

When Recorded Return To:
D.R. Horton, Inc.
12351 Gateway Park Place
Suite D-100
Draper, Utah 84020
Attention: Boyd A. Martin

ENT 88617:2005 PG 1 of 54
RANDALL A. COVINGTON
UTAH COUNTY RECORDER
2005 Aug 12 9:26 am FEE 155.00 BY STL
RECORDED FOR DR HORTON INC

**CERTIFICATE OF AMENDMENT NUMBER TWO
AND AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS
FOR
THE VILLAS AT SPANISH VISTA**

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**CERTIFICATE OF AMENDMENT NUMBER TWO
AND AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS
FOR
THE VILLAS AT SPANISH VISTA**

THIS CERTIFICATE OF AMENDMENT NUMBER TWO AND AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR THE VILLAS AT SPANISH VISTA (this "Amendment Number Two") is made and executed as of August ____, 2005, by D.R. Horton, Inc., a Delaware corporation, and by The Villas at Spanish Vista Owners Association, Inc., a Utah nonprofit corporation.

RECITALS

A. Centex Homes, a Nevada general partnership, was identified and defined as the "Declarant" under that certain Declaration of Covenants, Conditions, Easements and Restrictions for The Villas at Spanish Vista (the "Initial Declaration") dated February 14, 2005, which was recorded in the Office of the Recorder of Utah County, Utah on February 24, 2005 as Entry No. 19109:2005, beginning at Page 1, which Initial Declaration pertains to a residential planned unit development known as The Villas at Spanish Vista consisting of thirty-eight (38) Lots and thirty-eight (38) Townhouses for residential use (the "Project") located on that certain real property in Utah County, State of Utah more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference.

B. Pursuant to that certain Certificate of Amendment Number One to Declaration of Covenants, Conditions, Easements and Restrictions for The Villas at Spanish Vista ("Amendment Number One") dated June 30, 2005, which was recorded in the Office of the Recorder of Utah County, Utah on June 30, 2005 as Entry No. 70673:2005, beginning at Page 1, Centex Homes transferred and assigned to D.R. Horton, Inc. all right, title and interest of Centex Homes as the Declarant under the Initial Declaration with respect to the thirty-eight (38) Lots comprising the Property, as more specifically described in Exhibit "A" attached hereto and incorporated herein by this reference. The Initial Declaration, as amended by Amendment Number One and as further amended and restated by this Amendment Number Two, is herein referred to as the "Declaration."

C. D.R. Horton, Inc., as the Declarant under the Declaration, desires to amend and restate in its entirety the Initial Declaration, as amended by Amendment Number One, to the effect that upon the execution by D.R. Horton, Inc. of this Amendment Number Two and the recordation of this Amendment Number Two in the Office of the Recorder of Utah County, Utah, this Amendment Number Two shall supersede and replace in its entirety the Initial Declaration, as amended by Amendment Number One.

D. D.R. Horton, Inc. is authorized to execute this Amendment Number Two unilaterally as provided in Section 11.3 of the Initial Declaration.

E. D.R. Horton, Inc. (the "Declarant") and The Villas at Spanish Vista Owners Association, Inc. (the "Association") hold both legal and equitable title to certain real property located in the County of Utah, State of Utah, which property is described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Property"). Declarant owns all thirty-eight (38) Lots within the Project, and the Association has acquired title to those certain areas identified on the Plat for the Project as the Common Areas and the Limited Common Areas for the purposes set forth in this Declaration.

F. Declarant desires to develop a residential planned unit development known as The Villas at Spanish Vista on the Property, as shown on the Plat (the "Project"). Declarant intends to develop the Project to consist of up to thirty eight (38) Lots and thirty eight (38) Townhouses for residential use.

G. The covenants, conditions and restrictions contained in this Declaration and in the Exhibits hereto shall be enforceable equitable servitudes and shall run with the land. This Declaration is designed to complement local governmental regulations, and where conflicts occur, the more restrictive requirements shall prevail.

H. It is desirable for the efficient management and preservation of the value and appearance of the Project to create a nonprofit corporation to which shall be assigned the powers and delegated the duties of managing certain aspects of the Project; maintaining and administering the Common Areas; administering, collecting and disbursing funds pursuant to the provisions regarding assessments and charges hereinafter created and referred to; and to perform such other acts as shall generally benefit the Project and the Owners. The Villas at Spanish Vista Owners Association, Inc., a Utah non-profit corporation, has been incorporated under the laws of the State of Utah for the purpose of exercising the powers and functions aforesaid.

I. Each Owner shall receive fee title to his, her or its Lot and one Association Membership in the Association as provided herein.

J. By this Declaration, Declarant intends to establish a common scheme and plan for the possession, use, enjoyment, repair, maintenance, restoration and improvement of the Project and the interests therein conveyed and to establish thereon a planned community.

**AMENDMENT AND RESTATEMENT OF THE DECLARATION
OF COVENANTS, CONDITIONS, EASEMENTS AND
RESTRICTIONS FOR THE VILLAS AT SPANISH VISTA**

NOW THEREFORE, D.R. Horton, Inc., as the owner of all thirty-eight (38) Lots within the residential planned unit development known as The Villas at Spanish Vista, and The Villas at Spanish Vista Owners Association, Inc., a Utah nonprofit corporation, as the owner of all of the areas identified as Common Areas and Limited Common Areas on the Plats for The Villas at Spanish Vista—Plat A and The Villas at Spanish Vista—Plat B, as recorded in the Office of the Recorder of Utah County, Utah, hereby amend and restate in its entirety the Initial Declaration, as amended by Amendment Number One (as defined above) in its entirety, commencing with the Recitals on page 1 thereof, and hereby declare and provide as follows:

ARTICLE 1

DEFINITIONS

Each of the Recitals A through J above are incorporated into and made a part of this Declaration for all purposes. Unless the context clearly indicates otherwise, the following capitalized words, phrases or terms used in this Declaration shall have the meanings set forth in this Article 1. (Certain terms not defined herein are defined elsewhere in this Declaration.)

1.1 “Adjoining Owner” means the immediately adjoining Owner that owns a Townhouse with a common Party Wall touching the contiguous, neighboring Townhouse of a different Owner.

1.2 “Annual Assessments” means the Assessments levied pursuant to Section 6.2.

1.3 “Architectural Review Committee” means the committee that may be created by Declarant pursuant to Section 3.4 below.

1.4 “Articles” means the Articles of Incorporation of the Association, as amended from time to time.

1.5 “Assessable Property” means each Lot, except for Exempt Property.

1.6 “Assessment” means an Annual Assessment or Special Assessment.

1.7 “Assessment Lien” means the lien created and imposed by Section 6.7.

1.8 “Association” means The Villas at Spanish Vista Owners Association, Inc., a Utah nonprofit corporation, and its successors and assigns.

1.9 “Association Member” means any Person who is a member of the Association as provided in Article 5.

1.10 “Association Membership” means a membership in the Association and the rights granted to the Association Members, including Declarant, pursuant to Article 5 to participate in the Association.

1.11 “Association Rules” means the rules and regulations adopted by the Board pursuant to Section 5.3, as amended from time to time.

1.12 “Board” means the Board of Directors of the Association.

1.13 “Bylaws” means the Bylaws of the Association, as amended from time to time.

1.14 “Common Areas” means: (a) all land, and the Improvements situated thereon, within the Project that Declarant designates as a common area on the Plat or other Recorded instrument and other real property which the Association now or hereafter owns in fee for the benefit of the Owners for as long as the Association is the owner of the fee, which may include, without limitation, all Project open space, landscaped areas, Project and street signage, lighting, sidewalks, and other similar Improvements; and (b) any real property or Improvements within the Project that the Association has the obligation to maintain, repair or replace for the common benefit of the Owners, as set forth in this Declaration even though such real property and Improvements are not owned by the Association, including, without limitation, the roofs and the exterior finishes of the Townhouses (other than the entry doors and the windows of the Townhouses), the perimeter fencing and the irrigation system.

1.15 “Common Expenses” means expenditures made by or financial liabilities of the Association, together with any allocations to reserves as further described in 6.2.1.

1.16 “Declarant” means D.R. Horton, Inc., a Delaware corporation, its successors, and any Person to whom it may expressly assign any or all of its rights under this Declaration.

1.17 “Declaration” means this Certificate of Amendment Number Two and Amended and Restated Declaration of Covenants, Conditions, Easements and Restrictions for The Villas at Spanish Vista, as amended from time to time.

1.18 “Design Guidelines” means the written review standards promulgated by the Declarant pursuant to this Declaration, or the Architectural Review Committee created by Declarant pursuant to Section 3.4 below.

1.19 “Eligible Mortgagee” means and refers to a First Mortgagee who has requested notice of certain matters from the Association in accordance with Section 9.1 of this Declaration.

1.20 “Exempt Property” means:

(a) All land and improvements owned by, or dedicated to and accepted by, the United States, the State of Utah, Utah County or any Municipal Authority having jurisdiction, or any political subdivision of any of them, for as long as such entity or political subdivision is the owner thereof or for as long as said dedication remains effective;

(b) All Common Areas and Limited Common Areas owned by the Association, but specifically excluding from the Exempt Property the Lots and the Townhouses owned by a Person other than Declarant; and

(c) Each other property in the Project while owned by Declarant, until the earliest to occur of (i) the acquisition of its record title by a Person other than Declarant or (ii) the one hundred eightieth (180th) day after the Municipal Authority having jurisdiction thereover issues a certificate of occupancy for such Townhouse or Improvement hereafter constructed on a Lot.

1.21 “Improvement(s)” means any improvement now or hereafter constructed at the Project and includes anything which is a structure and appurtenances thereto of every type and kind, including, but not limited to, any (a) Townhouse, building, fence or wall; (b) any walkway, garage, road, driveway or parking area; (c) any mailbox, sign, covered patio, stairs or deck; (d) any paving, exterior lights, curbing, trees, shrubs, hedges, grass or other landscaping improvements of every type and kind; and (e) any other structure of any kind or nature.

1.22 “Lessee” means the lessee or tenant under a lease, oral or written, of any Townhouse (or part thereof), including an assignee of the lessee’s or tenant’s interest under a lease.

1.23 “Limited Common Area(s)” shall mean a portion of the Common Areas designated by this Declaration, and as may be shown on the Plat, for the exclusive use of one or more, but fewer than all of the Owners, including, without limitation, driveways in front of Townhouses and walkways from driveways to front doors of Townhouses.

1.24 “Lot(s)” means a portion of the Project intended for independent ownership and residential use and designated as a Lot on the Plat and, where the context indicates or requires, shall include any Townhouse or other Improvements situated on the Lot.

1.25 “Mortgage” means a deed of trust or a mortgage Recorded against a Lot, or any part thereof or interest therein. A “First Mortgage” means a Mortgage having priority as to all other Mortgages encumbering a Lot, or any part thereof or interest therein.

1.26 “Mortgagee” means a beneficiary under a deed of trust, or a mortgagee under a mortgage, Recorded against a Lot. A “First Mortgagee” means any Person or entity holding a First Mortgage including any insurer or guarantor of a First Mortgage. Any and all Mortgagee protections contained in this Declaration shall also protect the Declarant as the holder of a First Mortgage of a Lot or any part thereof or interest therein.

1.27 “Municipal Authority” means any applicable governmental entity or municipality which has jurisdiction over all or some part of the Project including, without limitation, the City of Spanish Fork, and the County of Utah County, Utah.

1.28 “Occupant” means any Person other than an Owner who has actual use, possession or control of a Townhouse, or any portion thereof, and shall include, without limitation, residents who reside in any Townhouse.

1.29 “Owner” means the Person or Persons who individually or collectively own fee title to a Lot, including Declarant, and purchasers under installment purchase contracts. “Owner” shall not include Persons who hold an interest in a Lot merely as security for the performance of an obligation.

1.30 “Party Wall” means a wall that forms part of a Townhouse and is located on or at a boundary line between two adjoining Lots owned by more than one Owner and is used by the Owners of both Lots.

1.31 “Person” means a natural person, corporation, business trust, estate, trust, partnership, association, limited liability company, limited liability partnership, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

1.32 “Plat A” means that certain planned community plat for the first phase of the Project entitled “THE VILLAS AT SPANISH VISTA – PLAT A” duly Recorded, which is incorporated herein by this reference.

1.33 “Plat B” means that certain planned community plat for the second phase of the Project entitled “THE VILLAS AT SPANISH VISTA – PLAT B” duly Recorded, which is incorporated herein by this reference.

1.34 “Plat” means, collectively, Plat A and Plat B.

1.35 “Project” means such term as described and set forth in Recital B.

1.36 “Project Documents” means this Declaration, the Design Guidelines, the Articles, the Bylaws and the Association Rules, as each document may be amended from time to time.

1.37 “Property” means such term as described and set forth in Recital A.

1.38 “Record” “Recording,” “Recorded” and “Recordation” means placing or having placed an instrument of public record in the Office of the Recorder of Utah County, Utah.

1.39 “Special Assessment” means any Assessment levied pursuant to Section 6.4.

1.40 “Townhouse(s)” means any dwelling unit situated upon a Lot and attached to other dwelling units in a row of at least four such units in which each unit has its own front access to the outside, no unit is located over another unit, and each unit is separated from any other unit by one or more common Party Walls, designed and intended for separate, independent use and occupancy as a primary residence. The term “Townhouse” shall include all exterior elements of a Townhouse, including, without limitation, exterior siding materials of all kinds, exterior doorways, windows, roof, shingles, rain gutters, address signs, and all similar exterior improvements of a Townhouse.

