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**Note to Recorder:**  
Record against the real property  
located in Washington County,  
Utah described in Exhibit A.

After Recording mail to:  
Jenkins Jensen & Bayles, LLP  
Attn: Bruce C. Jenkins  
1240 East 100 South, Ste. 9  
St. George, UT 84790

CHARTER OF DECLARATIONS, COVENANTS,  
RESTRICTIONS AND RESERVATION OF EASEMENTS  
FOR  
BOULDER SPRINGS VILLAS  
(a Planned Unit Development)

CHARTER OF DECLARATIONS, COVENANTS,  
RESTRICTIONS AND RESERVATION OF EASEMENTS  
FOR  
BOULDER SPRINGS VILLAS

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CHARTER OF DECLARATIONS, COVENANTS,  
RESTRICTIONS AND RESERVATION OF EASEMENTS  
FOR  
BOULDER SPRINGS VILLAS  
(a Planned Unit Development)

PREAMBLE

This Charter of Declarations, Covenants, Restrictions and Reservations of Easements for BOULDER SPRINGS VILLAS (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.

RECITALS

A. Boulder Springs Villas Development, Inc., a Utah corporation, as Founder, will develop the real property described in Exhibit A as a planned unit development.

B. Founder has established or will establish the BOULDER SPRINGS VILLAS 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

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 Sections 8.1 and 8.4 hereof as such restrictions and rules may be amended from time to time.

1.3 Annexable Territory. Annexable Territory shall mean the real property described 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 BOULDER SPRINGS VILLAS 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 Benefitted Assessment. Benefitted Assessment shall mean assessments levied in accordance with Article X against particular Units to cover costs pursuant to a menu of services which the Board of Directors may from time to time authorize.

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 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, including without limitation actions taken pursuant to Sections 2.12, 8.7, 9.1, and 14.9, and Article XI.

1.13 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.

1.14 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; monthly membership fees in the Athletic Club (as defined hereafter), as more fully explained and provided for in Section 2.15; 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.

1.15 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 highest standard. Founder shall establish initially 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.

**COMMUNITY-WIDE STANDARD**

*The higher of:*

**MINIMUM STANDARDS**

**OR**

**PREVAILING STANDARD**

*ACC Restrictions and Rules  
Rules and Regulations  
Resolutions of Board  
Example set by Founder, Board*

1.16 Deed of Trust. Deed of Trust shall mean a mortgage or a deed of trust as the case may be.

1.17 Development. Development shall mean BOULDER SPRINGS VILLAS according to the Plat.

1.18 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 2.13 below, such other land as shown as private property within Lot boundary lines on the Plat.

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

1.20 Founder. Founder shall mean Boulder Springs Villas Development, Inc., a Utah corporation, 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 Boulder Springs Villas Development, Inc. in the Properties by foreclosure, judicial sale, bankruptcy proceedings, or by other similar involuntary transfer, shall automatically be deemed a successor and assign of Boulder Springs Villas Development, Inc. as Founder under this Charter.

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

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

1.23 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.

1.24 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 2.13.

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

1.26 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.

1.27 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.

1.28 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."

1.29 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 held pursuant to a Notice of Noncompliance by the Board and Right to Hearing.

1.30 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, and may be delivered either personally or by first class or registered mail. Notice of Members Meetings shall be delivered at least ten (10) days but not more than thirty (30) days prior to the date of the meeting of the Members. Notwithstanding the foregoing, notice given by other means shall be deemed fair and reasonable if given in accordance with the Utah Revised Nonprofit Corporation Act.

1.31 Notice of Noncompliance by the ACC. Notice of Noncompliance by the Board and Right to Hearing Notice of Noncompliance by the ACC shall mean a notice from the ACC directed to an Owner specifying in reasonable detail the nature of such Owner's noncompliance with the ACC Restrictions and Rules. Notice of Noncompliance by the Board and Right to Hearing shall mean a notice from the Board directed to an Owner specifying in reasonable detail the nature of such Owner's noncompliance with any provisions of this Charter and the opportunity for the Owner to have a hearing before the Board as provided for in the Bylaws.

1.32 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.

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

1.34 Phase I. Phase I shall mean all of the real property described in the Plat for "BOULDER SPRINGS VILLAS PHASE I."

1.35 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.

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

1.37 Plat. Plat shall mean "BOULDER SPRINGS VILLAS -- PHASE I", a planned unit development Plat, executed and acknowledged by Founder, prepared and certified by Rosenberg Associates, recorded in the records of the Washington County Recorder, as the same has been 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.

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

1.39 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.

1.40 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 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 for the infractions thereof, as such rules and regulations may be amended from time to time.

1.41 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.

1.42 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.

1.43 Streets. Streets shall mean private streets and thoroughfares on the Properties.

1.44 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.

1.45 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.

1.46 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, aircraft, 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

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):

(i) To construct and complete the Improvements as Founder deems to be appropriate, and to do all things reasonably necessary or proper in connection therewith;

(ii) 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;

(iii) 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

(iv) 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 BOULDER SPRINGS VILLAS, Phase \_\_\_\_, 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 in any Phase, convey to the Association title to all Common Area contained in that Phase, and 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 in such Phase.

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 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 two-thirds (2/3) of the vote of each class of Membership which Members present in person or by proxy or represented by ballot are entitled to cast at a meeting duly called for the purpose. The quorum requirement for such meeting shall be as set forth in the Bylaws.

(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, 2.9, 2.10, 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 Cross-Use Easement. Founder reserves the right to grant a cross-use easement for ingress and egress permitting members of adjoining developments the right of ingress and egress over the private Streets in the Development.

