

FIRST AMENDED DECLARATION TO THE  
DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
CHARLESTON HEIGHTS PLANNED UNIT DEVELOPMENT

THIS FIRST AMENDED DECLARATION is made this 14 day of ~~December~~<sup>January</sup>, 1993, by Michelle Golightly (Declarant).

RECITALS

A. Charleston Heights Planned Unit Development (The Project) is a planned unit development project located in the City of Orem, County of Utah, State of Utah.

B. Pursuant to Article VI Section 3 the Declarations may be amended by written agreement of not less than 90% of the lot owners, a copy of which is attached hereto and made a part hereof as Exhibit "A".

NOW, THEREFORE, Declaration hereby makes this First Amended Declaration and amends the Declaration of Covenants, Conditions and Restrictions for Charleston Heights Planned Unit Development:

ARTICLE I

DEFINITIONS

ENT 4335 BK 3347 PG 163  
NINA B REID UTAH CO RECORDER BY MB  
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RECORDED FOR MICHELLE GOLIGHTLY

Section 1. "Association" shall mean and refer to CHARLESTON HEIGHTS HOMEOWNERS' ASSOCIATION, its successors and assigns.

Section 2. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 3. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first unit is described as follows:

ENT 38260; BK 3170; PG 240

Section 5. "Unit" shall mean and refer to any lot and the physically enclosed space upon it together with the undivided

interest in the common areas and facilities appertaining to that unit.

Section 6. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any unit which is part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 7. "Declarant" shall mean and refer to Michelle Golightly, her successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

ARTICLE II

ENT 4335 BK 3347 PG 164

PROPERTY RIGHTS

This Article stays the same as in the original Declaration.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a unit which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any unit which is subject to assessment. In addition, the Declarant shall be a member of the Association until the earlier of the dates set forth in Section 2(b) below.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all owners, with the exception of the Declarant, and shall be entitled to one vote for each unit owned. When more than one person holds an interest in any unit, all such persons shall be members. The vote for such unit shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any unit.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes outstanding in the Class A membership equal the total vote outstanding the Class B membership, or

(b) on March 1, 1996.

## ARTICLE IV

## COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Unit owned within the Properties hereby covenants, and each Owner of any Unit 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 or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment shall be SIX HUNDRED DOLLARS (\$600.00) per Unit.

(a) From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased each year not more than 5% above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased above 5% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole

or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto; provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for any Action Authorized under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to casts sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Units and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Units on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Unit at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the association setting forth whether the assessments on a specified Unit have been paid. A properly executed certificate of the Association as to the status of assessments on a Unit is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of six percent (6%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Unit.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Unit from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V

ENT 4335 BK 3347 PG 167

ARCHITECTURAL CONTROL

Article V stays the same as in the original Declaration.

ARTICLE VI

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Amendments. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive period of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Unit Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Unit Owners. Any amendment must be recorded.

Section 4. Annexation. Additional residential property and Common Area may be annexed to the Properties with the consent of two-thirds (2/3) of each class of members.

Section 5. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration of the Veterans Administration: Annexation of additional properties, dedication of

Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 14 day of December, 1993.

*January 1994*  
*[Signature]*

DECLARANT:

*Michelle Golightly*  
\_\_\_\_\_  
Michelle Golightly

STATE OF UTAH            )  
                                  ):ss  
COUNTY OF UTAH        )

On this 14<sup>th</sup> day of January, 1994, personally appeared before me Michelle Golightly, the signer of the within instrument, who duly acknowledge to me that she executed the same.

*Howard Chuntz*  
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Notary Public

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