ARTICLE 2

DECLARANT'S RIGHTS AND OWNERS' OBLIGATIONS

2.1 Property Subject to this Declaration. This Declaration is being Recorded to establish a general plan for the development and use of the Project in order to protect and enhance the value and desirability of the Project. All of the property within the Project shall be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any of the property subject to this Declaration, each Person, for himself, herself or itself, and his, her or its heirs, personal representatives, successors, transferees and assigns, binds himself, herself or itself, and his, her or its heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration. In addition, each such Person by so doing acknowledges that this Declaration sets forth a general scheme for the development and use of the Property and evidences his, her or its agreement that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, Lessees and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial to and enforceable by the Association and all Owners.

2.2 No Condominium. Declarant and each Owner hereby agree and understand that the Property is not, by execution and recording of this Declaration, being submitted to the provisions of the Utah Condominium Ownership Act, §§ 57-8-1, *et seq.*, Utah Code Ann. (the "Act"). This Declaration does not constitute a declaration as provided for in the Act, and the provisions of the Act shall not be applicable to the Property or any portion thereof.

2.3 Lots. The Project shall consist of up to thirty eight (38) Lots, each of which is to be improved with a Townhouse. Declarant intends, without obligation, to develop the Project in two (2) phases. The first phase of the Project shall consist of up to Six (6) Lots and Six (6) Townhouses as depicted on Plat A. The second phase of the Project shall consist of up to Thirty Two (32) Lots and Thirty Two (32) Townhouses as depicted on Plat B.

2.4 The Association. The Association shall maintain the Common Areas as set forth in this Declaration. The Association shall assess and collect Assessments from the Association Members, in accordance with the provisions hereof and the Bylaws.

2.5 Incidents of Ownership. Every Lot shall have appurtenant to it one Association Membership in the Association, and a nonexclusive easement for each Owner for use, enjoyment, ingress and egress over the Common Areas subject to such restrictions and limitations as are contained in the Project Documents and subject to other reasonable regulation by the Association. Each Association Membership shall be appurtenant to and inseparable from ownership of the Lot. Any sale, conveyance, hypothecation, encumbrance or other transfer of a Lot shall automatically transfer the Association Membership to the same extent, notwithstanding any term or provision to the contrary in the documents effecting such transfer.

2.6 Owner's Obligation to Maintain the Lot, Townhouse and Limited Common Area. Except for the maintenance and repair of the roofs and the exterior finishes of the Townhouses (other than the entry doors and the windows of the Townhouses) within the Project, which roofs and exterior finishes of the Townhouses (other than the entry doors and the windows of the Townhouses) shall be maintained by the Association as provided in Section 7.1 hereof, each Owner shall maintain his, her or its Lot, Townhouse, and the Limited Common Area appurtenant to such Lot, in a safe, sanitary and attractive condition. In the event that an Owner fails to maintain his, her or its Townhouse, Lot, Limited Common Area and/or such other Improvements as provided herein, in a manner which the Board reasonably deems necessary to preserve the appearance and/or value of the Project, the Board may notify the Owner of the work required and demand that it be done within a reasonable and specified period. In the event that the Owner fails to carry out such maintenance within such period, the Board shall have the right, but not the obligation, to enter upon the Lot or Limited Common Area, to cause such work to be done to the Lot, Townhouse, Limited Common Area or Improvement and individually charge the cost thereof to such Owner. Notwithstanding the foregoing, in the event of an emergency arising out of the failure of an Owner to maintain his, her or its Lot, Townhouse, Limited Common Area or Improvement, the Board shall have the right to immediately enter upon the Lot or Limited Common Area to abate the emergency and individually charge the cost thereof to such Owner.

2.7 Responsibility for Common Areas Damage. The cost of repair or replacement of any portion of the Common Areas resulting from the willful or negligent act of an Owner, Occupant, Lessees, tenants, family, guests or invitees shall be, in addition to the party at fault, the joint responsibility of such Owner to the extent that it is not covered by insurance maintained by the Association. The Association shall cause such repairs and replacements to be made and the cost thereof may be levied as an individual charge against such Owner.

2.8 Reservation of Right to Construct Townhouses and Improvements. In addition to the reservations of rights set forth in this Declaration, Declarant reserves the sole and exclusive right, without obligation, to construct and/or directly supervise the construction of all Townhouses and Improvements to be erected on the Lots which are a part of the Project in order to protect its integrity and control the grading and site elements relative to each particular Lot. A purchaser, transferee or an Owner of a Lot shall not have the right to independently construct a Townhouse thereon, or approve or supervise the construction of any Townhouse. Notwithstanding the foregoing intention to construct all of the Townhouses, Declarant reserves the right to sell, convey, transfer, assign or otherwise dispose of any Lot, without first constructing a Townhouse thereon.

2.9 Declarant's Disclaimer of Representations. Nothing which may be represented to a purchaser by real estate brokers or salespersons representing the Declarant or shall be deemed to create any covenants or restrictions, implied or express, with respect to the use of any property subject to this Declaration.

2.10 Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Project designed to make the Project safer than it otherwise might be. NEITHER THE ASSOCIATION NOR ITS BOARD, THE DECLARANT OR THE DESIGN REVIEW COMMITTEE (COLLECTIVELY, THE "PROJECT GOVERNING BODIES") SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY

WITHIN THE PROJECT, HOWEVER, AND THE PROJECT GOVERNING BODIES SHALL NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS, OCCUPANTS, TENANTS, GUESTS AND INVITEES OF ANY OWNER OR OCCUPANT, AS APPLICABLE, ACKNOWLEDGE THAT THE PROJECT GOVERNING BODIES DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM OR BURGLAR ALARM SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO THE DESIGN GUIDELINES MAY NOT BE COMPROMISED OR CIRCUMVENTED, THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, OR OTHERWISE NOR THAT FIRE PROTECTION OR BURGLARY ALARM SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER, OCCUPANT, TENANT, GUEST OR INVITEE OF AN OWNER OR OCCUPANT, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE PROJECT GOVERNING BODIES ARE NOT INSURERS AND THAT EACH OWNER, OCCUPANT, TENANT, GUEST AND INVITEE ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO LOTS, TO PERSONS, TO TOWNHOUSES, TO IMPROVEMENTS AND TO THE CONTENTS OF TOWNHOUSES AND IMPROVEMENTS AND FURTHER ACKNOWLEDGES THAT THE PROJECT GOVERNING BODIES HAVE NOT MADE REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, OCCUPANT, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROJECT.

2.11 Readjustment of Lot Line Boundaries. Declarant hereby reserves for itself, and Declarant's successors and assigns, the right to effectuate minor realignment and adjustment of Lot boundary lines for purposes of proper configuration and final engineering of the Project. The authority to realign and adjust such Lot boundary lines shall be exclusively reserved to the Declarant and Declarant's successors or assigns, in their sole and reasonable discretion, subject to the other provisions of this Section 2.11. All Owners specifically acknowledge and agree that they shall cooperate with Declarant to effectuate such minor realignment and adjustment of their respective Lot boundary lines by deed in form and content as requested by the Declarant for the purposes of proper configuration and final engineering of the Lots in relationship to the development of the Project. Further, all Owners acknowledge and agree that no amendment to this Declaration or the Plat shall be required to effectuate any Lot boundary line adjustments so long as such adjustments are made pursuant to § 17-27-808(7), Utah Code Ann., as amended. More particularly, boundary line adjustments between adjacent Lots may be executed upon the approval of the appropriate Municipal Authority and upon recordation of an appropriate deed if:

2.11.1 No new Townhouse or Improvement results from the Lot boundary line adjustment and exchange of title;

2.11.2 The appropriate Municipal Authority and adjoining property Owners consent to the Lot boundary line adjustment (such Owners' consent to be granted as described above);

2.11.3 The adjustment does not result in violation of applicable Municipal Authority zoning requirements; and

2.11.4 The appropriate Municipal Authority Records a notice of approval in accordance with § 17-27-808(7)(c), Utah Code Ann.

The forgoing Sections 2.11.1, 2.11.2, 2.11.3 and 2.11.4 are subject to automatic modification to be consistent with any amendments or changes to § 17-27-808(7), Utah Code Ann.

ARTICLE 3

LAND USES, PERMITTED USES AND RESTRICTIONS

3.1 Land Uses. The purposes for which property within the Project may be used shall be residential uses consistent with this Declaration, as well as ancillary, complementary or subsidiary uses such as (without limitation), open space, Common Areas, Limited Common Areas and the like.

3.2 Model Homes. Any provisions of this Declaration which prohibit non-residential use of Lots and regulate parking of vehicles shall not prohibit the construction and maintenance of model Townhouses for use as sales offices (collectively, "Models") by Declarant or its designee engaged in the construction of Townhouses in the Project, or parking incidental to the visiting of such Models, so long as the construction, operation and maintenance of such Models and parking otherwise comply with all of the provisions of this Declaration. Any Townhouses constructed as Models shall cease to be used as Models at such time as the Declarant deems, but in no case later than one (1) year after the last Lot/Townhome (not including the Model) in the Project is sold.

3.3 Use Restrictions. Except as otherwise provided herein, each Lot may be used in any manner consistent with the requirements of applicable zoning and other land use ordinances and regulations, including the construction of a Townhouse in accordance with the Project Documents. The Lots, Townhouses, Common Areas and Improvements, except as otherwise permitted in writing by the Association and/or Declarant as applicable, shall be used in accordance with the restrictions outlined in the Project Documents. Each Owner agrees, understands and acknowledges that his, her or its Lot is subject to certain use restrictions that may limit such Owner's use of the Lot and ability to construct various Improvements thereon as specifically described in the Project Documents.

3.3.1 Vehicles. Except as otherwise permitted by the Association Rules, no automobile, commercial vehicle, truck, mobile home or trailer (either with or without wheels), camper, camper trailer, boat or other watercraft, boat or watercraft trailer, or any other transportation device of any kind, shall be stored outside or parked on a Lot except within a garage. No Owner or Occupant shall repair or restore any vehicle of any kind upon any portion of the Project, except for emergency repairs, and then only to the extent

necessary to enable movement thereof to a proper repair facility. The Board may authorize such vehicles and items parked in violation of this provision to be towed away, and any such towing charge shall become a lien on the interest of such Owner if he or she owns the vehicle or item or his or her Occupant owns same.

3.3.2 Use. No part of the Property shall be used for other than housing and related common purposes for which the Property was designed. No Unit Townhouse shall be used for commercial purposes; provided, however, that nothing in this Subsection shall prevent (a) Declarant or its designees from using any Townhouse owned or leased by Declarant as sales offices Models as provided in Section 3.2 hereof, or (b) any Owner or his or her duly authorized agent from renting or assigning the use of his or her Townhouse from time to time.

3.3.3 Nuisances. No noxious, offensive or illegal activity, including without limitation the excessive smoking of tobacco or other substances within a Townhouse that becomes reasonably noticeable to and reasonably offensive to the Owner or Occupant of an adjoining Townhouse, shall be carried on in or upon any part of the Project nor shall anything be done on or placed in or upon any part of the Project, which is or may become a nuisance or may cause unreasonable embarrassment, disturbance or annoyance to Owners or Occupants.

3.3.4 Unsafe Activities or Conditions. No activities shall be conducted, or Improvements constructed, in or upon any part of the Project, which are or may become unsafe or hazardous to any person or property.

3.3.5 Pets. No animals, reptiles, rabbits, livestock, fowl or poultry of any kind of any kind shall be raised, bred or kept on any Lot, in any Townhouse or in the Common Areas, except that up to a total of two (2) pets, which may include dogs, cats or other usual household pets, may be kept on any Lot or in any Townhouse, subject to Association Rules, provided (a) that they are not kept, bred or maintained for any commercial purposes; (b) that any such pet kept in violation of the Association Rules or in violation of any law, regulation or ordinance of any Municipal Authority or causing or creating a nuisance or unreasonable disturbance (after causing more than one (1) violation) shall be permanently removed from the Project upon three (3) days' written notice from the Board and (c) in no event shall more than one (1) dog be kept in any one Townhouse.

3.3.6 Obstruction of Common Areas. There shall be no obstruction of any portion of the Common Areas; nor shall ready access to the Common Areas be obstructed or impeded in any manner; nor shall anything be stored in the Common Areas.

3.3.7 Unsightliness. No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed on any part of any Limited Common Areas. No temporary or permanent chairs, hammocks or other lounging devices, or bicycles or sporting equipment may be located on any Limited Common Areas appurtenant to any Townhouse. The Association shall have the power to establish specific rules and

regulations governing use of deck areas. The Common Areas and Limited Common Areas shall be kept free and clear of litter, rubbish, debris and other unsightly materials.

3.3.8 Commercial Activities. Except as otherwise provided herein no industry, business, trade, occupation or profession of any kind, commercial, religious, educational or otherwise, designated for profit, altruism, exploration or otherwise, shall be conducted, maintained or permitted in any Townhouse. This prohibition shall also apply to the Common Areas unless permission from the Board is obtained.