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 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 that do not contain a roof or footings, subject to approval of 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 Athletic Club Membership. Upon completion of construction on land adjacent to the Properties of the athletic club known as the Summit Athletic Club, or other similar name (the "Athletic Club"), Founder warrants that each Lot shall be vested with a membership for a couple (one person and his or her significant other) at the Athletic Club which shall be appurtenant to the Lot and shall run with the land and may not be transferred away from the Lot. (The Founder makes no warranties as to when or if the Athletic Club will be constructed). There shall be no initial membership fee associated with such membership interest; however, there shall be monthly membership use fees associated with the Athletic Club, which fees shall be collected by the Association as part of the assessments set forth in Article VI. A Lot Owner may purchase additional or expanded membership interest in the Athletic Club, but the costs for these additional or expanded membership interests shall not be collected by the Association and shall be the personal responsibility of such Lot Owner. The couple membership interest in the Athletic Club appurtenant to the Lot may be assigned by an Owner to a tenant, but may not be assigned or transferred to the guests or invitees of the Owner. Owners and other tenants shall abide by all policies of the Athletic Club.

2.17 Gated Community. The entrance(s) to the Properties will be gated. The gate(s) shall be closed, subject to access by Owners, their tenants, guests and invitees, during evening hours as reasonably determined by the Board. The gates shall remain open during the day unless the Association obtains approval from the City of St. George to close the gate(s) during the daytime.

2.18 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 – 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 southerly of the Virgin River on either side of River Road or 1470 South Street and as more particularly depicted in the map attached hereto and incorporated herein as Exhibit C.

2.19 Flood Hazard Notice. Based on the proximity of the Properties and Lots to the Virgin River, Improvements constructed within the boundaries of this Development may be subject to flooding and erosion hazards. Each Owner, by acceptance of a deed to a Lot, assumes any and all risk of damage and personal injury resulting directly or indirectly from the hazards associated with

proximity to the Virgin River and does hold Founder, its officers, directors, agents, shareholders, attorneys, engineers, employees, successors and assigns harmless from any and all claims of damages of whatever nature, and by any person, caused directly or indirectly by water, erosion, deposition, flooding, flowage, whether sudden or gradual and whether resulting from surface, flood or rainfall waters. Owners are advised to secure flood insurance as provided for in Section 12.7.

### ARTICLE III

#### BOULDER SPRINGS VILLAS 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 Ability to Contract with the Athletic Club. Founder covenants with the Association that the Association shall have the ability, to be exercised through its Board, to contract with the Athletic Club to provide (i) for the collection of Athletic Club couple membership fees as provided for in Section 2.14, (ii) for the use of a room at the Athletic Club for Board meetings (as frequent as monthly if desired by the Board), and (iii) for use of a portion of the Athletic Club for up to two meetings annually of the Association Members.

### 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 on the happening of either of the following events, whichever occurs earlier:

- (i) upon conveyance of ninety percent (90%) of the Lots subject to this Charter to purchasers; or
- (ii) the expiration of seven (7) years from the first Lot conveyance to a purchaser.

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) Benefitted Assessments, (5) Government Assessments, (6) Athletic Club monthly membership fees, and (7) 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, Benefitted 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.

So long as the Founder has an option unilaterally to subject additional property to this Charter, the following shall apply: the Founder, builder, contractor, investor, or other person or entity who purchases a Lot for the purpose of constructing improvements thereon for resale to an Owner, shall pay no assessment unless a Dwelling Unit constructed on a Lot is occupied for a residence on a permanent or part-time basis, provided that the Founder or its assigns shall have the obligation to subsidize the Association until control of the Association passes to the Owners. Subsidization shall be defined as the payment of the reasonable cash needs of the Association for ordinary and necessary maintenance expenses and a reasonable contribution to reserves. In no event, however, shall the subsidy exceed the monthly assessments. This obligation may be satisfied in the form of a cash subsidy or by "in kind" contributions of services or materials, or a combination of these.

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 One Thousand Four Hundred and Forty Dollars (\$1,440.00) 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 to the protection or preservation of the Properties, provided that any such assessment levied under this subparagraph (iv) 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 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, performed pursuant to the provisions of this Charter, including, without limitation, Sections 2.12, 8.7, 9.1, and Article XI, 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 (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 Benefitted Assessments. The Board may levy Benefitted Assessments against particular Lots for expenses incurred or to be incurred by the Association to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Lot or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize (which might include, without limitation, landscape maintenance, caretaker services, etc.), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner.

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; and

(b) The Common Area owned by the Association in fee.

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 any meeting another meeting may be called by the Board issuing a Notice of Members Meeting at which a quorum shall be one-half 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. The Board shall prepare a Budget to be presented to the Members at the Annual Meetings of the Members held as provided in the Bylaws.

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 replacement to the Common Areas.

6.14 Initial Capital Contribution. Each initial Owner of a Lot shall make an initial contribution of Two Hundred Dollars (\$200.00), which will be collected by the Founder from the purchaser of a Dwelling Unit and transferred to the Association by the Founder at the time of the sale. Such amounts paid shall not be deemed to be advance payments of the Annual Assessment, but shall be in addition thereto. The Board may apply such funds to cover any deficit in operating expenses or to the reserves.

## ARTICLE VII

## NONPAYMENT OF ASSESSMENTS; REMEDIES

7.1 Nonpayment of Assessments; Remedies. Pursuant to Utah Code Ann. §§ 57-8a-101, *et seq.* (2004), 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. 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 his assessment will be required to pay to the Association his 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 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. Each Owner hereby also grants to the Association and Trustee all powers and rights of non-judicial trust deed foreclosure provided for in Utah Code Ann. §§ 57-1-19, *et seq.*

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. If the Owner fails or refuses to pay an assessment when due, the board may, after giving notice and an opportunity to be heard as provided for below, terminate an Owner's right:

- (a) to receive utility services paid as a common expense; and
- (b) of access and use of recreational facilities.

