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**DECLARATION OF CONDOMINIUM
FOR
THE VILLAGES AT MILL CREEK**

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**DECLARATION OF CONDOMINIUM
FOR
THE VILLAGES AT MILL CREEK**

THIS DECLARATION OF CONDOMINIUM FOR THE VILLAGES AT MILL CREEK (“this Declaration”) is made and executed by D. R. HORTON, INC., a Delaware corporation (hereinafter referred to as “Declarant”), pursuant to the provisions of Title 57, Chapter 8, of the Utah Code, as amended.

1. RECITALS

1.1 Declarant holds both legal and equitable title to the real property located in the County of Salt Lake, State of Utah, hereinafter more particularly described, upon which Declarant desires to develop a residential condominium project.

1.2 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.

1.3 Recorded simultaneously herewith is a record of survey map of the Project (as hereinafter defined) as required by the Act (as hereinafter defined).

1.4 All capitalized terms used in this Declaration shall have the definitions as set forth herein.

1.5 The Project shall be known as The Villages at Mill Creek.

2. DEFINITIONS

2.1 Unless the context clearly indicates otherwise, certain terms as used in this Declaration and the foregoing Recitals shall have the meanings set forth in this Section 2.

2.2 “Act” shall mean the Utah Condominium Ownership Act (Title 57, Chapter 8, of the Utah Code, as it may be amended from time to time).

2.3 “Additional Land” shall mean the land that may be added to the Project in accordance with the provisions of Section 8, and as shown on the Map.

2.4 “Amendment” shall mean any amendment to this Declaration made in accordance with this Declaration and the Act.

2.5 “Articles” shall mean the Articles of Incorporation of The Villages at Mill Creek Owners Association, Inc.

2.6 “Buildings” shall mean the buildings constructed as part of the Project, as described in Section 3.2.

2.7 “Bylaws” shall mean the Bylaws of the Owners Association, a copy of which is attached hereto as Exhibit B and incorporated herein by this reference, as amended from time to time.

2.8 “Common Areas and Facilities” shall mean all portions of the Project other than the Units, as described in Section 6.1 hereof, including the Limited Common Areas and Facilities. The undivided interest in the Common Areas and Facilities appurtenant to each Unit is based upon the Par Value of such Unit as described in Section 6.2 hereof and is set forth in Exhibit A hereto.

2.9 “Common Assessments” shall mean those Assessments described in Section 22 to fund the Common Expenses, and include Regular Common Assessments, Special Common Assessments and any other assessments levied by the Owners Association.

2.10 “Common Expenses” shall mean all expenses of the administration, maintenance, repair, or replacement of the Common Areas and Facilities and all other expenses denominated as Common Expenses by this Declaration or by the Act.

2.11 “Common Expense Fund” shall mean one or more deposit or investment accounts of the Owners Association into which are deposited the Common Assessments.

2.12 “Cost of Living Index” shall mean the Consumer Price Index, all Urban Consumers—U.S. City Average—All Items (1982-84 = 100). Declarant may select any other comparable index which measures changes in the cost of living.

2.13 “Declarant” shall mean D. R. HORTON, INC., a Delaware corporation, or any successor in interest as defined by the Act.

2.14 “Declaration” shall mean this Declaration of Condominium for The Villages at Mill Creek, and all amendments, modifications and supplements hereto.

2.15 “Developmental Rights” shall mean the right under the Act to (1) add real estate to the Project pursuant to Section 8 hereof, and (2) exercise any of the rights set forth in Section 12 hereof.

2.16 “FHLMC” shall mean Federal Home Loan Mortgage Corporation.

2.17 “FNMA” shall mean the Federal National Mortgage Association.

2.18 “Furnishings” shall mean all furniture, furnishings, utensils, equipment, facilities and personal property within Units.

2.19 “Limited Common Areas and Facilities” shall mean a portion of the Common Areas and Facilities allocated by this Declaration or the Act, and as may be shown on the Map, for the exclusive use of one or more, but fewer than all, of the Units.

2.20 “Management Committee” shall mean the Board of Directors of the Owners Association, appointed or elected in accordance with this Declaration and the Bylaws.