3.3.9 Signs. Except as specifically set forth in this Declaration, no signs, advertising or other displays shall be maintained or permitted on any part of the Property except (a) one (1) "For Sale" sign no larger than twenty-four inches (24") high and thirty inches (30") wide, (b) one (1) reasonably sized political sign displayed two (2) weeks before and one (1) week after any scheduled public election date, or (c) signs at such location and in such form as shall be determined by the Board; provided that the right is reserved by Declarant and its agents to place and maintain on the Common Areas or any Townhouse it owns or leases, until the sale of the last Townhouse, all models, sales offices and advertising signs, banners and lighting in connection therewith, at such locations and in such forms as Declarant shall determine, together with the right of ingress, egress and transient parking therefor throughout the Property.

3.3.10 Window Treatments. The Board shall have the right to establish rules governing window coverings. All interior window coverings shall look professionally made. The Board shall have the right to request that an Owner or Occupant remove interior window coverings that appear to be homemade or distasteful. No aluminum foil, newspapers, reflective film coatings or any other similar materials may be used to cover the exterior windows of a Townhouse.

3.3.11 Common Areas. Nothing shall be altered or constructed in or removed from the Common Areas, except upon written consent of the Board.

3.3.12 Division of Townhouses. No Townhouse, or portions thereof, may be further divided or subdivided or a fractional portion thereof sold or conveyed so as to be held in divided ownership (as opposed to community property, tenancy in common, or other form of joint undivided ownership).

3.3.13 Alterations. No Owner shall, without the prior written consent of the Board, make or permit to be made any alteration, improvement or addition in or to any Townhouse or any Common Area. No Owner shall, without the prior written consent of the Board, do any act that would impair the structural soundness or integrity of the Townhouses or the safety of property, impair any easement or hereditament appurtenant to the Project, or make or permit to be made any alteration, improvement or addition to the Common Areas.

3.3.14 Prohibited Use. Nothing shall be done or kept in any Townhouse or in the Common Areas or any part thereof which would result in cancellation of the insurance on the Project or any part thereof, nor shall anything be done or kept in any

Townhouse which would increase the rate of insurance on the Project or any part thereof over what the Association but for such activity, would pay, without the prior written consent of the Board. Nothing shall be done or kept in any Townhouse or in the Common Areas or any part thereof which would be in violation of any statute or rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Areas or any part thereof shall be committed by any Owner, Occupant or guest, lessee, licensee or invitee of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by him or her or his or her guests, lessees, licensees, invitees or Occupants. No Owner shall overload the electric wiring in any Townhouse, or operate any machines, appliances, accessories or equipment in such manner as to cause, in the judgment of the Board, an unreasonable disturbance to others or connect any machines, appliances, accessories or equipment to the heating or plumbing system, without the prior written consent of the Board.

3.3.15 Rules and Regulations. The Association by the Board or its various committees shall have the right to establish the Association Rules concerning use of the Common Areas. No Owner shall violate such rules and regulations.

3.3.16 Aerials, Antennas, and Satellite Systems. Pursuant to Section 207 of the Telecommunications Act of 1996, the Federal Communications Commission adopted the Over-the-Air Reception Devices Rule (47 C.F.R. § 1.4000) (the "OTARD Rule"), which limits restrictions that may be imposed on the placement of certain antennas and satellite dishes. The OTARD Rule generally prohibits restrictions on certain antennas and satellite dishes that (a) unreasonably delay or prevent installation, maintenance or use; (b) unreasonably increase the cost of installation, maintenance or use; or (c) preclude reception of an acceptable quality signal. However, the OTARD Rule does not apply to rules restricting the installation, maintenance or use of certain antennas and satellite dishes in common areas of a project. Therefore, an Owner or Occupant is prohibited from installing any antenna or satellite dish, including, without limitation, an antenna for amateur ("HAM") radio, citizens band ("CB") radio, and digital audio radio services ("DARS") signals in any Common Areas within the Project. With regard to antennas designed to receive television broadcast signals, video programming or fixed wireless signals and satellite dishes that are one-half meter or less in diameter or diagonal measurement and designed to receive direct broadcast satellite service (each, a "Permitted Device"), each Owner or Occupant shall use his or her best efforts to (1) install such Permitted Devices in the garage or other interior space of the Townhouse so as not to be visible from outside the Townhouse; (2) not install a Permitted Device on the top of a roof of a Townhouse; or (3) attach or mount such Permitted Devices to the back of the Townhouse or some other location within a Lot, which is the least visible from the front of the building. Other than the Permitted Devices, no antennas or satellite dishes may be located on a Lot.

3.3.17 Exceptions. Nothing contained herein shall be construed in such a manner as to prohibit Owners from: (a) maintaining their personal professional libraries therein, (b) keeping their personal business or professional records or accounts therein, or (c) handling their personal business or professional telephone calls, business or

correspondence therefrom, provided such business activities are in accordance with all applicable laws, regulations and ordinances and do not include personal visits to the Property from business employees, invitees or guests. Such uses are expressly declared customarily incident to the principal residential use of the Townhouse and not in violation thereof.

3.3.18 Leases. Any lease agreement between an Owner and a Lessee respecting a Townhouse shall be subject in all respects to the provisions of this Declaration and the other Project Documents, and any failure by the Lessee to comply with the terms of such Project Documents shall be a default under the lease. All such lease agreements shall be in writing. No Townhouse may be leased or rented for an initial term of less than six (6) months. The Owner shall provide a copy of the lease or rental agreement to the Board within ten (10) days after the lease is executed and prior to occupancy. The Association is hereby expressly deemed to be a third party beneficiary of any such lease; any violation of this Declaration or the other Project Documents shall be deemed a default under such lease entitling the Association to exercise any and all remedies under the lease or available at law or equity, regardless of the Owner's action or inaction in response to such default. An Owner shall be responsible and liable for any damage to the Project caused by its tenants. Within ten (10) days after delivery of written notice of the creation of a nuisance or material violation of these restrictive covenants, the Owner shall proceed promptly to abate the nuisance or cure the default, and notify the Board in writing of his or her intentions.

3.3.19 Limitations on Use. All Owners are given notice that use of their Townhouses and the Common Areas is limited by this Declaration and the other Project Documents as modified from time to time. By acceptance of a deed, each Owner acknowledges and agrees that the use and enjoyment and marketability of the Owner's Townhouse can be affected by this provision and that the rules and regulations may change from time to time.

3.3.20 No Fences. No fences, walls, or other barriers shall be permitted for the purpose of enclosing or demarcating any property line boundaries without the prior written approval of the Architectural Review Committee, which approval may be withheld in the Architectural Review Committee's sole and exclusive discretion.

3.3.21 Utility Service. No lines, wires or other devices for the communication or transmission of electric current or power, including telephone, television and radio signals, and cable information highways, shall be erected, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on Improvements as approved by the Architectural Review Committee, except for boxes on the ground for electrical or communication connections, junctions, transformers and other apparatus customarily used in connection with such underground lines, wires and other devices.

3.4 Architectural Review Committee. The Association shall have an Architectural Review Committee to perform the functions assigned to it in this Declaration. So long as Declarant owns any Lots and Declarant's Class B Membership exists, the Architectural Review

Committee shall consist of three (3) regular members and one (1) alternate member, each of whom shall be appointed by, and serve at the pleasure of, Declarant. At such time as Declarant no longer owns any Lots and its Class B Membership no longer exists, the Architectural Review Committee shall consist of such number of regular and alternate members as the Board may deem appropriate from time to time (but in no event less than three (3) nor more than seven (7) regular members, nor less than one (1) nor more than three (3) alternate members), each of whom shall be appointed by, and serve at the pleasure of, the Board. The Declarant may at any time voluntarily surrender in writing its right, as Declarant, to appoint and remove the members of the Architectural Review Committee pursuant to this Section 3.4, and in that event Declarant may require, for so long as Declarant owns any Lot and holds a Class B Membership, that specified actions of the Architectural Review Committee, as described in a Recorded instrument executed by Declarant, be approved by Declarant before they become effective. The Architectural Review Committee shall have the right, but not the obligation, to promulgate, enforce and interpret the Design Guidelines provided that the Architectural Review Committee's determinations or functions do not contradict or supersede the Municipal Authority's duties and responsibilities.

3.5 Architectural Control. In addition to those certain approvals set forth in this Declaration, all Lots and Townhouses and Improvements constructed within the Project shall comply with the Design Guidelines. The Board and all purchasers, transferees and Owners shall not construct, install, remove, add, alter, repair, change, devegetate, excavate, grade, plant, revegetate, or other do any work, or cause any work to be done, which in any way alters the appearance (including but without limitation, the exterior color scheme) of any property or Lot within the Project, or any Townhouses or Improvements located thereon, without the prior written approval of the Architectural Review Committee, which approval may be withheld for any reason in the Architectural Review Committee's sole and exclusive discretion. The Association and any Owner or other Person desiring approval of the Architectural Review Committee for the construction, installation, addition, alteration, repair, change or replacement of any Townhouse or Improvement located thereon, which would alter the exterior appearance of a Lot, Townhouse or other portion of the Project, or any Improvements located thereon, shall comply with the following process:

3.5.1 Plans Submitted. Except for Declarant, plans for the construction of any new Townhouse or other Improvement on a Lot must be submitted to the Architectural Review Committee for review. It is recommended that a preliminary plan be submitted before the expense of final construction drawings is incurred. The plan must be in sufficient detail to show the location on the Lot of the exterior walls of the Townhouse and all other Improvements; detailed drawings of all elevations of all Improvements showing roof pitches, decks and other exterior elements; a list of exterior siding and roofing materials and/or a sample, including color samples; and a landscape plan showing the location of landscaped areas, fences (including fence design), driveways, walkways, patios, decks and other hard surfaced or irrigated areas and the areas to be disturbed by construction and the means of restoring those areas. In the case of an addition or modification of an existing Townhouse or other Improvement, the Architectural Review Committee may waive any of the foregoing it feels are unnecessary to its review of the remodel or addition.

3.5.2 Review Fee. The applicant will pay a review fee to the Architectural Review Committee in an amount necessary to cover the costs of review and the administration of the program in an amount to be established from time to time by the Board. In addition, the Architectural Review Committee may assess a fee for the professional review of the plans in accordance with the provisions of Section 3.5.7 below. The primary purpose of the fee is to document the date of submission, but the Architectural Review Committee may also use the proceeds to pay for its expenses in reviewing the plans and giving notice of meetings. No fee will be accepted until the President of the Architectural Review Committee considers the submission complete.

3.5.3 Review. Within fifteen (15) days from receipt of a complete submission, the Architectural Review Committee will review plans and make an initial determination whether or not the plans comply with the conditions imposed by this Declaration. If they do not, the plans will be rejected. If they are in compliance, the Architectural Review Committee will approve the plans. The Architectural Review Committee may also approve the plans subject to specific modifications or conditions, including, without limitation, requiring that the applicant submit a refundable deposit to the Architectural Review Committee in an amount established by the Architectural Review Committee to ensure clean-up of the construction site. Owners may desire to submit preliminary plans for review. The Architectural Review Committee will review preliminary plans, without fee, and make its comments known to the Owner; provided, however, that no preliminary approval is to be considered a final approval, and no final approval will be granted on less than a complete submission. Upon approval, the Architectural Review Committee and the Owner will each sign a copy of the plans, which shall be left with the Architectural Review Committee. No construction that is not in strict compliance with the plans approved will be permitted.

3.5.4 Written Record. The Architectural Review Committee will maintain a written record of its actions, and maintain in its files a copy of all plans approved or rejected for a period of five (5) years. The Architectural Review Committee will also provide evidence of this approval for the Municipal Authorities if requested by the Owner.

3.5.5 Failure to Act. If the Architectural Review Committee has not approved or rejected any submission within forty-five (45) days after payment of the review fee and submission of complete plans, the submission is deemed to have been disapproved.

3.5.6 Variances. Variances to the design standards contained in this Declaration may be granted when strict application would create an unforeseen or unreasonable hardship to the Owner. No variance, of any kind, may be granted without the consent of Association Members representing more than sixty five percent (65%) of the votes in the Association at a meeting called for that purpose. The Architectural Review Committee, or the Owners as a whole, cannot grant any variance that has the effect of modifying applicable Municipal Authority zoning or building code regulations. The burden of obtaining a variance is entirely on the applicant, including the costs of notice.

3.5.7 Costs of Professional Review. The Architectural Review Committee may engage the services of an architect, or civil or structural engineer to assist in its review of any proposed Improvements on a case-by-case basis or may elect to require the review of a design professional for every application. All costs of such additional review will be paid by the applicant; provided, however, that no architect or engineer will be hired without advance notice to the applicant of the intention to hire a review architect or engineer and the estimated cost of that review. The costs of such review must be paid by the applicant prior to the commencement of any review. If the applicant does not withdraw the proposal within five (5) days after receipt of that notice, he is deemed to have consented to the Architectural Review Committee retaining such professional assistance. Whenever the Architectural Review Committee retains outside professional services in its review, the reviewing architect or engineer is acting only in an advisory capacity, and the applicant, for himself and his successors and assigns, waives any and all claims against the Architectural Review Committee in the event that advice from, or conditions imposed by, the reviewing professional prove ineffective, unnecessary, or inappropriate to the circumstances.

3.5.8 General Design Review. The Architectural Review Committee will use its best efforts to provide consistent application of the standards of this Declaration and the Design Guidelines. These standards are, of necessity, general in nature, and it is the Architectural Review Committee's responsibility to apply them in a manner that results in a high quality, attractive, and well designed community.

3.5.9 Association, Board and Committee not Liable. The Association, the Board, and the Architectural Review Committee and its members shall not be liable to the applicant for any damages, or to the Owners for their actions, inactions, or approval or disapproval of any set of plans submitted to the Architectural Review Committee for review. In the absence of bad faith or malicious actions, the Owners shall have no claim against the Association, the Board or Architectural Review Committee as a result of the performance or failure to perform the duties created by this Declaration.