Before terminating utility services or right of access and use of recreational facilities, the Manager or Board shall give written notice to the Owner in the manner provided in the Bylaws. The notice shall inform the Owner (i) that utility service or right of access and use of recreational facilities will be terminated if payment of the assessment is not received within thirty (30) days; (ii) of the amount of the assessment due, including any interest or late payment fee; and (iii) of the right to request a hearing as provided for in this Section. An Owner who is given notice may request an informal hearing to dispute the assessment by submitting a written request to the Board within fourteen (14) days after the date on which the Owner receives the notice. The hearing shall be conducted by the Board in accordance with the standards provided in the Bylaws. If a hearing is requested, utility services or right of access and use of recreational facilities may not be terminated until after the hearing has been conducted and a final decision has been entered. Upon payment of the assessment due, including any interest or late payment fee, the Manager or Board shall immediately take action to reinstate the terminated utility services and right of access and use of recreational facilities.

7.7 Future Lease Payments. If the Owner of a Lot who is leasing the Lot fails to pay an assessment for more than sixty (60) days after the assessment is due, the Board, upon compliance with this Section, may demand that the tenant pay to the Association all future lease payments due to the Owner, beginning with the next monthly or other periodic payment, until the amount due to the Association is paid. The Manager or Board shall give the Owner written notice of its intent to demand full payment from the tenant under this Section. The notice shall: (i) provide notice to the tenant that full payment of the remaining lease payments will begin with the next monthly or other periodic payment unless the assessment is received within the time period provided in the Charter, Bylaws, or Association Rules; (ii) state the amount of the assessment due, including any interest or late payment fee; (iii) state that any costs of collection, not to exceed One Hundred Fifty Dollars (\$150.00), and other assessments that become due may be added to the total amount due; and (iv) provide the requirements and rights described in this Section. If the Owner fails to pay the assessment due by the date specified in the notice, the Manager or Board may deliver written notice to the tenant that demands future payments due to the Owner be paid to the Association pursuant to this Section. The Manager or Board shall mail a copy of the notice to the Owner. The notice provided to the tenant under this Section shall state: (i) that due to the Owner's failure to pay the assessment within the time period allowed, the Owner has been notified of the intent of the Board to collect all lease payments due to the Association; (ii) that until notification by the Association that the assessment due, including any interest, collection cost, or late payment fee, has been paid, the tenant shall pay to the Association all future lease payments due to the Owner; and (iii) that payment by the tenant to the Association in compliance with this Section will not constitute a default under the terms of the lease agreement. If a tenant makes payments in compliance with this Section, the Owner may not initiate an action against the tenant. All funds paid to the Association pursuant to this Section shall be: (i) deposited in a separate account; and (ii) disbursed to the Association until the assessment due, together with any cost of administration which may not exceed Twenty-Five Dollars (\$25.00), is paid in full. Any remaining balance shall be paid to the Owner within five (5) business days after payment in full to the Association. Within five (5) business days after payment

in full of the assessment, including any interest or late payment fee, the Manager or Board shall mail a copy of such notification to the Owner.

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, repainting, 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 (together with such fees for review and inspection as may be reasonably required by 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 ACC may condition its approval of any Improvement upon such changes, alterations or modifications of such Improvement as it deems appropriate and may require submission of additional Plans and specifications or other information prior to approving or disapproving material submitted. Such conditions may also include a requirement that the applicant complete the proposed Improvement within a stated period of time. The ACC may require such detail in Plans and specifications submitted for its review as it deems proper, including, without limitation, landscape plans, floor plans, as they relate to exterior appearance, site plans, exterior lighting plans and interior lighting plans as they relate to exterior illumination, drainage plans, elevation drawings and description or samples of exterior material and colors. Decisions of the ACC shall be transmitted by the ACC to the applicant at the address set forth in the application for approval, after receipt by the ACC of all materials required by the ACC and within thirty (30) days after its next duly scheduled meeting at which there is a quorum in attendance. Any application submitted pursuant to this Section 8.3 shall be deemed approved, unless written disapproval or a request for additional information or materials by the ACC shall have been transmitted to the applicant within the time herein set forth. In addition to complying with the ACC Restrictions and Rules, the Applicant shall

meet any review or permit requirements of the City of St. George, Utah, prior to making any alterations or engaging in construction, reconstruction or remodeling permitted hereunder.

Lots 16, 17, 18, 20, 22, 24, 26, 28, 30, and 32 are subject to the height restrictions set forth on the Plat.

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. Inspection of work and correction of defects therein shall proceed as follows:

(a) The ACC or its duly authorized representative may inspect during reasonable daylight hours, any work for which approval of Plans is required under this Article VIII. However, the ACC's right of inspection of Improvements for which Plans have been submitted and approved shall terminate sixty (60) days after the Improvement has been completed, as evidenced in the case of a Dwelling Unit by a certificate of occupancy issued by the City of St. George, Utah, and the respective Owner has given written notice to the ACC of its completion. The ACC's rights of inspection shall not terminate pursuant to this paragraph if Plans for the Improvement have not previously been submitted to and approved by the ACC. If, as a result of such inspection, the ACC finds that the Improvement was constructed without obtaining approval of the Plans therefor or was not done in substantial compliance with the Plans approved by the ACC, it shall deliver to the owner a Notice of Noncompliance by the ACC within five (5) days from the inspection. The ACC shall have the authority to require the Owner to take such action as may be necessary to remedy the noncompliance.

(b) If upon the expiration of ten (10) days from the date of delivery of the Notice of Noncompliance by the ACC as provided for above, the Owner has failed to remedy the noncompliance, the ACC shall notify the Board in writing of such failure. The Board shall

then deliver to such Owner a Notice of Noncompliance by the Board and Right to Hearing. At hearing the Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Owner shall remedy or remove the same within a period of not more than thirty (30) days from delivery of Notice of Board Adjudication to the Owner. If the Owner does not comply with the Board determination within that period, the Board may commence a lawsuit for damages or injunctive relief, as appropriate, to remedy the noncompliance. In addition, the Board may peacefully remedy the noncompliance, and the Owner shall reimburse the Association, upon demand, for all expenses (including reasonable attorneys' fees) incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy a Corrective Assessment against the Owner for reimbursement as provided in this Charter. The right of the Association to remove a noncomplying Improvement or otherwise remedy the noncompliance shall be in addition to all other rights and remedies which the Association may have at law, in equity or in this Charter.