2.21 “Manager” shall mean the person, firm or company designated by the Owners Association to manage, in whole or in part, the affairs of the Owners Association and the Project.

2.22 “Map” shall mean the Record of Survey Map of The Villages at Mill Creek, recorded in the Office of the Recorder of Salt Lake County, Utah, a reduced copy of which is attached hereto as Exhibit C, as it may be amended from time to time pursuant to this Declaration and the Act. It is contemplated that the initial Map may be amended at such time as the Buildings are constructed, in the event there are material changes in the Buildings’ boundaries or elevations as constructed. Such an amendment to the Map is expressly authorized and may be undertaken by Declarant without the joinder or consent of any other Owners. It is also contemplated that the Map may be amended in the event that Declarant exercises the Option to Expand the Project in accordance with the terms of Section 8 hereof.

2.23 “Mortgage” shall mean any mortgage, deed of trust or other security instrument (including the seller’s rights under a contract for deed) by which a Unit or any part thereof or interest therein is encumbered. A “First Mortgage” is a Mortgage having priority as to all other Mortgages encumbering a Unit or any part thereof or interest therein.

2.24 “Mortgagee” shall mean any person or entity named as the mortgagee, beneficiary or holder of the seller’s interest under any Mortgage by which the interest of any Owner is encumbered, or any successor to the interest of such person under such Mortgage. A “First Mortgagee” shall mean 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 Unit or any interest therein.

2.25 “Owner” shall mean any person or entity, including Declarant, at any time owning a Unit or an interest in a Unit within the Project (including, to the extent permitted by law, those purchasing an interest pursuant to a contract for deed who have given written notice of their purchase and a copy of their contract to the Owners Association). The term “Owner” shall not refer to any Mortgagee, unless such Mortgagee has acquired title for other than security purposes.

2.26 “Owners Association” shall mean The Villages at Mill Creek Owners Association, Inc., a Utah non-profit corporation, organized for the purposes set forth in this Declaration.

2.27 “Par Value” shall mean the number of points assigned to each Unit as described herein and in the Act. In accordance with the provisions of the Act, the statement of Par Value should not be considered to reflect or control the sales price or fair market value of any Unit.

2.28 “Period of Declarant Control” shall mean the period of time during which Declarant shall be entitled, for purposes of the Owners Association, to vote three (3) votes for every Unit owner by Declarant and during which period of time Declarant shall be entitled to appoint all of the members of the Board of Directors of the Owners Association and all of the officers of the Owners Association, as provided in Section 12.3 hereof.

2.29 “Project” shall mean the Property, the Units, the Common Areas and Facilities and all improvements submitted by this Declaration to the provisions of the Act.

2.30 "Property" shall mean that certain real property situated in the County of Salt Lake, State of Utah, more particularly described in Section 3 hereinafter, on which the Units and other improvements are located.

2.31 "Regular Common Assessments" shall mean the annual assessments levied by the Owners Association to pay the budgeted Common Expenses.

2.32 "Special Common Assessments" shall mean assessments that the Owners Association may levy from time to time, in addition to the Regular Common Assessments, for unexpected Common Expenses or other purposes as provided herein.

2.33 "Supplemental Map" shall mean any amendment to the Map made in accordance with this Declaration and the Act.

2.34 "Total Votes of the Owners Association" shall mean the total number of votes appertaining to all Units, as described in Section 10 hereof.

2.35 "Unit" shall mean a physical portion of the Project designed for separate ownership, occupancy and/or use as described in Section 5 hereof.

2.36 "Unit Number" shall mean the number, letter or combination of numbers and letters that identifies only one Unit in the Project.

2.37 "VA" shall mean the United States Department of Veteran Affairs.

