2 **Severability.** Invalidation of any provision of this Charter by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

15.3 **Rule Against Perpetuities.** The rule against perpetuities and the rule against unreasonable restraints on alienation of real estate may not defeat or otherwise void a provision of this Charter, the Articles, Bylaws, Plat, Rules or other governing document of the Association. If for any reason the Charter does not comply with the Act, such noncompliance does not render a Lot or Common Area unmarketable or otherwise affect the title if the failure is insubstantial.

15.4 **Interpretation.** The provisions of this Charter shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of the Common Area. The article and section headings have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter. Except for judicial construction, the Board shall have the exclusive right to construe and interpret the provisions of this Residential Charter. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Board's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by this Residential Charter.

15.5 **Amendment.** Any amendment to this Charter shall require the affirmation of at least sixty-seven percent (67%) of all Membership votes actually represented in person, by proxy, or by ballot that are entitled to be cast at a meeting duly called for such purpose. The Board shall cause to be delivered to all Members a Notice of Members Meeting setting forth the purpose of the meeting and the substance of the amendment proposed. The quorum required for any such meeting shall be as follows: At the first meeting called the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of the Membership shall constitute a quorum. If a quorum is not present at any meeting, another meeting may be called by the Board causing to be delivered another Notice of Members Meeting, at which meeting a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting. During the Founder (Declarant) Control Period, Founder shall have, and it hereby vested with, the right to unilaterally amend this Charter as Founder believes may be reasonably necessary or desirable. (Any amendment authorized pursuant to this Section shall be accomplished through the Recordation of an instrument executed by the Association. In such instrument an officer of the Association or member of the Board shall certify that the vote required by this Section for amendment has occurred, except for amendments unilaterally made by the Founder.

15.6 **Notice.** When notice is required under the Charter, notice shall be given as provided in the Bylaws.

15.7 **Manager.** The Association may carry out through a Manager any of its functions which are properly the subject of delegation. Any Manager so engaged may be an independent contractor or an agent or employee of the Association. Such Manager shall be responsible for managing the Properties for the benefit of the Association and the Owners, and shall, to the extent permitted by law and the terms of a management agreement with the Association, be authorized

to perform any of the functions or acts required or permitted to be performed by the Association itself.

15.8 Terms of Management Agreement. Any agreement for professional management of the Development, or any other contract providing for services of the Founder, sponsor, or builder, may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of termination fee on not more than ninety (90) but not less than thirty (30) days written notice.

15.9 Rules and Regulations. The Board shall have the authority to promulgate and adopt Rules and Regulations as the Board deems necessary or desirable (i) to aid it in administering the affairs of the Association, (ii) to insure that the Properties are maintained and used in a manner consistent with the interests of the Owners, (iii) to regulate the use of the Common Areas and to regulate the personal conduct of the Members and their guests thereon, and (iv) to establish penalties and fines for the infractions of any Rules and Regulations, this Charter, or the Bylaws. Fines, subject to limitations under the Act, may be assessed as a Corrective Assessment against the Lot. The Board may adopt, amend, cancel, limit, create exceptions to, expand or enforce rules and design criteria of the Association that are not inconsistent with the Charter or the Act. Except in the case of imminent risk of harm to a Common Area, a limited Common Area, an Owner, a Lot or a dwelling, the Board shall give at least fifteen (15) days advance notice of the date and time the Board will meet to consider adopting, amending, canceling, limiting, creating exceptions to, expanding or changing the procedures for enforcing rules and design criteria. The Board may provide in the notice a copy of the particulars of the rule or design criteria under consideration. A rule or design criteria adopted by the Board is only disapproved if member action to disapprove the rule or design criteria is taken in accordance with the limitations under Section 217 of the Act.

15.10 Assignment of Founder Powers. Any and all rights and powers of the Founder herein contained may be delegated, transferred, or assigned. In the event of any such transfer of Founder rights, the Founder shall have assigned all of its rights herein and shall be relieved from and after the date of such transfer of all liability and obligations hereunder, and the Successor Founder(s) shall have all the rights and obligations of Founder contained herein.

15.11 Agreement to Encourage Resolution of Construction Defect Disputes Without Litigation.

(a) Founder, the Association, and all persons subject to this Charter (collectively "Bound Parties") hereby agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving a Claim (as defined in subsection (b)) without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 14.12 in a good faith effort to resolve such Claim.

(b) As used in this Article, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relating to the design or construction of improvements by Founder within the Properties.