(c) If for any reason the ACC fails to notify the Owner of any noncompliance with previously submitted and approved Plans within thirty (30) days after receipt of written notice of completion from the Owner, the Improvement shall be deemed to be in accordance with 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 Basic ACC Standards and 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 of 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. Except for front and side yard landscaping maintenance provided for in Section 9.2 below, it shall be the duty of each Owner, at his sole cost and expense, subject to the provisions of this Charter requiring ACC approval, to maintain, repair, replace and restore all Improvements located on his Lot or structures built by the Owner on the Limited Common Area, and to ensure that the Lot itself is maintained in a neat, sanitary and attractive condition. If any Owner shall permit any Improvement, the maintenance of which is the responsibility of such Owner, to fall into disrepair or to become unsafe, unsightly or unattractive or to otherwise violate this Charter, the Board shall have the right to seek any remedies at law or in equity which it may have. In addition, the Board shall have the right, but not the duty, to enter upon such Owner's Lot to perform such emergency and non-emergency repairs or maintenance as the Board deems appropriate and to charge the cost thereof to the Owner. Said cost shall be a Corrective Assessment enforceable as set forth in this Charter. For ~~non-emergency repairs or maintenance~~ the Owner shall be entitled to Notice of Noncompliance by **the Board and Right to Hearing**. Owner's may assign certain of their maintenance obligations to the Association under written contract pursuant to a menu of service which may be offered by the Association under the provisions of this Charter relating to **Benefitted Assessments**.

Each Owner shall also keep the interior of his Dwelling 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 sate of repair. In the case of common utility lines shared by two Dwelling Units, such obligations for maintenance and repair shall be shared equally by the two Dwelling 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 Dwelling Unit shall develop an unclean or unsanitary condition or fall into a state of disrepair, and in the event that the owner of such Dwelling 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 Dwelling 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.

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, repair, and replacement of the Common Area and all Improvements (including drainage) 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 ensure that the landscaping on the Common Area and the Limited Common Area in the front in side yards of the Lot to the exterior walls of the Dwelling Unit are watered and maintained free of weeds and disease. It shall be the obligation of the Owner to replace all plants other than grass, which shall be the responsibility of the Association to replace. 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 placed on the dividing line between the Lots or Common Areas shall constitute a party wall, including common walls between Dwelling Units and patio 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, and the Association as the case may be, 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 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. This Section shall not prohibit fractional ownership of a Dwelling Unit.

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 one (1) car. 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, their driveways, 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 Construction. Construction of Dwelling Units shall be diligently pursued to substantial completion which generally shall occur within nine months of commencement, subject to extensions by the ACC in its sole discretion. All damage caused by construction activity (including construction related vehicles), shall be promptly repaired by the Owner or his contractor.

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 Drilling. Except as permitted for earth-coupled heat pumps or similar devices as provided for below, no oil drilling, oil, gas or mineral development operations, oil refining, geothermal exploration or development, quarrying or mining operations of any kind shall be permitted on the Properties, nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted on or below the surface of any Lot. Further, except as permitted for earth-coupled heat pumps or similar devices as provided for below, no derrick or other structure used in boring for water, oil, geothermal heat or natural gas shall be erected, maintained or permitted on the Properties.

The Board in its discretion may approve earth-coupled heat pumps or similar devices which may require the excavation or drilling of vertical or horizontal trenches or shafts below the surface of the improved area of a Lot.

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 Water Supply and Sewage Disposal Systems. No individual water supply or sewage disposal system shall be permitted on any Lot on the Properties unless such system is designed, located, constructed and equipped in accordance with the requirements, standards and recommendations, if any, of the ACC and of any public agency having jurisdiction over the Properties, the Washington County, Utah, Health Department, and all other applicable governmental authorities.

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 side yard, except when placing the receptacles at the curb for pick up. The Board may pass additional Rules and Regulations governing trash receptacles.

10.18 Planting, Gardening and Landscaping. Owners are encouraged to plant and maintain personal landscaping in front courtyards and rear yards. All personal landscaping must be kept in a neat and attractive manner. The Board may modify this Section by Rule.

10.19 Fences. Subject to the provisions governing repair and maintenance of party walls in Article IX, this Section shall control fencing in the Properties. Perimeter Lots may have a fence not to exceed six (6) feet in height. Interior Lots, with the exception of Lots 43, 49, 57 and 59, may have a fence not to exceed forty-two (42) inches in height. All fences must be constructed of brick, stone, split -face block, and wrought iron, or some combination thereof. All fences must be of a style and color in harmony with other fences in the Development. Owners are encouraged to intermittently breakup the fence line with shrubs or other plantings. All fences must be approved by the ACC prior to construction. For the purposes of this Section the following definitions apply: (a) perimeter Lots are those Lots where the back or side yards boarder (i) Common Areas which boarder adjacent lands not part of the Development or (ii) adjacent lands not part of the Development; and (b) interior Lots are those Lots where the backyard abuts the Common Area and the Common Area is bordered on all sides by other Lots or other Common Area. The ACC may allow in advance and in writing fences on Lots 43, 49, 57 and 59 that are greater than forty-two (42) inches in height, but less than six (6) feet in height. The in making such an allowance the ACC should consider factors such as Owner privacy and maintaining open views to the Common Areas from the Streets.

10.20 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.