3. DESCRIPTION OF THE PROPERTY AND THE IMPROVEMENTS

3.1 The Property on which the Units and improvements are located is situated in Salt Lake County, Utah and is more particularly described as follows:

PHASE 1

A PARCEL OF LAND LYING WITHIN THE SOUTHWEST 1/4 OF SECTION 5, TOWNSHIP 2 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, SALT LAKE COUNTY, UTAH, MORE PARTICULARLY DESCRIBED AS:

BEGINNING AT A POINT IN THE CENTERLINE OF A COUNTY ROAD KNOWN AS 45TH SOUTH STREET, BEARING EAST AND WEST, 3.68 CHAINS SOUTH AND 16.45 CHAINS WEST FROM THE NORTHEAST CORNER OF THE SOUTHWEST 1/4 SECTION 5, T.2S., R.1E., SLB&M., AND RUNNING THENCE SOUTH 13.62 CHAINS TO THE POINT OF BEGINNING, SAID POINT OF BEGINNING IS MORE PARTICULARLY DESCRIBED AS BEING LOCATED S.89°51'30"W. 296.78 FEET ALONG THE MONUMENTED CENTERLINE OF SAID 4500 SOUTH STREET AND S.00°10'35"E. 898.91 FEET FROM THE BRASS CAP MONUMENT AT THE INTERSECTION OF 900 EAST STREET;

THENCE S.12°20'00"E. 35.58 FEET; THENCE S.77°40'00"W. 86.44 FEET; THENCE S.32°40'00"W. 19.18 FEET; THENCE S.12°20'00"E. 39.44 FEET TO A POINT OF CURVATURE OF A 364.00-FOOT RADIUS CURVE TO THE RIGHT; THENCE SOUTHERLY 78.35 FEET ALONG THE ARC OF SAID CURVE, HAVING A CENTRAL ANGLE OF 12°20'00" AND BEING SUBTENDED BY A CHORD THAT BEARS S.06°10'00" E. 78.20 FEET TO THE CURVES END; THENCE SOUTH 83.59 FEET; THENCE EAST 4.00 FEET; THENCE S.45°00'00"E. 33.94 FEET; THENCE EAST 62.75 FEET; THENCE NORTH 88.16 FEET; THENCE N.85°15'47"E. 18.55 FEET; THENCE N.05°04'32"W. 43.64 FEET TO A FOUND 5/8" IRON PIN LS# 3370; THENCE EAST 229.39 FEET TO THE WEST RIGHT-OF-WAY OF 900 EAST STREET; THENCE S.04°54'30"E. ALONG SAID RIGHT-OF-WAY 173.82 FEET TO A POINT OF INTERSECTION WITH A NON-TANGENT 28.00-FOOT RADIUS CURVE TO THE LEFT; THENCE NORTHWESTERLY 21.72 FEET ALONG THE ARC OF SAID CURVE, HAVING A CENTRAL ANGLE OF 44°27'03" AND BEING SUBTENDED BY A CHORD THAT BEARS N.67°46'29"W. 21.18 FEET TO THE CURVES END; THENCE WEST 255.60 FEET; THENCE SOUTH 96.44 FEET; THENCE EAST 282.80 FEET; THENCE S.04°54'30"E. 27.66 FEET; THENCE WEST 189.23 FEET; THENCE N.12°20'00"W. 2.11 FEET; THENCE N.89°27'48"W. 234.49 FEET; THENCE N.18°27'12"W. 17.57 FEET; THENCE NORTH 11.16 FEET; THENCE EAST 98.46 FEET; THENCE NORTH 91.91 FEET; THENCE WEST 155.88 FEET TO A POINT OF CURVATURE OF A 286.00-FOOT RADIUS CURVE TO THE LEFT; THENCE WESTERLY 93.78 FEET ALONG THE ARC OF SAID CURVE, HAVING A CENTRAL ANGLE OF 18°47'15" AND BEING SUBTENDED BY A CHORD THAT BEARS S.80°36'23"W. 93.36 FEET TO THE CURVES END; THENCE S.50°56'39"W. 19.40 FEET; THENCE S.12°31'20"E. 101.56 FEET; THENCE S.80°37'48"W. 71.76 FEET; THENCE N.25°40'40"W. 118.30 FEET; THENCE N.64°19'20"E. 143.86 FEET; THENCE S.89°29'02"E. 44.39 FEET TO A POINT OF INTERSECTION WITH A NON-TANGENT 318.00-FOOT RADIUS CURVE TO THE RIGHT; THENCE EASTERLY 33.24 FEET ALONG THE ARC OF SAID CURVE, HAVING A CENTRAL ANGLE OF 05°59'19" AND BEING SUBTENDED BY A CHORD THAT BEARS N.87°00'20"E. 33.22 FEET TO THE CURVES END; THENCE EAST 71.55 FEET; THENCE N.45°00'00"E. 33.94 FEET; THENCE NORTH 83.59 FEET TO A POINT OF CURVATURE OF A 332.00-FOOT RADIUS CURVE TO THE LEFT; THENCE NORTHERLY 71.47 FEET ALONG THE ARC OF SAID CURVE, HAVING A CENTRAL ANGLE OF 12°20'00" AND BEING SUBTENDED BY A CHORD THAT BEARS N.06°10'00"W. 71.33 FEET TO THE CURVES END; THENCE N.12°20'00"W. 106.67 FEET; THENCE S.77°40'00"W. 103.27 FEET TO A FOUND 5/8" IRON PIN LS# 3370; THENCE N.47°08'00"E. 100.00 FEET TO A FOUND 5/8" IRON PIN LS# 3370; THENCE N.88°31'00"E. 100.00 FEET TO A FOUND 5/8" IRON PIN LS# 3370; THENCE S.57°49'00"E. 71.42 FEET TO THE POINT OF BEGINNING. CONTAINS 2.31 ACRES OF LAND MORE OR LESS.