3.6 Municipal Authority Approval. The approval required of the Architectural Review Committee pursuant to Article 3 shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation, this Declaration or under any other governing Recorded instrument. The Architectural Review Committee may condition its approval of any application, plans or other items submitted to it on delivery to the Architectural Review Committee of evidence satisfactory to the Architectural Review Committee that the Owner or other Person seeking its approval has also made appropriate applications for (and prior to commencing work shall have obtained) any and all such other approvals or permits. The Architectural Review Committee shall cooperate reasonably with any other approving authorities or entities; provided, however, that the Architectural Review Committee shall not be bound by any approvals, permits or other decisions of any other such approving authority or entity, unless otherwise required by law.

3.7 Required Approvals for Further Property Restrictions. The Property is subject to the following additional approvals:

3.7.1 No portion less than all of any such Lot, or any easement or other interest therein, shall be conveyed or transferred by any Owner without the prior written approval of the Declarant, so long as Declarant's Class B Membership exists, and thereafter, the Board. This provision is not intended to prohibit any Owner from renting his or her Townhouse, subject to any Association Rules governing such rental activities. No Owner of any Townhouse shall offer or sell any interest in a Townhouse under a timesharing, interval ownership, fractional, club or similar program.

3.7.2 No further covenants, conditions, restrictions or easements, and no application for rezoning, variances or use permits shall be Recorded or submitted to any Municipal Authority, unless the same has first been approved in writing by the Architectural Review Committee; further, no changes or modifications shall be made in any such documents, instruments or applications once the same have been approved by the Architectural Review Committee hereunder, unless such changes or modifications have first been approved by the Architectural Review Committee in writing.

3.8 Lots and Improvements. Declarant shall not be restricted in the location or in the number of Townhouses, Common Areas or other Improvements that may be created on the Property, except as may be required by the Project Documents, applicable zoning requirements, ordinances or regulations, and provided that when completed, the Project shall not contain more than thirty eight (38) Lots and thirty eight (38) Townhouses. The Lots and Townhouses to be located on the Property shall be subject to the use restrictions contained in the Project Documents. No structures other than Townhouses and Improvements approved by the Architectural Review Committee will be erected on the Property; provided, however, that Declarant reserves the right to create additional Common Areas and Improvements on the Property without limitation. Declarant makes no assurances as to location, size, type or number of Common Areas or other Improvements to be created on the Property.

3.9 Description of Limited Common Areas. Limited Common Areas means a portion of the Common Areas reserved for the exclusive use and occupancy of one or more but fewer than all of the Owners to the exclusion of other Owners. Limited Common Areas shall include, without limitation, any areas identified by this Declaration or on the Plat or other recorded instrument as Limited Common Areas within the Project to be for the exclusive use of one or more but fewer than all of the Owners, such as certain driveways, walkways and similar Improvements. The use and occupancy of designated Limited Common Areas shall be reserved to the Owners of the Lots as shown on the Plat or as specified in this Declaration. In addition to the Association Rules and other parking restrictions that Declarant or the Board may promulgate from time to time, each driveway designated for ingress and egress to a particular Lot shall constitute a Limited Common Area, and the Owner of such Lot shall have control and exclusive right of access to and use of the driveway constructed for the benefit of his, her or its Lot; provided, however, that Owners of Limited Common Areas allocated exclusively to the Lot(s) such Owners own shall maintain, repair, replace and service such Limited Common Areas in accordance with the provisions of this Declaration. Declarant reserves the right for itself, and its successors and assigns, to adjust the Limited Common Areas via a recorded instrument as it shall determine it its sole and exclusive discretion, in accordance with the provisions of Section 2.11 above. No amendment to the Plat shall be required in order to fix Limited Common Areas.

Owners shall not designate, modify or reallocate Limited Common Areas between or among Lots in which they have an interest.

3.10 Declarant's Exemption. No Architectural Review Committee approval shall be required for (i) any construction, installation, addition, alteration, repair, change, replacement or other work by, or on behalf of, the Declarant; (ii) initial Improvements constructed by, at the direction of, or with the express written approval of Declarant; (iii) normal maintenance of Exempt Property or previously approved Improvements; (iv) rebuilding of Exempt Property or previously approved Improvements in accordance with its original design and dimensions; and (v) work reasonably required to be performed in an emergency for the purpose of protecting any person or property from damage.

ARTICLE 4

EASEMENTS

4.1 Owners' Easements of Enjoyment.

4.1.1 Subject to the rights and easements granted to the Declarant in Section 4.4, each Owner and Occupant shall have a non-exclusive right and easement of enjoyment in, to and over the Common Areas owned by the Association, which right and easement shall be appurtenant to and shall pass with the title to each Lot, subject to the provisions of the Project Documents including, without limitation, the following:

4.1.1.1 Except as otherwise provided in this Declaration, no dedication, transfer, mortgage or encumbrance of all or any portion of the Common Areas owned by the Association shall be effective unless approved by Owners representing two-thirds (2/3) of the votes in each class of Association Members. Notwithstanding the preceding sentence or any other provision of this Declaration to the contrary, the Association shall have the right, without the consent of the Owners or any other Person (except Declarant, whose consent shall be required so long as Declarant owns any part of the Property), to dedicate portions of the Common Areas owned by the Association to the public, or to grant easements over, under or through portions of the Common Areas owned by the Association to the public, to any Municipal Authority, or to any public, quasi-public or private utility company, for use as right-of-way, for utilities, for public landscape purposes and the like, as may be required or requested by any Municipal Authority or other entity having jurisdiction, or by a public, quasi-public or private utility company, in connection with or at the time of the development of portions of the Property.

4.1.1.2 The Association shall have the right to regulate the use of the Common Areas through the Association Rules and to prohibit access to such portions of the Common Areas, such as landscaped right-of-ways, not intended for use by the Owners, Lessees or other Occupants.

4.1.1.3 The Declarant and the Association shall each have the right to grant easements or licenses to Persons for the construction of Improvements on the Common Areas owned by the Association, and the Declarant and the Association shall each have the right to grant ingress and egress easements over the Common Areas owned by the Association in the Project to Persons who are not Association Members.

4.1.2 Occupants' Use of the Common Areas. If a Townhouse is leased or rented by its Owner, the Occupants of such Townhouse shall have the right to use the Common Areas owned by the Association during the term of the lease, and the Owner of such Townhouse shall have no right to use the Common Areas until the termination or expiration of such lease.

4.2 Utility Easement. There is hereby created an easement upon, across, over and under the Common Areas, and other property as depicted on the Plat for reasonable ingress, egress, installation, replacement, repair or maintenance of all utilities, including, but not limited to, gas, water, sewer, irrigation, telephone, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to install and maintain the necessary equipment on and in the Common Areas, and other property as depicted on the Plat. However, except within the public utility easements depicted on the Plat, no sewers, electrical lines, water lines or other utility or service lines may be installed or located on the Common Areas or on other property within the Project, except as initially designed, approved and/or constructed by the Declarant or as approved by the Board (and, in the case of a Lot, by the Owner of such Lot). If any utility company requests that a more specific easement be granted in its favor in substitution for the easement hereby established with respect to the Common Areas, the Association shall have the power and authority, without the need for any consent by the Owners or any other Person, to grant the more specific easement on such terms and conditions as the Board deems appropriate.

4.3 Easements for Ingress and Egress. There are hereby created easements for ingress and egress for pedestrian traffic over, through and across sidewalks, paths, walks and lanes that from time to time may exist upon the Common Areas owned by the Association. There is also created an easement for ingress and egress for pedestrian and vehicular traffic over, through and across such public streets and parking areas as from time to time may be paved and intended for such purposes. Moreover, there is an easement created for the designated Owners' use and enjoyment of, and ingress and egress to and over, any Limited Common Areas appurtenant to one or more Lots. Such easements shall run in favor of and be for the benefit of the Owners and Occupants of the Lots and Townhouses and their guests, families, tenants and invitees. There is also hereby created an easement upon, across and over the Common Areas within the Project for vehicular and pedestrian ingress and egress for police, fire, medical and other emergency vehicles and personnel. The Board shall have the right to relocate and/or reconfigure any and all such easements from time to time as it sees fit without the consent of any Owners (but subject to any necessary approvals of any Municipal Authority having jurisdiction thereover including in particular, but without limitation, the easements granted herein for police, fire, medical and other emergency vehicles and personnel).

4.4 Declarant's Use and Easements.

4.4.1 Declarant shall have the right and an easement to maintain sales or leasing offices, management offices and Models throughout the Project and to maintain one or more advertising signs on the Property, including, without limitation, on the Common Areas, with respect to the sales of Lots and Townhouses or other property in the Project. Declarant reserves the right to place Models, management offices and sales and leasing offices on any Lots or other property owned by Declarant and on any portion of the Project, including, without limitation, on the Common Areas, in such number, of such size and in such locations as Declarant deems appropriate.

4.4.2 So long as Declarant is marketing Lots and Townhouses or other portions of the Property, Declarant shall have the right to restrict the use of the parking spaces on the Common Areas. Such right shall include reserving such spaces for use by prospective purchasers, Declarant's employees and others engaged in sales, leasing, maintenance, construction or management activities.

4.4.3 Declarant shall have the right and an easement on and over the Common Areas to construct all Improvements Declarant may deem necessary and to use the Common Areas owned by the Association and any Lots and other property owned by the Declarant for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work respecting the Project.

4.4.4 Declarant shall have the right and an easement upon, over and through the Common Areas owned by the Association as may be reasonably necessary for the purpose of exercising the rights granted to or reserved by the Declarant in this Declaration.

4.5 Easement in Favor of Association. The Lots are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

4.5.1 For inspection during reasonable hours of the Lots in order to verify the performance by Owners or other Persons of all items of maintenance and repair for which they are responsible;

4.5.2 For inspection, maintenance, repair and replacement of portions of the Common Areas accessible only from such Lot or Lots;

4.5.3 For correction of emergency conditions on one or more Lots or on portions of the Common Areas accessible only from such Lot or Lots;

4.5.4 For the purpose of enabling the Association, the Board, the Architectural Review Committee or any other committees appointed by the Board to exercise and discharge during reasonable hours their respective rights, powers and duties under the Project Documents;

4.5.5 For inspection during reasonable hours of the Lots in order to verify that the Owners and Occupants, and their guests, tenants and invitees, are complying with the provisions of the Project Documents.

4.6 Easement for Party Wall. Each Owner, for each Lot that he, she or it owns hereby acknowledges and agrees that a Party Wall may presently encroach upon or overlap the Owner's Lot. To the extent the Party Wall does encroach upon or overlap a Lot, the Owner of said Lot hereby grants to the Adjoining Owner of the other Lot that shares a Party Wall an easement over and upon its Lot for the purpose of maintaining the Party Wall and carrying out the other obligations set forth in this Declaration. By accepting a deed to a Lot, each Owner hereby covenants and agrees not to do anything or to erect any barrier that will hinder, delay or limit the maintenance of the Party Wall and the performance of the Association's obligations and each Owner's respective obligations under this Declaration.

ARTICLE 5

THE ASSOCIATION; ORGANIZATION; ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

5.1 Formation of Association. The Association shall be a nonprofit Utah corporation charged with the duties and vested with the powers prescribed by law and set forth in the Project Documents. In the event of any conflict or inconsistency between this Declaration and the other Project Documents, priority shall be given to the Project Documents in the following order: this Declaration, the Articles, Bylaws, and Association Rules, as each respective document may be amended from time to time.

5.2 Governing Board and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. Unless the Project Documents specifically require the vote or written consent of the Association Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board. The Board may appoint various committees at its discretion. The Board may also appoint or engage a manager to be responsible for the day-to-day operation of the Association and the maintenance and repair of the Common Areas; the Board shall determine the compensation to be paid to any such manager.

5.3 Association Rules. The Board may, from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal the Association Rules which generally pertain to: (a) the management, operation, maintenance, repair and use of the Common Areas; (b) minimum standards for any maintenance or repair of Common Areas, Lots, Townhouses and Improvements within the Project; or (c) any other subject within the jurisdiction of the Association. In the event of any conflict or inconsistency between the provisions of this Declaration and the Association Rules, the provisions of this Declaration shall prevail.

5.4 Personal Liability. No member of the Board, the Architectural Review Committee, or any other committee of the Association, no officer of the Association and no manager or other employee of the Association shall be personally liable to any Association Member, or to any other Person including the Association, for any damage, loss or prejudice

suffered or claimed on account of any act, omission, error or negligence of the Association, the Board or any member thereof, the manager, any representative or employee of the Association, any officer of the Association or any member of any other committee of the Association; provided, however, the limitations set forth in this Section shall not apply to any person who has engaged in intentional misconduct.

5.5 Borrowing Power. The Association may borrow money in accordance with the Bylaws in such amounts, at such rates, upon such terms and security, and for such periods of time as is necessary or appropriate as determined by the Board without a vote of the Association Members. The Association may secure such loans by pledging any of its properties including future Assessments.

5.6 Implied Rights. The Association may exercise any expressed or implied right or privilege given to the Association expressly by the Project Documents or any other right or privilege reasonably necessary to effectuate any such right or privilege.

5.7 Membership in the Association. Every Owner, including Declarant, shall be a member of the Association, and the Declarant shall be a member of the Association so long as it owns any part of the Project (unless and until the Declarant expressly relinquishes in writing its status as a Association Member).