10.21 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. In order to protect against personal injury and property damage, an dish may not be placed in a location where it may come into contact with a power line. In order to protect against personal injury and property damage, all dishes must be properly grounded and secured. In order to protect against personal injury, dishes may not block or obstruct any driver's view of an intersection or Street. The Owner is responsible for all costs associated with the installation and maintenance of an dish. The Owner



is responsible for all damage caused by or connected with the dish. The Owner must hold the Association harmless and indemnify the Association in the event that someone is injured by the dish. The Owner shall keep the dish in good repair so that it does not violate any portion of this Charter. An Owner must complete the notification form attached as Exhibit D and submit a copy of the completed form to the Association within five (5) business days after installing an antenna allowed pursuant to this Amendment. If requested by the Association, the Owner must establish a mutually convenient time to meet with a representative of the Association to review and discuss the antenna. In the event of a violation of this Section, the Association may bring an action for declaratory relief with the FCC or the Fifth District Court, Washington County, after notice and an opportunity to be heard. If the FCC or Court determines that this Section is enforceable, the Owner shall pay a \$50.00 fine to the Association for each violation. If the violation is not corrected within a reasonable length of time, additional fines of \$10.00 per day will be imposed for each day that the violation continues. If an antenna poses a serious, immediate safety hazard, the Association may seek injunctive relief to compel the removal of the antenna. The Association shall be entitled to recover its reasonable attorney's fees, costs and expenses incurred in the enforcement of this Section. If any provision of this Section is ruled invalid, the remainder of these rules shall remain in full force and effect. If the FCC modifies its rules, the modified rules shall be incorporated into this Section as if fully set forth herein.

10.22 Exception for Founder. Notwithstanding the restrictions contained in this Article X, Founder shall have the right to use any Lot or Dwelling Unit owned or leased by it in furtherance of any reasonably necessary or appropriate construction, marketing, sales, management, promotional, or other activities designed to accomplish or facilitate the sale of Lots and/or Dwelling Units owned by Founder. This exception shall not extend to the ordinary brokerage activities of Founder as to which the Founder shall be subject to the same rules and regulations as are other real estate brokerages.

## 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

### INSURANCE

12.1. Casualty Insurance. The Association shall secure and at all times maintain the following insurance coverages: A policy or policies of fire and casualty insurance, with extended coverage endorsement, for the full insurable replacement value of all Improvements comprising a part of the Common Area. The name of the insured under each such policy shall be in form and

substance similar to: "BOULDER SPRINGS VILLAS OWNERS ASSOCIATION" for the use and benefit of the individual Lot Owners and Mortgagees, as their interests may appear.

12.2. Liability Insurance. A comprehensive policy or policies insuring the Owners, the Association, and its Board, officers, agents, and employees against any liability incident to the ownership, use or operation of the Common Areas which may arise among themselves, to the public, and to any invitees or tenants of the Property or of the owners. Limits of liability under such insurance shall not be less than \$1,000,000.00 for all claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against 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. 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 in the Development because of negligent acts of the Association or other Owners.

12.3. Fidelity Insurance. A **fidelity policy or policies** to protect against dishonest acts on the part of Board, officers, Manager, employees of the Association and all others (including volunteers) who handle or are responsible for handling funds of the Association. This fidelity coverage shall name the Association as the obligee or insured and shall be written in an amount sufficient to offer the protection reasonably required, but in no event less than one hundred percent (100%) of the Association's estimated annual operating expenses including reserves. The fidelity bond or insurance shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression. Said policy shall also provide that it may not be canceled or substantially modified (including cancellation for non-payment of premiums] without at least thirty (30) days prior written notice to all Mortgagees of Lots.

12.4. Additional Insurance Requirements. The following additional provisions shall apply with respect to the insurance:

(a) In addition to the insurance described above, the Association shall secure and at all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with developments similar to the Property in construction, nature, and use.

(b) All policies shall be written by a company holding a rating of Class IV or better from Best's Insurance Reports or equivalent rating. Each insurer must be specifically licensed in the State of Utah.

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

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

(e) Each policy of insurance obtained by the Association shall, if reasonably possible, provide: A Waiver of the insurer's subrogation rights with respect to the Association, the Owners, invitees, and tenants; that it cannot be canceled, suspended, or invalidated due to the conduct of any particular Owner or Owners; that it cannot be canceled, suspended, or invalidated due to the conduct of the Association or of any Board, officer, Manager, agent or employee of the Association without a prior written demand that the defect be cured; that any "no other insurance" clause herein shall not apply with respect to insurance held by the owners.

(f) Notwithstanding any provisions to the contrary herein, so long as the Mortgagee or its designee holds a mortgage or beneficial interest in a trust deed on a Lot in the Development or owns a Lot, insurance policies shall meet all requirements and contain such other coverage and endorsements as may be required from time to time by the Mortgagee or its designee.

(g) Mortgagee Clause. All policies of hazard insurance must contain or have attached the standard Mortgagee clause commonly accepted by private institutional mortgage investors in the area in which the mortgaged premises are located. The mortgagee clause must provide that the insurance carrier shall notify the first Mortgagee (or trustee) named at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy.

(h) Review of Insurance. The Board shall periodically, and whenever requested by twenty percent (20%) or more of the Owners, review the adequacy of the Association's insurance program and shall report in writing the conclusions and action taken on such review to the Owner of each Lot and to the holder of any mortgage on any Lot who shall have requested a copy of such report. Copies of every policy of insurance procured by the Board shall be available for inspection by the Owner.

(i) Lots and Dwelling Units Not Insured by Association. The Association shall have no duty or responsibility to procure or maintain any fire, liability, extended coverage or other insurance covering any Lot or Dwelling Unit on a Lot and acts and events occurring thereon.