3.2 The initial improvements within the Project will consist of three (3) buildings (which together with any other buildings constructed on the Additional Land shall collectively be referred to herein as the "Buildings"), which Buildings are designated on the Map as Buildings A-1, B-1 and B-2. Each Building shall have two (2) floors aboveground and a ground-level parking area. Building A-1 shall contain six (6) Units, Building B-1 shall contain three (3) Units, and Building B-2 shall contain three (3) Units. The Buildings shall be principally constructed of: concrete footings and foundation; steel and concrete frame below ground; wood frame above ground; cultured stone, stucco or brick exteriors; sheetrock interiors; asphalt shingle roofs; and such other materials as allowed by current building codes. The Buildings will be supplied with telephone, cable television, electricity, natural gas, water, and sewer service. The Project also includes the Common Areas and Facilities described herein, which Common Areas and Facilities shall include an outdoor play area for children, landscaped areas, private roads, private driveways, and parking areas in the locations identified on the Map.

4. SUBMISSION TO ACT

Declarant hereby submits the Property, the Buildings and all other improvements thereon to the provisions of the Act. All of said Project is and shall be held, conveyed, hypothecated, encumbered, leased, subleased, rented, used and improved as a condominium project. All of the Project is and shall be subject to the covenants, conditions, restrictions, uses, limitations and obligations set forth herein, each and all of which are declared and agreed to be for the benefit of the Project and in furtherance of a plan for improvement of the Project and division thereof into Units; further, each and all of the provisions hereof shall be deemed to run with the land and shall be a burden and a benefit to the Declarant, the successors and assigns of the Declarant, and any person acquiring, leasing, subleasing or owning an interest in the real property and improvements comprising the Project, their assigns, lessees, sublessees, heirs, executors, administrators, devisees and successors. The Declarant and the Owners Association are each hereby granted a limited license to use the name "The Villages at Mill Creek" in connection with the administration, sale and operation of their respective interests in the Project.

5. DESCRIPTION OF UNITS

The boundary lines of each Unit and the dimensions thereof are as set forth on the Map and consist of the undecorated and/or unfinished interior surfaces of its perimeter walls, bearing walls, lowermost floor, uppermost ceiling, and the interior surfaces of windows and doors. The interior surfaces of the doors and windows mean the points at which such surfaces are located when such window or door is closed. Each Unit shall include both the portions of a Building that are not Common Areas and Facilities within such boundary lines and the space so encompassed, excepting Common Areas and Facilities. Without limitation, a Unit shall include any finishing material applied or affixed to the interior surfaces of the interior walls, floors and ceilings; non-supporting interior walls; and all utility outlets, fixtures or appliances found within the boundary lines of the Unit and servicing only that Unit. Notwithstanding the fact that they may be within the boundaries of the Unit, the following are not part of any Unit: bearing walls; floors, ceilings and roofs (except the interior finished surfaces thereof); foundations, ceiling equipment, tanks, pumps, pipes, vents, ducts, shafts, flues, chutes, conduits, wires and other utility installations, except the outlets thereof when located within the Unit. The Map and/or Exhibit A hereto contain the Unit Number of each Unit in the Project.