5.8 Votes in the Association.

5.8.1 So long as Declarant owns any part of the Project, the Association shall have two classes of Association Memberships which shall be entitled to the following voting rights:

5.8.1.1 Class A. Each Owner of a Lot (other than Declarant) shall be a Class A Member of the Association, and each Class A Member is allotted one (1) vote per Lot owned. Each Class A membership in the Association shall be held jointly by all Owners of that Lot.

5.8.1.2 Class B. Declarant shall be a Class B Member of the Association and shall be entitled to ten (10) votes for each Lot held by Declarant as an Owner of a Lot. At such time as the Declarant no longer owns any part of the Project, the Association shall be deemed to have a single class of Association Members and votes.

5.9 Voting Procedures. A change in the ownership of a Lot shall be effective for voting purposes from the time the deed or other instrument effecting such change is Recorded, or, in connection with Owners who are vendees, upon the execution of the installment purchase contract. Thereafter, the new Owner shall give the Board written notice of such change of ownership and provide satisfactory evidence thereof. The vote for each Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that a Lot is owned by more than one Person and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Association Member casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he, she or it was acting with the authority and consent of all other Owners of the

same Lot, unless objection thereto is made at the time the vote is cast. In the event more than one Owner attempts to cast the vote for a particular Lot, the vote for that Lot shall be deemed void and shall not be counted.

5.10 Transfer of Association Membership. The voting rights and assessment obligations of any Association Member other than the Declarant shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Lot, and then only to the transferee of ownership of the Lot. A transfer of ownership of a Lot may be effected by deed, intestate succession, testamentary disposition, foreclosure or such other legal process as is now in effect or as may hereafter be established under or pursuant to applicable law. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership of a Lot shall operate to transfer the Association Membership appurtenant to such Lot to the new Owner thereof.

ARTICLE 6

COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

6.1 Creation of Lien and Personal Obligation of Assessments. Declarant, for each Lot, hereby covenants and agrees, and each Owner, other than the Declarant, by becoming the Owner of a Lot, is deemed to covenant and agree, to pay Assessments to the Association in accordance with this Declaration. All Assessments shall be established and collected as provided in this Declaration. The Assessments, together with interest, late charges and all costs, including, but not limited to, reasonable attorneys' fees incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made. Each Assessment, together with interest and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall also be the personal obligation of each Person who was an Owner of the Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them (unless title is transferred to one or more such successors for purposes of avoiding payment of any Assessment or is transferred to a Person controlling, controlled by or under common control with the Owner transferring title), but the lien created by this Declaration against the applicable Lot shall continue to secure payment of such delinquent Assessment (including, but not limited to, any and all interests and late charges) until the same are fully paid.

6.2 Annual Assessment. In order to provide for the operation and management of the Association and to provide funds for the Association to pay all Common Expenses and to perform its duties and obligations under the Project Documents, including, without limitation, the establishment of reasonable reserves for replacements, maintenance and contingencies, the Board, for each fiscal year shall assess an Annual Assessment against each Lot which is Assessable Property. Annual Assessments shall be computed and assessed against all Lots in the Project as follows:

6.2.1 Common Expense. Annual Assessments shall be based upon advance estimates of the Association's cash requirements to provide for payment of all estimated expenses arising out of or connected with the maintenance and operation of the Common Areas, and furnishing common items to the Townhouses. Such estimated expenses may include, without limitation, the following: the maintenance, repair and replacement of the roofs and the exterior finishes of the Townhouses (other than the entry doors and windows of the Townhouses); landscaping costs; management expenses; real property taxes on the Common Areas owned by the Association; premiums for all insurance that the Association is required or permitted to maintain hereunder; repairs and maintenance; wages of Association employees, including fees for a manager; utility charges for utility services to the Common Areas owned by the Association; any deficit remaining from a previous period; creation of an adequate contingency reserve, major maintenance reserve and/or sinking fund; creation of an adequate reserve fund for maintenance repairs, and replacement of those Common Areas that must be replaced on a periodic basis; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration. Such shall constitute the Common Expenses, and all funds received from assessments under this Section shall be part of the common expense fund. Two separate and distinct funds shall be created and maintained hereunder, one for operating expenses and one for capital expenses, which together shall constitute the common expense fund.

6.2.2 Apportionment. Common Expenses shall be equally apportioned among and assessed to all Association Members, based on their ownership of Lots, which are Assessable Property. Each Owner, for each Lot that he, she or it owns, shall be liable for an equal share of the Common Expenses. Declarant shall be liable for the amount of any assessments against Lots owned by it, which do not constitute Exempt Property.

6.2.3 Annual Budget. Annual Assessments shall be determined on the basis of a fiscal year beginning January 1 and ending December 31 next following, provided the first fiscal year shall begin on the date of this Declaration shall end on December 31 next following. On or before January 1 of 2006 and of each fiscal year thereafter, the Board shall prepare and furnish to each Owner, or cause to be prepared and furnished to each Owner, an operating budget for the upcoming fiscal year. The budget shall itemize the estimated Common Expenses for such fiscal year, anticipated receipts (if any) and any deficit or surplus from the prior operating fiscal year. The budget shall serve as the supporting document for the Annual Assessment for the upcoming fiscal year and as the major guideline under which the Project shall be operated during such fiscal year.

6.2.4 Notice and Payment. Beginning with the 2006 fiscal year, the Board shall give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each fiscal year, but the failure of the Board to give a copy of the operating budget or such prior notice shall not affect the validity of the Annual Assessment established by the Board nor relieve any Owner from its obligation to pay the Annual Assessment. If the Board determines during any Assessment Period that the funds budgeted for that fiscal year are, or will become, inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessments by

Association Members, it may increase the Annual Assessment for that fiscal year, and the revised Annual Assessment shall commence on the date designated by the Board.

6.3 Exempt Property Assessments. If, after an Assessment's record date but before the end of the fiscal year for which it is levied, an Exempt Property becomes Assessable Property, the Assessment for such Lot shall be in an amount determined under this Section as if it were eligible for such levy on such record date, but then reduced in proportion to the number of days (if any) in such fiscal year elapsed as of (and including) the date on which such Exempt Property becomes an Assessable Property.

6.4 Special Assessments. The Association may levy against each Lot which is Assessable Property, in any fiscal year, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of Improvements upon the Common Areas, including fixtures and personal property related thereto, provided that any Special Assessment shall have the assent of two-thirds (2/3) of the votes entitled to be cast by the Association Members who are voting in person or by proxy at a meeting duly called for such purpose. Such approval and assenting vote shall not be necessary for the Board to include within the Annual Assessment the charges and expenses described in Section 6.2.1 above, including without limitation contingency reserve funds and sinking funds as described in Section 6.2.1.

6.5 Uniform Rate of Assessment. The amount of any Assessment against each Lot shall be fixed at a uniform rate per Association Membership. Annual Assessments may be collected on a monthly basis, and Special Assessments may be collected as specified by the Board unless otherwise determined by the resolution of the Association Members approving the Special Assessment.

6.6 Rules Regarding Billing and Collection Procedures. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments, provided that the procedures are not inconsistent with the provisions of this Declaration. The failure of the Association to send a bill to an Association Member shall not relieve any Association Member of his, her or its liability for any Assessment or charge under this Declaration. However, no Assessment Lien shall be foreclosed or otherwise enforced until the Association Member has been given not less than thirty (30) days written notice prior to such foreclosure or enforcement that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it, even though the ownership of a Lot changes during a fiscal year; successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

6.7 Effect of Nonpayment of Assessments; Remedies of the Association.

6.7.1 Any Assessment, or any installment of an Assessment, not paid within thirty (30) days after the Assessment, or the installment of the Assessment, first became due shall bear interest from the due date at the rate established from time to time by the Board. In addition, the Board may establish a late fee to be charged to any Owner who

has not paid any Assessment, or any installment of an Assessment, within thirty (30) days after such payment was due.

6.7.2 The Association shall have a lien on each Lot for all Assessments levied against the Lot and for all other fees and charges payable to the Association by the Owner of the Lot pursuant to this Declaration. Recording of this Declaration constitutes record notice and perfection of the Assessment Lien. The Association may, at its option, Record a notice of lien setting forth the name of the delinquent Owner as shown in the records of the Association, the legal description of the Lot against which the notice of lien is Recorded and the amount claimed to be past due as of the date of the Recording of the notice, including interest, lien recording fees and reasonable attorneys' fees.

6.7.3 The Assessment Lien shall have priority over all liens or claims except for (a) tax liens for real property taxes; (b) assessments in favor of any Municipal Authority or assessment district; and (c) the lien of any First Mortgage.

6.7.4 The Association shall not be obligated to release any Recorded notice of lien until all delinquent Assessments, interest, lien fees, reasonable attorneys' fees, court costs, collection costs and all other sums payable to the Association by the Owner of the Lot have been paid in full.

6.7.5 The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, lien fees, reasonable attorneys' fees and any other sums due to the Association in any manner allowed by law, including, but not limited to, taking either or all of the following actions, concurrently or separately (and by exercising either of the remedies hereinafter set forth, the Association does not prejudice or waive its right to exercise the other remedy): (a) bringing an action at law against the Owner personally obligated to pay the delinquent Assessments, and such action may be brought without waiving the Assessment Lien securing the delinquent Assessments; or (b) enforcing the Assessment Lien against the applicable Lot by sale or foreclosure conducted in accordance with the then prevailing Utah law relating to the foreclosure of realty mortgages or deeds of trust (including the right to recover any deficiency), the method recognized under Utah law for the enforcement of a mechanic's lien which has been established in accordance with Chapter 1, Title 38, Utah Code Ann., as amended from time to time, or any other manner permitted by law, and the Lot may be redeemed after foreclosure sale if provided by law. In order to facilitate the foreclosure of any such Assessment Lien in the manner provided at law for the foreclosure of deeds of trust, Declarant hereby designates Surety Title Company as trustee and grants and conveys the Project, IN TRUST, to Surety Title Company, as trustee with full power of sale, to foreclose any such Assessment Liens as directed by the Board. The Board may, at any time, designate one or more successor trustees, in accordance with provisions of Utah law for the substitution of trustees under deeds of trust. Such trustee, and any successors, shall not have any other right, title or interest in the Project beyond those rights and interests necessary and appropriate to foreclose any Assessment Liens against Lots arising pursuant hereto. In any such foreclosure, the Owner of the Lot being foreclosed shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the

Assessment Lien being foreclosed. The Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

6.7.6 The Association shall have the right to suspend the rights of any Owner or Occupant to use and enjoy the Common Areas owned by the Association: (1) for any period during which an Assessment remains delinquent; (2) for a period not to exceed sixty (60) days for any infraction of the Project Documents; or (3) for successive 60-day periods if any such infraction is not corrected during any preceding suspension period.

6.8 Evidence of Payment of Assessments. Upon receipt of a written request by an Association Member or any other Person, the Association, within a reasonable period of time thereafter, shall issue to such Association Member or other Person a written certificate stating: (a) that all Assessments, interest and other fees and charges have been paid with respect to any specified Lot as of the date of such certificate; or (b) if all Assessments have not been paid, the amount of such Assessments, interest, fees and charges due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matters therein stated as against any bona fide purchaser of, or lender on, the Lot in question.

6.9 Purposes for Which Association's Funds May be Used. The Association shall apply all funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of the Project and the Owners and Occupants by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all roads, land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without the Project, which may be necessary, desirable or beneficial to the general common interests of the Project, the Owners and the Occupants, and to the establishment and funding of reasonable reserves for replacements and contingencies. The following are some, but not all, of the areas in which the Association may seek to aid, promote and provide for such common benefit: social interaction among Association Members and Occupants; maintenance, repair and replacement of the roofs and the exterior finishes of the Townhouses (other than the entry doors and windows of the Townhouses); maintenance of landscaping on Common Areas and public right-of-way and drainage areas within the Project; construction, operation and maintenance of recreational and other facilities on Common Areas; insurance; communications; utilities for Common Areas; safety; indemnification of officers, directors and committee members of the Association; employment of professional managers; hiring professional consultants such as architects, engineers, attorneys and accountants, and pledging future Assessments as collateral to secure Association financing.

6.10 Surplus Funds. The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and the Association may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may

determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

6.11 Notice for Meetings to Consider Special Assessments. All written notices of any meeting called for the purpose of approving the establishment of any Special Assessment shall be sent to all Association Members in accordance with the time periods and provisions set forth in the Bylaws.

6.12 Special Service Districts. In connection with the development of the Project and other developments within Utah County, Special Service Districts have been or may be formed in order to provide the Project with various services and facilities including but not limited to waste water treatment and disposal services, fire protection service, road maintenance, emergency services, special lighting facilities for non-standard street lights, culinary water and facilities including pumping stations, snowplowing and school bus stop shelters. The Special Service Districts have or will have the power, among other things, to contract, to acquire and construct facilities and to finance the cost thereof by the issuance of bonds and to establish rates and charges that enable the Special Service Districts to operate such facilities as are necessary to fulfill its purposes. Each Owner hereby agrees and acknowledges that the Project is or may become a part of certain Special Service Districts, and that Special Service Districts have or shall have the right and authority to levy taxes, charges and/or assessments upon owners of taxable property within such Special Service Districts. Each Owner will be subject to all charges levied by such Special Service Districts and will pay such charges directly to the same. All charges levied by such Special Service Districts against owners of taxable property are and shall be the personal and individual obligation of each Owner, and such charges do not constitute a Common Expense.