12.5. Insurance Obligations of Owners. Each Owner shall secure and keep in force at all times fire and extended coverage insurance which shall be equal to or greater than fire and extended coverage and shall be at least equal to that commonly required by private institutional mortgage investors in the area in which the mortgaged premises are located. The policy shall provide, as a minimum, fire and extended coverage insurance on a replacement cost basis in an amount not less than that necessary to comply with any co-insurance percentage stipulated in the policy. The amount

of coverage shall be sufficient so that in the event of any damage or loss to the mortgaged premises of a type covered by the insurance, the insurance proceeds shall provide at least the lesser of: (i) compensation equal to the full amount of damage or loss, or (ii) compensation to the first Mortgagee under the mortgage equal to the full amount of the unpaid principal balance of the Mortgage Loan. However, the Board may elect to take advantage of discounts and/or improved coverage that may be afforded by a master policy of insurance. If the Board elects so to do, such policy shall be in an amount equal to full replacement value of all Dwelling Units on the Lots with a co-insurance clause and each owner of such Lots shall be designated as additional insured. The cost of such insurance shall be part of the assessment for such Lot. In this event the insurance cost may be specifically charged to those Lots with Dwelling Units built upon them.

12.6. Unacceptable Policies. Policies are unacceptable where: (i) under the terms of the carrier's charter, bylaws or policy, contributions or assessment may be made against the Lot Owner or Mortgagee or Mortgagee's designee; or (ii) by, the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by carrier's policy includes any limiting clauses (other than insurance conditions) which could prevent the Lot Owner, Mortgagee or Mortgagee's Designee from collecting insurance proceeds.

12.7. Association and Owner's Flood Insurance. In the event that a portion of the Development should be declared to be in a flood area, a blanket policy of flood insurance for that portion of the Common Area located in the flood area shall be maintained by the Association in an amount equal to the full cost of replacement of the Common Area within the flood area. Each Owner of a Lot located within the 100 year flood plain marked on the Plat (including without limitation, Lots 1 - 11) shall acquire and maintain in effect flood insurance for the full replacement cost of the Dwelling Unit, the Lot and all Improvements thereon, unless such Owner elects not to obtain flood insurance and signs a "Waiver and Acknowledgment" of such election on a form prepared by and acceptable to the attorney for the local municipality prior to issuance of a certificate of occupancy. The Waiver and Acknowledgment shall be binding upon all heirs, successors and assigns of the Owner signing such Waiver and Acknowledgment. All Dwelling Units and buildings within the 100 year flood plain must have an elevation certificate, prepared by a license professional, verifying the finished floor elevation prior to issuance of a building permit. Said certificate's elevation shall be verified by the licensed professional before a certificate of occupancy is obtained. It is recommended that each and every Owner in the Development obtain flood insurance, even if that Owner's Lot is not located within the 100 year flood plain.

### ARTICLE XIII

#### MORTGAGEE PROTECTION CLAUSE

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

13.1 Preservation of Regulatory Structure and Insurance. Unless the holders of seventy-five percent (75%) of all first Mortgagees and seventy-five percent (75%) of the Lot Owners shall have given their prior written approval, the Association shall not be entitled:

(a) by act or omission to change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design of the exterior, appearance of Dwelling Units, the exterior maintenance of Dwelling Units under certain conditions provided in Section 9.2, or the upkeep of the Common Area;

(b) to fail to maintain fire and extended coverage on insurable portions of the Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurance values (based on current replacement costs); or

(c) to use hazard insurance proceeds for losses to the Common Area for other than the repair, replacement or reconstruction of improvements on the Common Area.

13.2 Preservation of Common Area; Change in Method of Assessment. Unless the Association shall receive the prior written approval of (1) at least seventy-five percent (75%) of all first mortgagees (based on one (1) vote for each Mortgagee) of the Lots and (2) the Owners of at least seventy-five percent (75%) of the Lots (not including Lots owned by Founder), the Association shall not be entitled:

(a) by act or omission to seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area, except to grant easements for utilities and similar or related purposes, as herein elsewhere reserved; or

(b) to change the ratio or method of determining the obligations, assessments, dues or other charges which may be levied against a Lot or the owner thereof.

Neither this Article XIII nor the insurance provisions contained in Article XII may be amended without the prior approval of all first Mortgagees.

13.3 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.

13.4 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.

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

13.6 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.

13.7 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, 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.

#### ARTICLE XIV

#### GENERAL PROVISIONS

14.1 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:

(a) 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.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

14.2 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.

14.3 Term. The covenants and restrictions of this Charter, as the same may be amended and supplemented from time to time, shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the Association, the Founder for so long as Founder owns a Lot in the Development, or the Owner of any land subject to this Charter, their respective legal representatives, heirs, successive Owners and assigns, for a term of fifty (50) years from the date this Charter is Recorded, after which the term shall be automatically extended for successive periods of ten (10) years unless a Charter of termination satisfying the requirements of an amendment to the Charter as set forth in Section 14.5 is Recorded.

14.4 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.

14.5 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. Notwithstanding anything herein contained to the contrary, until ninety (90%) of the Lots in the Properties have been sold to purchasers, Founder shall have, and it hereby vested with, the right to unilaterally amend this Charter as may be reasonably necessary or desirable; (a) to more accurately express the intent of any provision of this Charter in light of then existing circumstances, information or mortgage requirements, (b) to better insure, in light of then existing circumstances or information, workability of the arrangement which is contemplated by this Charter; or (c) to conform this Charter, or any amendments thereto, to local ordinances, to Utah law, or to the requirements of law of any other jurisdiction or state where the Development may be registered, or as may be amended from time to time, or to conform to the underwriters guidelines of major secondary market investors in order to facilitate the availability of financing. 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.

14.6 Notice. Any notice, including, without limitation, Notice of Noncompliance by the ACC, Notice of Noncompliance by the Board and Right to Hearing, and Notice of Board Adjudication, permitted or required to be delivered as provided herein shall be fair and reasonable if given in writing and may be delivered either personally or by first class or registered mail. If delivery is made by mail, it shall be deemed to have been delivered three (3) business days after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the residence of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association. Notwithstanding the foregoing, notice given by other means shall be deemed fair and reasonable if given in accordance with the Utah Revised Nonprofit Corporation Act.

14.7 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.

14.8 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.

14.9 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 levied may be assessed as a Corrective Assessment against the Lot.

14.10. 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.

14.11. 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.