15.12 Dispute Resolution Procedures.

(a) Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice to each Respondent and to the Board stating plainly and concisely:

(i) the nature of the Claim, including the persons involved and the Respondent's role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) Mediation. If the parties have not resolved the Claim through negotiation within thirty (30) days of the date of the notice described in Section 14.12(a) (or within such other period as the parties may agree upon), the Claimant shall have thirty (30) additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Washington County Utah area.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the Parties do not settle the Claim within thirty (30) days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date the mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

DISPUTE RESOLUTION TIMELINE
 Claim Between Bound Parties

Day 1	Days 2-30	Days 31-60	Days 61-90+
Written Notice of Claim <ul style="list-style-type: none"> Factual Basis Legal Basis Propose a resolution Propose a meeting Send copy to Board 	Negotiations <ul style="list-style-type: none"> Good faith effort Parties meet in person May request Board assistance 	Request Mediation <ul style="list-style-type: none"> Claimant must submit claim Mediator assigned by Association or independent agency If Claim is not submitted, it is waived 	Mediation <ul style="list-style-type: none"> Agency supplies rules Fee split between parties Written summary from each side Supervised negotiation Contractual settlement or Termination of mediation

Each Party shall bear its own costs of the mediation, including attorney fees, and each Party shall share equally all fees charged by the mediator.

(d) **Settlement.** Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the Parties. If any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the Party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from non-complying Party (or if more than one non-complying Party, from all such Parties in equal proportions) all costs incurred in enforcing such agreement or award, including without limitation attorney fees and court costs.

15.13 **Initiation of Litigation and Limitation of Action.** In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Claimant shall not initiate any judicial or administrative proceeding against the Founder for a Claim unless first approved by a vote of seventy-five percent (75%) of the total votes in the Association. This Section shall not be amended unless such amendment is approved by the Founder in writing. *No litigation or dispute resolution may be commenced by a Claimant unless brought within one (1) year from the date the cause of action accrued.*

15.14 **Easement to Inspect and Right to Correct.** Founder and others it may designate grant the right to inspect, monitor, test, redesign, and correct any structure, improvement, or

condition which may exist on any portion of the Properties, including Lots or Parcels, and a perpetual, non-exclusive easement of access throughout the Properties to the extent reasonably necessary to exercise such right. Except in any emergency, entry onto a Lot or Parcel shall be only after reasonable notice to the Owner and no entry into a dwelling shall be permitted without the Owner's consent. The person exercising this easement shall promptly repair, at such person's own expense, any damage resulting from such exercise.

15.15 Founder's Disclaimer of Representations. Anything to the contrary in this Residential Charter notwithstanding, and except as otherwise may be expressly set forth on a recorded plat or other instrument recorded in the office of the County Recorder of Washington County, Utah, Founder makes no warranties or representations whatsoever that the plans presently envisioned or the complete development of the Covered Property can or will be carried out, or that any land now owned or hereafter acquired by Founder is or will be subjected to this Residential Charter or any other Charter, or that any such land (whether or not it has been subjected to this Residential Charter) is or will be committed to or developed for a particular (or any) use, or if that land is once used for a particular use, such use will continue in effect. Not as a limitation of the generality of the foregoing, Founder expressly reserves the right at any time and from time to time to amend the Master Development Plan.

ARTICLE XVI ANNEXABLE TERRITORY

16.1 Annexation by Founder. Founder may expand the real property subject to this Charter by the annexation of all or part of the Annexable Territory. The annexation of such land shall become effective and extend this Charter to such real property upon the Recordation of a Supplementary Charter or similar instrument which:

- (a) describes the real property to be annexed or incorporated by reference within the description contained in the Annexable Territory portion of the Plat;
- (b) declares that the annexed real property is to be held, sold, conveyed, encumbered, leased, occupied and improved as part of the Properties subject to this Charter; and
- (c) sets forth such additional limitations, restrictions, covenants, conditions complementary additions to the covenants, conditions and restrictions contained in this Charter as are not inconsistent with this Charter and which do not create a character different than exists in the Development and is intended by this Charter.

When such annexation becomes effective, said real property shall be subject to this Charter and subject to the functions, powers and jurisdiction of the Association, and thereafter all of the Owners of Lots in the Properties shall automatically be members of the Association.

Such annexation may be accomplished in one or more annexations or phases of Development without limitation as to size or location within the Annexable Territory.