ARTICLE 7

MAINTENANCE

7.1 Common Areas and Public Right of Way.

7.1.1 The Association, or its duly delegated representative, shall manage, maintain, repair and replace the Common Areas and all Improvements located thereon, including without limitation the maintenance, repair and replacement of the roofs and the exterior finishes of the Townhouses (other than the entry doors and windows of the Townhouses) (subject to Section 7.1.3), except the Association may, but shall not be obligated to, maintain areas which any Municipal Authority or any utility company is maintaining or is obligated to maintain.

7.1.2 The Board shall be the sole judge as to the appropriate maintenance of all Common Areas and other properties maintained by the Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of said properties shall be taken by the Board or by its duly delegated representative.

7.1.3 In the event any deed restriction, the Plat or this Declaration permits the Board to determine whether or not Owners of certain Lots will be responsible for

maintenance of certain Common Areas or public right-of-way areas, the Board shall have the sole discretion to determine whether or not it would be in the best interest of the Owners and Occupants for the Association or an individual Owner to be responsible for such maintenance, considering cause, cost, uniformity of appearance, location and other factors deemed relevant by the Board. The Board may cause the Association to contract to provide maintenance service to Owners of Lots and Townhouses having such responsibilities in exchange for the payment of such fees as the Association and Owner may agree upon.

7.2 Limited Common Areas. Notwithstanding anything to the contrary contained in this Declaration or the Plat, the Owners shall maintain, repair and replace the Limited Common Areas appurtenant to their Lots and Townhouses pursuant to the same maintenance standards applicable to all Common Areas. The Limited Common Areas to be maintained, repaired and replaced by the Owners must be identified in this Declaration, on the Plat recorded or approved by Declarant or in deeds from Declarant to a transferee of a Lot. In the event that an Owner fails to maintain, repair or replace a Limited Common Area, the Association shall have the right to undertake such maintenance, repairs or replacement and include such costs on the Assessment Lien for the Lot appurtenant to the Limited Common Area in accordance with the terms of this Declaration. Any amounts payable by an Owner to the Association pursuant to this Section shall be secured by the Assessment Lien, and the Association may enforce collection of such amounts in the same manner and to the same extent as provided elsewhere in this Declaration for the collection and enforcement of Assessments.

7.3 Lots and Townhouses. Except for the maintenance, repair and replacement of the roofs and the exterior finishes of the Townhouses, which shall be performed by the Association (other than the maintenance, repair and replacement of the entry doors and the windows of the Townhouses, which shall be performed by the Owner of each Lot), each Owner of a Lot shall be responsible for maintaining, repairing or replacing his, her or its Lot and Townhouse, and all other Improvements situated thereon. All Townhouses and other Improvements shall at all times be kept in good condition and repair. Landscaping shall be maintained as required by Section 7.4.

7.4 Installation of Landscaping. If not installed by Declarant, all landscaping must be installed in accordance with plans approved in writing by the Architectural Review Committee, and shall be subject to those certain approvals described in Section 3.5 above. Any amounts payable by an Owner to the Association pursuant to this Section shall be secured by the Assessment Lien, and the Association may enforce collection of such amounts in the same manner and to the same extent as provided elsewhere in this Declaration for the collection and enforcement of Assessments.

7.5 Assessment of Certain Costs of Maintenance and Repair. In the event that the need for maintenance or repair of the Common Areas or any other area maintained by the Association is caused through the willful or negligent act of any Association Member, his, her or its family, tenants, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Association Member and the Association Member's Lot is subject and shall be secured by the Assessment Lien. Any charges or fees to be paid by the Owner of a Lot pursuant to this Section in connection with a contract entered into by

the Association with an Owner for the performance of an Owner's maintenance responsibilities shall also become a part of such Assessment and shall be secured by the Assessment Lien.

7.6 Improper Maintenance and Use of Lots and Limited Common Areas. In the event any portion of any Lot, Townhouse or Limited Common Area is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Project which are substantially affected thereby or related thereto, or in the event any portion of a Lot, Townhouse or Limited Common Area is being used in a manner which violates the Project Documents, or in the event the Owner of any Lot is failing to perform any of its obligations under the Project Documents, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said 14-day period the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such corrective action as it deems appropriate to be taken, and the cost thereof shall be added to and become a part of the Assessment to which the offending Owner and the Owner's Lot is subject and shall be secured by the Assessment Lien.

7.7 Maintenance of Party Walls. By acceptance of a deed to a Lot, each Owner hereby acknowledges, agrees and understands that it is essential that the Party Wall be maintained in good condition and repair to preserve the integrity of the Townhouses as they are used and occupied by the Owners. With respect to the surface components of the Party Wall, each Owner agrees to maintain and keep in good condition and repair, including the making of replacements as needed, all surface components which face into such Owners' respective Townhouse. With respect to pipes, conduits, ducts and other utility lines and connections which benefit only one of the Owners, the Owner benefited solely thereby shall be fully responsible for the cost of maintaining such items in good condition and repair, including the making of replacements as needed. With respect to structural components of the Party Wall, except as may be otherwise provided in the immediately preceding sentence, the Owners agree to share equally in the cost of maintenance and upkeep thereof in good condition and repair, including the replacement thereof as necessary. If the Party Wall is destroyed or damaged by fire or other casualty, either Owner may restore it, and the other Adjoining Owner shall contribute one-half of the cost of restoration thereof (in excess of any available casualty insurance proceeds); provided, however, that any such single maintenance or repair activity, including a replacement as necessary, which is expected to exceed \$5,000.00 shall, except in an emergency, be undertaken only with the approval of the Architectural Review Committee and both Owners, which approval shall not be unreasonably withheld, conditioned or delayed.

7.8 Failure to Maintain Party Wall. If any Owner shall fail to comply with the provisions of this Declaration as to maintenance, repair, or use of the Party Wall, or other obligations contained herein ("Defaulting Owner"), then in any such event the Adjoining Owner shall have the right, upon thirty (30) days written notice to the Defaulting Owner (unless within such 30-day period the Defaulting Owner shall cure such default, or in the case of a nonmonetary default which by its nature cannot be cured within such 30-day period, the Defaulting Owner shall take such action as is reasonably calculated to commence the curing thereof, and thereafter shall diligently prosecute the curing thereof to completion) to proceed to take such action as shall be necessary to cure such default, all in the name of and for the account of the Defaulting Owner.

The Defaulting Owner shall on demand reimburse the other Adjoining Owner taking such action for the monies actually expended by such Adjoining Owner and the Adjoining Owner's reasonable out-of-pocket expenses in so doing, together with interest thereon as set forth below from the date of demand to the date of payment. Notwithstanding the foregoing, if the nondefaulting Adjoining Owner shall in good faith deem that an emergency is occurring or has occurred, so that the default requires immediate curing, then no notice shall be required, and the nondefaulting Adjoining Owner may act promptly without giving notice and take such action as is necessary to cure the alleged failure. Any Adjoining Owner performing any action pursuant to the preceding sentence shall interfere to the minimum extent possible with the Defaulting Owner's use and occupancy of such Defaulting Owner's Townhouse, and, with reasonable promptness, shall give verbal or written notice to the Defaulting Owner of such action and the claimed failure.

7.8.1 All remedies hereby specifically set forth in this Section 7.8 are cumulative and shall be deemed to be in addition to any remedies available at law or in equity which shall include the right to restrain by injunction any violation or threat of violation by any Owner of any of the terms, covenants, or conditions of this Declaration governing Party Walls and by decree to compel specific performance of any such terms, covenants, or conditions governing Party Walls, it being agreed that the remedy at law for any breach of any such term, covenant, or condition governing Party Walls is not adequate. Notwithstanding the foregoing, no default by any Owner under this Agreement shall entitle any other Adjoining Owner to terminate, cancel, or otherwise rescind this Declaration or any terms, covenants or conditions governing Party Walls.

7.8.2 The Board, without obligation and in its exclusive discretion, may also notify the Defaulting Owner of the work required to the Party Wall and demand that it be done within a reasonable and specified period. In the event that the Defaulting Owner fails to carry out such maintenance within said period, the Board shall have the right to enter upon the Lot, to cause such work to be done to the Party Wall and individually charge the cost thereof to such Defaulting Owner, and the costs shall be secured by the Assessment Lien. Notwithstanding the foregoing, in the event of an emergency arising out of the failure of a Defaulting Owner to maintain his, her or its Party Wall, the Board shall also have the right to immediately enter upon the Lot to abate the emergency and individually charge the cost thereof to such Defaulting Owner, and the costs shall be secured by the Assessment Lien.

ARTICLE 8

INSURANCE

8.1 Scope of Coverage. Commencing not later than the time of the first conveyance of a Lot to a purchaser, other than Declarant, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

8.1.1 "All-risk" property insurance with respect to all of the Townhouses within the Project, which "all-risk" property insurance shall be an amount equal to at least one hundred percent (100%) of the replacement cost of the Townhouses (less

reasonable deductibles), exclusive of the cost of excavation, foundations and footings, and which "all-risk" property insurance shall protect against loss or damage by fire and all other hazards that are normally covered by the standard extended coverage endorsement. Such policy shall be carried with a company rated "B" or better in "Best's Insurance Guide." All policy proceeds payable with respect to damage or destruction of any of the Townhouses shall be made available to the Owners of any such damaged Townhouses to repair and replace Party Walls that have been damaged or destroyed and to repair and replace other portions of the Townhouses that have been damaged or destroyed;

8.1.2 Property insurance on the Common Areas insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Common Areas, as determined by the Board; provided however, that the total amount of insurance shall not be less than one hundred percent (100%) of the current replacement cost of the insured property (less reasonable deductibles), exclusive of the land, excavations, foundations and other items normally excluded from a property policy;

8.1.3 Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Areas and other portions of the Project which the Association is obligated to maintain under this Declaration, and shall also include hired automobile and non-owned automobile coverages with cost liability endorsements to cover liabilities of the Owners as a group to an Owner;

8.1.4 Worker's compensation insurance to the extent necessary to meet the requirements of applicable law;

8.1.5 Fidelity bonding of the Board and employees of the Association having control of, or access to, the funds of the Association with loss coverage ordinarily not less than the maximum amount of funds of the Association over which the principal(s) under the bond may reasonably be expected to have control or access at any time;

8.1.6 Errors and omissions insurance coverage for the Board; and

8.1.7 Such other insurance as the Board shall determine from time to time to be appropriate to protect the Association or the Owners.

8.1.8 Each insurance policy purchased by the Association shall, to the extent reasonably available, contain the following provisions:

8.1.8.1 The insurer issuing such policy shall have no rights of subrogation with respect to claims against the Association or its agents, servants or employees, or with respect to claims against Owners or Occupants;

8.1.8.2 No act or omission by any Owner will void the policy or adversely affect recovery on the policy;

8.1.8.3 The coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners, Occupants or Mortgagees;

8.1.8.4 A "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner or Occupant because of the negligent acts of the Association or other Owners or Occupants;

8.1.8.5 Statement naming the Association as the insured; and

8.1.8.6 For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify any Mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.

8.2 Certificates of Insurance. An insurer which has issued an insurance policy under this Article shall issue a certificate or a memorandum of insurance to the Association and, upon request, to any Owner or Mortgagee. Any insurance obtained pursuant to this Article shall not be cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association and to each Owner and each Mortgagee to whom certificates of insurance have been issued.

8.3 Payment of Premiums. The premiums for any insurance obtained by the Association pursuant to this Declaration shall be included in the budget of the Association and shall be paid by the Association.

8.4 Payment of Insurance Proceeds. With respect to any loss to the Common Areas covered by property insurance obtained by the Association, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any Mortgagee. Subject to the provisions of Section 8.5, the proceeds shall be disbursed for the repair or restoration of the damage to the Common Areas.

8.5 Repair and Replacement of Damaged or Destroyed Property. Any portion of the Common Areas which is damaged or destroyed shall be repaired or replaced promptly by the Association unless repair or replacement would be illegal under any state or local health or safety statute or ordinance. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If the entire Common Areas is not repaired or replaced, insurance proceeds attributable to the damaged Common Areas shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall either: (i) be retained by the Association as an additional capital reserve; (ii) be used for payment of operating expenses of the Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of Association Members representing more than fifty percent (50%) of the votes in the Association; or (iii) be distributed in equal shares per Association Membership to the Owners of each Lot as their interests appear. The proceeds attributable to Limited Common

Areas that are not rebuilt must be distributed to the Owner or Owners of those Lots to which those Limited Common Areas were appurtenant, in proportion to such Owner's or Owners' respective interest in such Limited Common Areas, or to Mortgagees, as their interests may appear.

8.6 Insurance of Contents of Townhouses; Waiver. By acceptance of a deed to a Lot, each Owner hereby acknowledges his, her or its independent insurance obligations, at such Owner's expense, to maintain physical damage insurance on such Owner's personal property and furnishings and on any upgrade made to the structures and fixtures of the Owner's Lot and Townhouse. In addition, an Owner may obtain such other and additional insurance coverage on and in relation to the Owner's Lot and Townhouse as the Owner in the Owner's sole discretion shall conclude to be desirable. However, none of such insurance coverages obtained by such Owner shall affect any insurance coverage obtained by the Association or cause the diminution or termination of such insurance coverage, nor shall such insurance coverage of an Owner result in apportionment of insurance proceeds as between policies of insurance of the Association and the Owner. The Owner shall be liable to the Association for the amount of any such diminution of insurance proceeds to the Association as a result of insurance coverage maintained by the Owner, and the Association shall be entitled to collect the amount of the diminution from the Owner as if the amount were a default Assessment, with the understanding that the Association may impose and foreclose a lien for the payment due. Any insurance obtained by an Owner shall include a provision waiving the particular insurance company's right of subrogation against the Association and other Owners. Each Owner shall be responsible to provide insurance coverage for the amount of any additional value to any Lot and Townhouse caused by an Improvement to the Lot or Townhouse made by such Owner and not initially made by Declarant, including, but not limited to, the value of structural upgrades or fixtures supplied by the Owner, or if the applicable insurance is to be provided by the Association, for any additional insurance costs associated with such increased value due to the Improvements.