14.12 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 15.2.11(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	Negotiations	Request Mediation	Mediation
<ul style="list-style-type: none"> <li>• Factual Basis</li> <li>• Legal Basis</li> <li>• Propose a resolution</li> <li>• Propose a meeting</li> <li>• Send copy to Board</li> </ul>	<ul style="list-style-type: none"> <li>• Good faith effort</li> <li>• Parties meet in person</li> <li>• May request Board assistance</li> </ul>	<ul style="list-style-type: none"> <li>• Claimant must submit claim</li> <li>• Mediator assigned by Association or independent agency</li> <li>• If Claim is not submitted, it is waived</li> </ul>	<ul style="list-style-type: none"> <li>• Agency supplies rules</li> <li>• Fee split between parties</li> <li>• Written summary from each side</li> <li>• Supervised negotiation</li> <li>• Contractual settlement</li> <li style="text-align: center;">or</li> <li>• Termination of mediation</li> </ul>

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.

14.13. **Initiation of Arbitration 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 and Claimant may only bring a Claim in arbitration upon approval by a vote of seventy-five percent (75%) of the total Class A votes in the Association. Each party to a Claim shall be entitled to appoint one (1) nominee, who will then collectively meet and appoint one (1) arbitrator who shall be a licensed attorney at law and who shall charge a reasonable fee. The arbitrator, when duly appointed shall have the right to examine all the accounts, notes, securities, books, inventories, assets and equipment of the parties

as the same relate directly or indirectly to the Claim and to hear evidence of the parties and other witnesses and to make an accounting as may be necessary and to do all things fully and completely to enable him to make a fair and full ruling on all matters in dispute in the arbitration. When the arbitrator has passed upon matters in dispute between the parties, he shall notify each party in writing of his decision and his decision shall be final and binding upon the parties, subject to rights provided under the Utah Arbitration Act. All arbitration hearings shall take place in Washington County, Utah. This Section shall not be amended unless such amendment is approved by the Founder in writing. *No arbitration action may be commenced by a Claimant unless brought within one (1) year from the date the cause of action accrued.*

14.14. 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.

## ARTICLE XV

### ANNEXABLE TERRITORY

15.1 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 the 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.

15.2 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.

15.3 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.

IN WITNESS WHEREOF, Founder executed this Charter on the 2nd day May, 2005.

Founder:

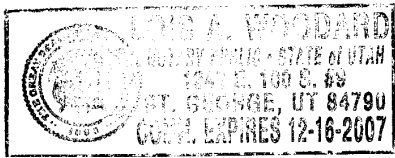
BOULDER SPRINGS VILLAS DEVELOPMENT, INC.

By: *M. Haffield*  
Its: *president*

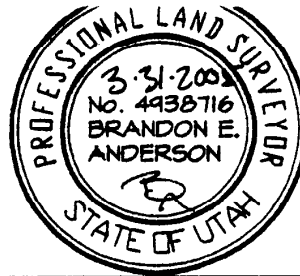
STATE OF UTAH, )  
 )  
 :SS.  
 County of Washington. )

On this 2nd day of May, 2005, personally appeared before me Stephen Sheffield, who being personally known to me (or satisfactorily proved to me), and who being by me duly sworn did say that he is the President of Boulder Springs Villas Development, Inc., a Utah corporation, and that he executed the foregoing Charter on behalf said corporation being authorized and empowered to do so by the Bylaws of said Company or resolution of its directors, and he acknowledged before me that such Corporation executed the same for the uses and purposes stated therein.

Lee A. Woodard  
Notary Public



3-31-2005  
Date:



Brandon E. Anderson  
Brandon E. Anderson

Certificate No. 4938716

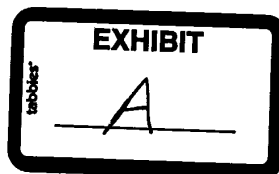
**LEGAL DESCRIPTION**

**BOULDER SPRINGS VILLAS PHASE I**

Beginning at a point being South  $00^{\circ}32'03''$  West 2686.48 feet along the section line to the West Quarter Corner of Section 33, Township 42 South, Range 15 West, Salt Lake Base & Meridian and South 1,700.81 feet and East 5.76 feet from the Northwest Corner of Section 33, Township 42 South, Range 15 West, Salt Lake Base & Meridian, and running;

thence North  $03^{\circ}38'33''$  East 99.00 feet;  
 thence South  $86^{\circ}21'28''$  East 289.48 feet;  
 thence South  $81^{\circ}14'17''$  East 44.83 feet to the northwest corner of The Boulders Phase 5 as found on record at the Washington County Recorders Office as Entry No. 758060;  
 thence southwesterly and southeasterly the following (3) courses along the westerly line of said The Boulders Phase 5;  
 thence South  $03^{\circ}38'33''$  West 392.28 feet;  
 thence South  $15^{\circ}14'40''$  East 125.50 feet;  
 thence South  $36^{\circ}57'07''$  East 150.74 feet to the northerly line of The Boulders Phase 3 Amended as found on record at the Washington County Recorders Office as Entry No. 669144;  
 thence southwesterly the following (2) courses along the northerly line of said The Boulders Phase 3 Amended;  
 thence South  $53^{\circ}02'52''$  West 102.39 feet;  
 thence South  $61^{\circ}12'28''$  West 263.80 feet to the northeast corner of The Boulders Phase 2 Amended as found on record at the Washington County Recorders Office as Entry No. 541378;  
 thence South  $78^{\circ}31'12''$  West 309.83 feet along the northerly line of said The Boulders Phase 2 Amended;  
 thence North  $11^{\circ}28'48''$  West 126.00 feet;  
 thence South  $78^{\circ}31'12''$  West 28.77 feet;  
 thence North  $11^{\circ}28'48''$  West 111.00 feet;  
 thence North  $78^{\circ}31'12''$  East 277.23 feet;  
 thence North  $52^{\circ}25'48''$  East 61.41 feet;  
 thence North  $03^{\circ}38'33''$  East 287.36 feet;  
 thence North  $86^{\circ}21'27''$  West 9.30 feet;  
 thence North  $03^{\circ}38'33''$  East 60.00 feet;  
 thence North  $86^{\circ}21'27''$  West 68.28 feet;  
 thence North  $03^{\circ}38'32''$  East 138.00 feet;  
 thence North  $86^{\circ}21'27''$  West 20.00 feet to the Point of Beginning.