16.2 Limitation on Annexation. Founder's right to annex said real property to the Properties shall be subject to the following limitations, conditions and rights granted to the Founder:

(a) The annexed real property must be part of the Annexable Territory as of the date of this Charter. However, Founder reserves the right to expand the borders of Annexable Territory to real property contiguous to the property described in Exhibits A and B, but with no obligation to do so and no claim as to right, title or interest to said real property.

(b) All Lots added to the Properties shall be for residential purposes, except as otherwise provided for in this Charter.

(c) Founder reserves unto itself and its assigns the right to create Common Area, and Improvements thereon, within any portion of the annexed real property. Founder makes no assurances that such Common Areas or Improvements will be established.

(d) The configuration of annexed land as to Lot size, Common Areas and the type of Improvements is reserved to the Founder.

16.3 Expansion of Definitions In the event the Properties are expanded, the definitions used in this Charter automatically shall be expanded to encompass and refer to the Properties as so expanded.

[SIGNATURES ON THE FOLLOWING PAGE]

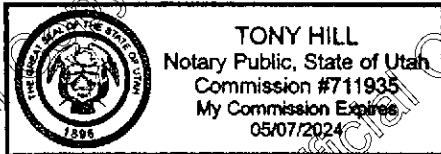
IN WITNESS WHEREOF, Founder executed this Charter on the 18 day of
MARCH, 2021.

CW DESERT VILLAGE PARTNERSHIP, L.P, a
Delaware
limited partnership

Colin Wright
By: COLIN WRIGHT
Its: GENERAL PARTNER

STATE OF UTAH,)
)
) ss.
County of ~~Washington.~~)
 DAVIS)

On this 18 day of MARCH, 2021, personally appeared before me
COLIN WRIGHT, who is personally known to me (or satisfactorily proved to
me), and who being by me duly sworn did say that he is the GENERAL PARTNER of CW Desert
Village Partnership, L.P, a Delaware limited partnership, and that he executed the foregoing
Charter on behalf said corporation by authority of a resolution of its Board of Directors, and he/she
acknowledged before me that the corporation executed the same for the uses and purposes stated
therein.



Tony Hill
Notary Public

Exhibit A
(Legal Description)

Beginning at the intersection of the easterly line of Rachel Drive and the northerly line of Lot 4, Block 28, St. George and Santa Clara Bench Irrigation Survey, said point being South 00°37'37" West 670.40 feet along the section line and South 89°22'23" East 30.00 feet from the ~~West Quarter~~ ^{Northwest} Corner of Section 4, Township 42 South, Range 16 West, Salt Lake Base & Meridian, and running;

thence South 89°11'13" East 351.82 feet along the northerly line of said Lot 4 thence South 45°53'15" East 65.23 feet; thence Southeast 194.92 feet along an arc of a 525.00 foot radius curve to the right (center bears South 44°06'45" West, long chord bears South 35°15'05" East 193.80 feet with a central angle of 21°16'20"); thence South 24°36'55" East 140.96 feet; thence Southeast 98.90 feet along an arc of a 475.00 foot radius curve to the left (center bears North 65°23'05" East, long chord bears South 30°34'49" East 98.73 feet with a central angle of 11°55'48"); thence South 53°27'17" West 129.22 feet; thence South 15°40'05" West 43.81 feet; thence West 34.65 feet along an arc of a 132.00 foot radius curve to the left (center bears South 15°40'05" West, long chord bears North 81°51'09" West 34.55 feet with a central angle of 15°02'28"); thence North 89°22'23" West 319.01 feet; thence Southwest 31.31 feet along an arc of a 20.00 foot radius curve to the left (center bears South 00°37'37" West, long chord bears South 45°46'30" West 28.21 feet with a central angle of 89°42'13"); thence North 89°40'10" West 40.00 feet; thence Northwest 31.52 feet along an arc of a 20.00 foot radius curve to the left (center bears North 89°04'37" West, long chord bears North 44°13'30" West 28.36 feet with a central angle of 90°17'47"); thence North 89°22'23" West 56.39 feet; thence Southwest 31.42 feet along an arc of a 20.00 foot radius curve to the left (center bears South 00°37'40" West, long chord bears South 45°37'38" West 28.28 feet with a central angle of 90°00'04") to said easterly line of Rachel Drive; thence North 00°37'37" East 550.86 feet along said easterly line to the Point of Beginning. Containing 274,689 square feet or 6.31 acres.

**Exhibit B
(Annexable Territory)**

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