ARTICLE 9

MORTGAGEE REQUIREMENTS

9.1 Notice of Action. The Board shall maintain a roster containing the name and address of each Eligible Mortgagee as such term is defined herein and in Section 1.19 above. To be considered an Eligible Mortgagee, a First Mortgagee shall provide the Board with a certified copy of its Recorded First Mortgage and the name and address of the First Mortgagee and a statement that the Mortgage is a First Mortgage together with a written request that it receive notice of the matters and actions described below. The Board shall strike an Eligible Mortgagee from the roster upon request by such Eligible Mortgagee or upon the Board's receipt of a certified copy of a Recorded full release or satisfaction of the Eligible Mortgage. The Board shall give notice of such removal to the Eligible Mortgagee, unless the removal is requested by the Eligible Mortgagee. Upon the Board's receipt of such written request, an Eligible Mortgagee shall be entitled to timely written notice of:

9.1.1 Any condemnation loss or any casualty loss which affects a material portion of the Project or any Lot on which there is a Mortgage held, insured or guaranteed by such Eligible Mortgagee, insurer or governmental guarantor;

9.1.2 Any delinquency in the payment of Assessments or charges owed by an Owner whose Lot is subject to a Mortgage held, insured or guaranteed by such Eligible Mortgagee, insurer or governmental guarantor, which default remains uncured for a period of sixty (60) days; and

9.1.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond or insurance maintained by the Association.

9.2 Availability of Project Documents and Financial Statements. The Association shall maintain and have current copies of the Project Documents, membership register, books, records, and financial statements available for inspection by Association Members or by Eligible Mortgagees. Generally, these documents shall be available during the Association's normal business hours and may be maintained and kept at the office of the manager for the Association. The Association may, as a condition to permitting a Association Member to inspect the membership register or to its furnishing information from the register, require that the Association Member agree in writing not to use, or allow the use of, information from the membership register for commercial or other purposes not reasonably related to the regular business of the Association and the Association Member's interest in the Association.

9.3 Subordination of Lien. The Assessment or claim against a Lot for unpaid Assessments or charges levied by the Association pursuant to this Declaration shall be subordinate to the First Mortgage affecting such Lot, and the First Mortgagee thereunder which comes into possession of or which obtains title to such Lot shall take the same free of such lien or claim for unpaid Assessment or charges, but only to the extent of Assessments or charges which accrue prior to foreclosure of the First Mortgage, exercise of a power of sale available thereunder, or taking of a deed or assignment in lieu of foreclosure. No Assessment, charge, Assessment Lien, or claim which is described in the preceding sentence as being subordinate to a First Mortgage, or as not to burden a First Mortgagee which comes into possession or which obtains title to a Lot, shall be collected or enforced by the Association from or against a First Mortgagee, a successor in title to a First Mortgagee, or the Lot affected or previously affected by the First Mortgage concerned. The provisions of this Section 9.3 shall be in addition to the rights of a First Mortgagee under Section 6.7.3.

9.4 Notice to Eligible Mortgagees. The Association shall give timely written notice of the events listed in Section 9.1 above to any Eligible Mortgagee who requests such notice in writing.

9.5 Payment of Taxes. In the event any taxes or other charges which may or have become a lien on the Common Areas are not timely paid, or in the event the required hazard insurance described in Section 8.1 lapses, is not maintained, or the premiums therefor are not paid when due, any First Mortgagee or any combination of First Mortgagees may jointly or singly, pay such taxes or premiums or secure such insurance. Prior to paying any taxes or premiums, such First Mortgagee or First Mortgagees shall provide thirty (30) days advance written notice to the Board, which notice shall specify the nature of the taxes or premiums and suggest a reasonable cure period for such payments.

9.6 Priority. No provision of this Declaration or the Articles gives or may give an Association Member or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Association Members of insurance proceeds or condemnation awards for loss to or taking of all or any part of the Lots or the Common Areas. All proceeds or awards shall be paid directly to any Mortgagees of Record, as their interests may appear.

ARTICLE 10

CONDEMNATION

10.1 Notice. Whenever all or any part of the Common Areas shall be taken or conveyed in lieu of and under threat of condemnation, each Member shall be entitled to notice of the taking, but the Association shall act as attorney-in-fact for all Members in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

10.2 Partial Condemnation; Distribution of Award; Reconstruction. The award made for such taking shall be payable to the Association as trustee for all Members to be disbursed as follows: If the taking involves a portion of the Common Areas on which Improvements have been constructed, then, unless within sixty (60) days after such taking Declarant and Members representing at least sixty-seven percent (67%) of the total votes of the Association shall otherwise agree, the Association shall restore or replace such Improvements so taken on the remaining land included in the Common Areas to the extent lands are available therefor, in accordance with plans approved by the Board and the Architectural Review Committee. If such Improvements are to be repaired or restored, the provisions in Article 8 above regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any Improvements on the Common Areas, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed to Members in proportion to their respective Membership Interests, first to the Mortgagees and then to the Members.

10.3 Limited Common Areas. All or any portion of an award attributable to the taking, condemnation, sale, acquisition or other disposition of in lieu of or in avoidance of condemnation of Limited Common Areas shall be equally divided among the Owner or Owners of the Lot or Lots to which such Limited Common Areas were appurtenant at the time of the taking, condemnation, sale, acquisition or other disposition in proportion to such Owner's or Owners' respective interest in such Limited Common Areas, first to the Mortgagees and then to the Members.

10.4 Complete Condemnation. If all of the Project is taken, condemned, sold, or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate, and the portion of the condemnation award attributable to the Common Areas shall be distributed to Members based upon the relative value of the Lots prior to the condemnation, first to the Mortgagees and then to the Members.

ARTICLE 11

TERM, TERMINATION AND AMENDMENT

11.1 Term; Method of Termination. This Declaration shall be effective upon the date of Recordation hereof and, as amended from time to time, shall continue in full force and effect for a term of fifty (50) years from the date this Declaration is recorded. From and after such date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by the then Association Members casting eighty percent (80%) of the total votes cast at an election held for such purpose or otherwise approved in writing within six (6) months prior to the expiration of the initial effective period hereof or any ten-year extension. If the necessary votes and consents are obtained, the Board shall cause to be Recorded a certificate of termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon these covenants shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

11.2 Amendments. This Declaration may be amended by Recording a certificate of amendment, duly signed and acknowledged by and on behalf of the Association ("Certificate of Amendment"). The Certificate of Amendment shall set forth in full the amendment adopted, and, except as provided elsewhere in this Declaration, shall certify that at a meeting duly called and held pursuant to the provisions of the Articles and Bylaws or by separate written ballot without a meeting, the Association Members casting at least sixty seven percent (67%) of the total votes of the Association at the election voted affirmatively for the adoption of the amendment. Within twenty-five (25) years from the date of Recording this Declaration, and so long as the Declarant is the Owner of any Lot in the Project, this Declaration may be amended or terminated only with the written approval of the Declarant.

11.3 Unilateral Amendments. Declarant alone may amend or terminate this Declaration prior to the closing of a sale of the first Lot. Notwithstanding anything contained in this Declaration to the contrary, this Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; or (b) if such amendment is reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots and Townhouses subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's property unless any such Owner shall consent thereto in writing. Further, so long as the Declarant's Class B Membership in the Association exists, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Owner hereunder, nor shall it adversely affect title to any property without the consent of the affected Owner.

11.4 Right of Amendment if Requested by Governmental Agency or Federally-Chartered Lending Institutions. Anything in this Article or Declaration to the contrary notwithstanding, Declarant reserves the unilateral right to amend all or any part of this

Declaration to such extent and with such language as may be requested by a State Department of Real Estate (or similar agency), FHA, VA, the FHLMC or FNMA and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot(s) or any portions thereof. Any such amendment shall be effected by the Recordation by Declarant of a Certificate of Amendment duly signed by or on behalf of the members, authorized agents, or authorized officers of Declarant, as applicable, with their signatures acknowledged, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such a Certificate of Amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Certificate of Amendment, when Recorded, shall be binding upon all of the Project and all persons having an interest therein. It is the desire of Declarant to retain control of the Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of this Section deletes, diminishes or alters such control, Declarant alone shall have the right to amend this Declaration to restore such control.

ARTICLE 12

GENERAL PROVISIONS

12.1 Enforcement. The Association or any Owner shall have the right to enforce the Project Documents.

12.2 Interpretation. Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefited or bound by this Declaration.

12.3 Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

12.4 Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of the person holding the office of President of the United States on the date this Declaration is Recorded.

12.5 Change of Circumstances. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

12.6 Rules and Regulations. In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Association shall have the right to adopt, as part of the Association Rules, additional rules and regulations with respect to any other aspects of the Association's rights, activities and duties, provided said additional rules and regulations are not inconsistent with the provisions of the other Project Documents.

12.7 Laws, Ordinances and Regulations.

12.7.1 The covenants, conditions and restrictions set forth in this Declaration and the provisions requiring Owners and other Persons to obtain the approval of the Board or the Architectural Review Committee with respect to certain actions are independent of the obligation of the Owners and other Persons to comply with all applicable laws, ordinances and regulations, and compliance with this Declaration shall not relieve an Owner or any other Person from the obligation also to comply with all applicable laws, ordinances and regulations.

12.7.2 Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Project is hereby declared to be in violation of this Declaration and subject to any or all of the enforcement proceedings set forth herein.

12.8 References to this Declaration in Deeds. Deeds to and instruments affecting any Lot or any other part of the Project may contain the covenants, conditions and restrictions herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any deed or instrument, each and all of the provisions of this Declaration shall be binding upon the grantee-Owner or other Person claiming through any instrument and his, her or its heirs, executors, administrators, successors and assigns.

12.9 Gender and Number. Wherever the context of this Declaration so requires, any word used in the masculine, feminine or neuter genders shall include each of the other genders, words in the singular shall include the plural, and words in the plural shall include the singular.

12.10 Captions and Title; Section References; Exhibits. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the meaning or intent thereof. References in this Declaration to numbered Articles, Sections or Subsections, or to lettered Exhibits, shall be deemed to be references to those paragraphs or Exhibits so numbered or lettered in this Declaration, unless the context otherwise requires. Any Exhibits referred to in this Declaration are hereby incorporated herein by reference and fully made a part hereof.

12.11 Notices. If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, the Project Documents or resolution of the Board to be given to any Owner, Lessee or Occupant then, unless otherwise specified in the Project Documents or in the resolution of the Board, or unless otherwise required by law, such notice requirement shall be deemed satisfied if notice of such action, proposed action or meeting is: (a) sent by United States mail to the last known mailing address of the Owner, Lessee or

Occupant (as applicable), as shown in the records of the Association; or (b) if no such mailing address is reflected on the records of the Association, then sent by United States mail to the mailing address of the Lot (as applicable) on file with the Utah County Assessor's Office; or (c) if there is no such mailing address reflected in the records of the Association and there is no then current address on file with the Utah County Assessor's Office, then sent or given in whatever reasonable manner the Board may elect, which may include, without limitation, publishing the same in any newspaper in general circulation within Utah County, Utah. This Section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other reasonable and appropriate manner.

12.12 Indemnification. The Association shall indemnify each and every director and officer of the Association, each and every member of the Architectural Review Committee, and each and every member of any committee appointed by the Board (including, for purposes of this Section, former officers and directors of the Association, former members of the Architectural Review Committee, and former members of committees appointed by the Board) (collectively, "Association Officials" and individually an "Association Official") against any and all expenses, including attorneys' fees, reasonably incurred by or imposed upon an Association Official in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the Board serving at the time of such settlement) to which he or she may be a party by reason of being or having been an Association Official, unless the liability for such expenses arises out of his or her own intentional misconduct. No Association Official shall have any personal liability with respect to any contract or other commitment made by them or action taken by them, in good faith, on behalf of the Association (except indirectly to the extent that such Association Official may also be a Association Member and therefore subject to Assessments hereunder to fund a liability of the Association), and the Association shall indemnify and forever hold each such Association Official free and harmless from and against any and all liability to others on account of any such contract, commitment or action. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any Association Official may be entitled. If the Board deems it appropriate, in its sole discretion, the Association may advance funds to or for the benefit of any Association Official who may be entitled to indemnification hereunder to enable such Association Official to meet on-going costs and expenses of defending himself or herself in any action or proceeding brought against such Association Official by reason of his or her being, or having been, an Association Official. In the event it is ultimately determined that an Association Official to whom, or for whose benefit, funds were advanced pursuant to the preceding sentence does not qualify for indemnification pursuant to this Section or otherwise under the Articles, Bylaws or applicable law, such Association Official shall promptly upon demand repay to the Association the total of such funds advanced by the Association to him or her, or for his or her benefit, with interest (should the Board so elect) at a rate as exclusively determined by the Board from the date(s) advanced until paid.