Containing 298,409 square feet or 6.85 acres.





# Boulder Springs Villas Phase 2

## LEGAL DESCRIPTION

Beginning at a point on the westerly line of Boulder Springs Villas Phase 1, said point being South 00°32'03" West 2686.48 feet along the section line to the West Quarter Corner of Section 33, Township 42 South, Range 15 West, Salt Lake Base & Meridian and South 1,700.81 feet and East 5.76 feet from the Northwest Corner of Section 33, Township 42 South, Range 15 West, Salt Lake Base & Meridian, and running;

thence southeasterly and southwesterly the following 8 courses along the west line of said Boulder Springs Villas Phase 1;

- thence South 86°21'27" East 20.00 feet;
- thence South 03°38'32" West 138.00 feet;
- thence South 86°21'27" East 68.28 feet;
- thence South 03°38'33" West 60.00 feet;
- thence South 86°21'27" East 4.30 feet;
- thence South 03°38'33" West 287.36 feet;
- thence South 52°25'48" West 61.41 feet;
- thence South 78°31'12" West 392.23 feet;
- thence North 77°52'03" West 10.91 feet;
- thence South 78°31'12" West 48.53 feet;
- thence North 81°30'24" West 72.92 feet;
- thence North 89°09'50" West 33.65 feet;
- thence North 08°29'36" East 130.66 feet;
- thence South 81°30'24" East 4.42 feet;
- thence North 08°29'36" East 102.00 feet;
- thence South 81°30'24" East 40.71 feet;
- thence North 78°31'12" East 258.50 feet;
- thence North 03°38'33" East 438.65 feet;
- thence South 86°21'27" East 172.00 feet to the west line of said Boulder Springs Villas

Phase 1;

thence South 03°38'33" West 94.00 feet to along the west line of said Boulder Springs Villas Phase 1 to the Point of Beginning.

Containing 226,965 sq. ft. 5.210 acres.

## Boulder Springs Villas Phase 3

Beginning at a point on the southerly line of Boulder Springs Villas Phase 2, and the westerly corner of Boulder Springs Villas Phase 1, said point being South 00°32'03" West 2,686.48 feet along the section line to the West Quarter Corner of Section 33, Township 42 South, Range 15 West, Salt Lake Base & Meridian and South 2,284.01 feet and West 248.05 feet from the Northwest Corner of Section 33, Township 42 South, Range 15 West, Salt Lake Base & Meridian, and running;

Thence southerly the following (3) courses along the westerly line of said Boulders Springs Villas Phase 1;

thence South 11°28'48" East 111.00 feet;

thence North 78°31'12" East 28.77 feet;

thence South 11°28'48" East 126.00 feet to the northerly line of The Boulders Phase 2 Amended;

thence South 78°31'12" West 485.86 feet along the northerly line of said the Boulders Phase 2;

thence North 11°28'48" West 420.38 feet;

thence North 61°28'00" West 66.33 feet;

thence northerly 164.26 feet along an arc of a 60.00 foot radius curve to the right (center bears North 03°09'01" West long chord bears North 14°43'21" West 117.56 feet with a central angle of 156°51'20");

thence northeasterly 17.91 feet along an arc of a 20.00 foot radius curve to the left (center bears North 26°17'41" West long chord bears North 38°02'47" East 17.32 feet with a central angle of 51°19'04");

thence North 12°23'15" East 15.07 feet;

thence South 77°36'45" East 60.00 feet;

thence South 81°30'25" East 270.04 feet to the westerly corner of said Boulder Springs Villas Phase 2;

Thence southerly the following (8) courses along the westerly line of said Boulders Springs Villas Phase 2;

thence South 08°29'36" West 102.00 feet;

thence North 81°30'24" West 9.42 feet;

thence South 08°29'36" West 130.66 feet;

thence South 89°09'50" East 33.65 feet;

thence South 81°30'24" East 72.92 feet;

thence North 78°31'12" East 48.53 feet;

thence South 77°52'03" East 10.91 feet;

thence North 78°31'12" East 115.00 feet to the Point of Beginning.

Containing 195,449 square feet or 4.487 acres.

EXHIBIT

B

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EXHIBIT D

Notice of Installation of Antenna  
on Individually-Owned or Exclusive-Use Area

Homeowner(s): \_\_\_\_\_  
\_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone (Day) \_\_\_\_\_ (Evening) \_\_\_\_\_

Type of Antenna: \_\_\_\_\_

- Direct broadcast satellite  18-inch  Other  Size \_\_\_\_\_
- Television broadcast
- Multi-point distribution service  Size \_\_\_\_\_
- Internet  Size \_\_\_\_\_

Company Performing Installation \_\_\_\_\_

Identify Installation Location: Patio  Rear Deck  Balcony   
Other  Indicate "other:" \_\_\_\_\_

Date Installation Performed: \_\_\_\_\_

Please indicate the method of installation.

Will the installation be in compliance with all Association guidelines (which include manufacturers' guidelines and applicable building codes)? Yes  No

Please provide three days and times for which you are available to meet with us to discuss antenna installation. At this meeting, you will need to provide information supporting the necessity for non-routine installation.

Is a mast necessary for reception? Yes  No

If yes, is the mast required to extend more than 12 feet above the roofline or extend to a height greater than the distance from the installation to the lot line? Yes  No

If yes, you must complete the form for mast installation.

I will comply with all of the Association's rules for installing, maintaining, and using antennas. I assume liability for any damage to Association and other owners' property that occurs due to antenna installation, maintenance, and use.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_