12.13 No Partition. No Person acquiring any interest in the Property or any part thereof shall have a right to, nor shall any person seek, any judicial partition of the Common Areas, nor shall any Owner sell, convey, transfer, assign, hypothecate or otherwise alienate any funds or other assets of the Association except in connection with the sale, conveyance or hypothecation of such Owner's Lot (and only appurtenant thereto), or except as otherwise expressly permitted

herein. This Section shall not be construed to prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring or disposing of title to real property (other than disposition of title to the Common Areas, which shall be subject to Article 4) which may or may not be subject to this Declaration.

12.14 Number of Days. In computing the number of days for purposes of any provision of this Declaration or the Articles or Bylaws, all days shall be counted including Saturdays, Sundays and holidays; provided, however, that if the final day of any time period falls on a Saturday, Sunday or legal holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or legal holiday.

12.15 Notice of Violation. The Association shall have the right to Record a written notice of a violation by any Owner or Occupant of any restriction or provision of the Project Documents. The notice shall be executed and acknowledged by an officer of the Association and shall contain substantially the following information: (a) the name of the Owner or Occupant; (b) the legal description of the Lot against which the notice is being Recorded; (c) a brief description of the nature of the violation; (d) a statement that the notice is being Recorded by the Association pursuant to this Declaration; and (e) a statement of the specific steps which must be taken by the Owner or Occupant to cure the violation. Recordation of a notice of violation shall serve as a notice to the Owner and Occupant, and to any subsequent purchaser of the Lot, that there is such a violation. If, after the Recordation of such notice, it is determined by the Association that the violation referred to in the notice does not exist or that the violation referred to in the notice has been cured, the Association shall Record a notice of compliance which shall state the legal description of the Lot against which the notice of violation was recorded, the Recording data of the notice of violation, and shall state that the violation referred to in the notice of violation has been cured or, if such be the case, that it did not exist. Notwithstanding the foregoing, failure by the Association to Record a notice of violation shall not constitute a waiver of any existing violation or evidence that no violation exists.

12.16 Disclaimer of Representations. While the Declarant does not believe that any of the restrictive covenants contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent, the Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by accepting a deed to the Lot agrees to hold the Declarant harmless therefrom.

12.17 Amendments Affecting Declarant Rights. Notwithstanding any other provision of this Declaration to the contrary, no provision of this Declaration (including but not limited to, this Section) which grants to or confers upon the Declarant any rights, privileges, easements, benefits or exemptions (except for rights, privileges, easements, benefits, or exemptions granted to or conferred upon Owners generally) shall be modified, amended or revoked in any way, so long as the Declarant or a trustee for the benefit of the Declarant owns any portion of the Property, without the express written consent of the Declarant.

12.18 Bulk Service Agreements.

12.18.1 The Board, acting on behalf of the Association, shall have the right, power and authority to enter into one or more Bulk Service Agreements with one or more Bulk Providers (each of which terms is defined below), for such term(s), at such rate(s) and on such other terms and conditions as the Board deems appropriate, all with the primary goals of providing to Owners and Occupants of Lots both within the Property, or within one or more portions thereof, cable television, community satellite television, high speed Internet, security monitoring or other electronic entertainment, information, communication or security services, or any other personal services: (a) which might not otherwise be generally available to such Owners and Occupants; (b) at rates or charges lower than might otherwise generally be charged to Owners and Occupants for the same or similar services; (c) otherwise on terms and conditions which the Board believes to be in the interests of Owners and Occupants generally; or (d) any combination of the foregoing.

12.18.2 If all Lots within the Property are to be served by a particular Bulk Service Agreement, the Board shall have the option either to: (a) include the Association's costs under such Bulk Service Agreement in the budget for each applicable fiscal year and thereby include such costs in the Annual Assessments for each such applicable year; or (b) separately bill to each Owner his, her or its proportionate share of the Association's costs under such Bulk Service Agreement, as reasonably determined by the Board, and with such frequency as may be determined by the Board, but no more often than monthly. Such "separate billing" may be made as one or more separate line items on billings or invoices from the Association to the affected Owner(s) for Assessments or other charges. If not all Lots within the Property will be served by a particular Bulk Service Agreement the Board shall have only the billing option described in clause (b) above.

12.18.3 Declarant, for each Lot, hereby covenants and agrees, and each Owner other than the Declarant, by becoming the Owner of a Lot, is deemed to covenant and agree, to pay all amounts levied or charged against or to him, her or it (or his, her or its Lot) by the Board pursuant to this Section and all such amounts: (a) shall be deemed to be a part of the Assessments against the Lots (or against or to whose Owners they are levied or charged); (b) with interest, late charges and all costs, including but not limited to reasonable attorneys fees, incurred by the Association in collecting or attempting to collect delinquent amounts, shall be secured by the lien for Assessments established by this Declaration; and (c) as with other Assessments, shall also be the personal obligation of each Person who was an Owner of the Lot at the time such amount became due (which personal obligation for delinquent amounts shall not pass to the successors in title of the Owner unless expressly assumed by them, unless title is transferred to one or more such successors for purposes of avoiding payment of such amounts or other Assessments or is transferred to a Person controlling, controlled by or under common control with the Owner transferring title).

12.18.4 No Owner of a Lot covered by a Bulk Service Agreement shall be entitled to avoid or withhold payment of amounts charged by the Board to such Owner or

such Owner's Lot under this Section, whether on the basis that such Owner does not use, accept or otherwise benefit from the services provided under such Bulk Service Agreement, or otherwise. However, the Board shall have the right, at its option, to exempt from payment of such amounts any Lot upon which no Townhouse or other Improvement has been completed.

12.18.5 "Bulk Provider" means a private, public or quasi-public utility or other company which provides, or proposes to provide, cable television, community satellite television, high speed Internet, security monitoring or other electronic entertainment, information, communication or security services, or other personal services, to Owners, Occupants, Townhouses within the Property, Lots or within one or more portions thereof, pursuant to a "Bulk Service Agreement" (as defined below).

12.18.6 "Bulk Service Agreement" means an agreement between the Association and a Bulk Provider pursuant to which the Bulk Provider would provide cable television, community satellite television, high speed Internet, security monitoring or other electronic entertainment, information, communication or security services, or other personal services, to Owners, Occupants or Lots.

12.18.7 So long as Declarant's Class B Membership exists, the Board shall not, without the approval of Declarant, enter into a Bulk Service Agreement which imposes on the Association or the Association Members any obligation to pay the direct costs of construction of any cables, lines or other facilities or equipment for any cable television, community satellite television, high speed Internet, security monitoring or electronic entertainment, information, communication or security services, but nothing in this Section shall prevent the Board from entering into, or require approval by the Association Members of any Bulk Service Agreement which imposes on the Association or the Association Members installation, connection, service charge or similar charges or fees which do not exceed those generally prevailing at the time within the greater Utah County, Utah, area, or which includes as a component of the monthly fee charged by the Bulk Provider amortization of some or all of its capital costs and related costs in providing services under the Bulk Service Agreement.

12.19 Effective Date. This Certificate of Amendment Number Two and Amended and Restated Declaration of Covenants, Conditions, Easements and Restrictions for The Villas at Spanish Vista shall be effective upon the recording thereof in the Office of the Recorder of Utah County, Utah.

IN WITNESS WHEREOF, D.R. Horton, Inc. and The Villas at Spanish Vista Owners Association, Inc. have executed this Certificate of Amendment Number Two and Amended and Restated Declaration of Covenants, Conditions, Easements and Restrictions for The Villas at Spanish Vista as of the date first above written.

D.R. HORTON, INC.,
a Delaware corporation

By: Boyd A. Mann
Title: V.P.

THE VILLAS AT SPANISH VISTA
OWNERS ASSOCIATION, INC.,
a Utah nonprofit corporation

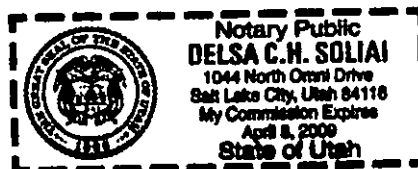
By: Boyd A. Mann
Title: Pres.

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 11th day of August, 2005, by Boyd A. Martin, who is the Vice-President of D.R. Horton, Inc., a Delaware corporation.

Delisa C.H. Soliai
NOTARY PUBLIC
Residing at: 1044 North Omni Drive SLCT 84116

My Commission Expires:
April 8, 2009



STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 11th day of August, 2005, by Boyd A. Martin as the V.P. of The Villas at Spanish Vista Owners Association, Inc., a Utah nonprofit corporation.

Delisa C.H. Soliai
NOTARY PUBLIC
Residing at: 1044 North Omni Drive SLCT 84116

My Commission Expires:
April 8, 2009

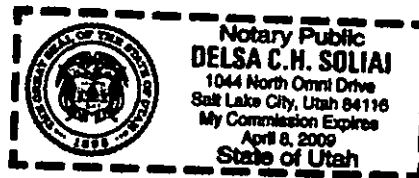


EXHIBIT "A"
TO
CERTIFICATE OF AMENDMENT NUMBER TWO
AND AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS
FOR
THE VILLAS AT SPANISH VISTA

That certain real property located in Utah County, State of Utah, more particularly described as follows:

Lots 101, 102, 103, 104, 105 and 106, Plat "A", THE VILLAS AT SPANISH VISTA, according to the official plat thereof on file and of record in the Utah County Recorder's Office.

Lots 201, 202, 203, 204, 205, 206, 301, 302, 303, 304, 305, 306, 401, 402, 403, 404, 405, 406, 501, 502, 503, 504, 601, 602, 603, 604, 701, 702, 703, 704, 705, 706, Plat "B", THE VILLAS AT SPANISH VISTA, according to the official plat thereof on file and of record in the Utah County Recorder's Office.

AND ALSO

The Villas At Spanish Vista, Plat A

Description for a parcel of land in Spanish Fork, Utah County, located in the Northeast Quarter of Section 29, Township 8 South, Range 3 East, Salt Lake Base and Meridian, the basis of bearing for said parcel is N 00°24'18" W, along the quarter section line between the South Quarter Corner and the North Quarter Corner of said Section 29. The parcel being more particularly described according to the following courses and distances to wit:

Beginning at a point on the northerly boundary of Spanish Vista Phase 3, said point located N 00°24'18" W along the Quarter Section Line 4,147.24 feet and East 665.68 feet from the South Quarter Corner of Section 29, Township 8 South, Range 3 East, Salt Lake Base and Meridian and running thence N 00°04'15" W, 76.06 feet; thence along the arc of a curve to the left, having a radius of 20.00 feet, passing through a central angle of 88°59'26", a length of 31.06 feet (chord bears N 44°33'58" W, 28.03 feet); thence N 04°59'14" E, 60.15 feet; thence along the arc of a non-tangent curve to the left having a radius of 20.00 feet, passing through a central angle of 71°26'57", a length of 24.94 feet (chord bears N 55°12'51" E, 23.36 feet); thence N 19°29'22" E, 43.68 feet; thence along the arc of a curve to the left, having a radius of 20.00 feet, passing through a central angle of 24°03'19", a length of 8.40 feet (chord bears N 07°27'42" E, 8.34 feet) to the southerly right-of-way line of a state highway; thence S 70°09'48" E, 163.20 feet along said southerly state highway right-of-way line; thence S 00°23'32" E, 162.05 feet to the northern boundary of Spanish Vista Phase 3;

thence S 89°34'33" W, 174.93 feet to the point of beginning. Containing 0.785 acres, more or less.

The Villas AT Spanish Vista, Plat B

A parcel of land located in the Northeast Quarter of Section 29, Township 8 South, Range 3 East, Salt Lake Base and Meridian. The basis of bearing of which is N 00°24'18" W, between the South Quarter corner and the North Quarter Corner of said Section 29. The parcel being more particularly described according to the following courses and distances, to wit:

Beginning at a point on the easterly boundary of Spanish Vista Phase 1, said point located N 00°24'18" W, 4148.04 feet along the quarter section line and East 145.68 feet from the South Quarter Corner of Section 29, Township 8 South, Range 3 East, Salt Lake Base and Meridian and running thence N 00°04'15" W, 180.33 feet along said Spanish Vista Phase 1; thence S 89°11'44" E, 88.24 feet; thence N 00°00'20" W, 201.99 feet to the southerly right of way of a state highway; thence S 70°09'48" E, 480.85 feet along said state highway; thence along the arc of a non-tangent curve to the right, having a radius of 20.00 feet, passing through a central angle of 24°03'19", a length of 8.40 feet (chord bears S 07°27'42" W, 8.34 feet); thence S 19°29'22" W, 43.68 feet; thence along the arc of a curve to the right having a radius of 20.00 feet, passing through a central angle of 71°26'57", a length of 24.94 feet (chord bears S 55°12'51" W, 23.36 feet); thence S 04°59'14" W, 60.15 feet; thence along the arc of a non-tangent curve to the right having a radius of 20.00 feet, passing through a central angle of 88°59'26", a length of 31.06 feet (chord bears S 44°33'58" E, 28.03 feet); thence S 00°04'15" E, 76.06 feet to the northerly boundary of Spanish Vista Phase 3; thence S 89°34'33" W, 412.01 feet along the northerly boundary of Spanish Vista Phase 3 and Phase 2; thence N 00°04'15" W, 4.65 feet; thence S 89°34'33" W, 108.00 feet to the point of beginning. Containing 3.382 acres, more or less.