6. DESCRIPTION AND OWNERSHIP OF COMMON AREAS AND FACILITIES

6.1 The Common Areas and Facilities shall mean and include the Property on which all Units are located and all portions of the Project not included as part of any Unit, including, but not by way of limitation, the foundation, columns, girders, beams, supports, exterior and bearing walls, roofs, halls, corridors, elevators, stairwells, lobbies, fire escapes and entrances and exits of the Buildings; all private roads and private driveways within the Project; all parking areas within the Project, include the parking areas designated as Limited Common Areas; the grounds and recreational facilities, if any, in the Project, designated as part of the Common Areas and Facilities on the Map; installations of all central services, including power, light, gas, hot and cold water, heating, ventilating and garbage collection; tanks, pumps, motors, fans, ducts and, in general, all apparatuses and installations existing for common use; all utility pipes, lines or systems servicing the Units; all ducts, flues, chutes, wires, conduits and other accessories and utility installations to the outlets used therewith; all other parts of the Property necessary or convenient to its existence, maintenance and safety, or normally in common use, or which have been designated as Common Areas and Facilities on the Map or any Supplemental Map; and all repairs and replacements of any of the foregoing. In the event of a conflict between this Declaration and the Map, the provisions of this Declaration shall control.

6.2 The undivided interest in the Common Areas and Facilities appurtenant to each Unit in the Project is based upon the Par Value of such Unit, which is determined by the number of points allocated to each Unit. Ten Points (the Par Value) shall be allocated to each Unit. The percentage of undivided interest in the Common Areas and Facilities appurtenant to each Unit shall be determined by dividing the number of points allocated to that Unit by the total number of points allocated to all Units in the Project. In accordance with the provisions of the Act, the statement of Par Value shall not be considered to reflect or control the sales price or fair market value of any Unit. Except as otherwise provided in this Declaration, the undivided interest appurtenant to each Unit shall have a permanent character and shall not be altered; provided, however, Declarant reserves the right to allocate points with respect to Units created pursuant to Section 8 hereof, and to adjust the undivided interest of each Unit in the Common Areas and Facilities following any addition of Units to the Project, in accordance with the formula set forth in Section 8 hereof. The sum of the undivided interests in the Common Areas and Facilities allocated to all Units shall at all times equal one hundred percent. Declarant is authorized to round the undivided interest of one or more Units in order to cause the total to equal one hundred percent. The Owners Association shall have the right and obligation to design, maintain, replace and otherwise control all landscaping on the Common Areas and Facilities. The Owners may not repair, replace, maintain or otherwise alter in any manner the landscaping in the Common Areas and Facilities.

7. DESCRIPTION OF LIMITED COMMON AREAS AND FACILITIES

Limited Common Areas and Facilities shall mean a portion of the Common Areas and Facilities reserved for the use of certain Owners to the exclusion of other Owners, including but not limited to any porches, balconies, patios and parking areas designated by the Owners Association to be for the exclusive use of one or more but fewer than all of the Units. The Owners Association shall have the right from time to time to designate that a specific parking area comprising a portion of the Limited Common Areas and Facilities shall be reserved for the

use of the Owner of a certain specified Unit. The Owners Association shall have the right from time to time to alter the designation of which parking area within the Limited Common Areas and Facilities are reserved for specific Units. The Limited Common Areas and Facilities shall be those areas designated as such on the Map, in this Declaration or as provided for by the Act. The use and occupancy of designated Limited Common Areas and Facilities shall be reserved to the Units as specified in this Declaration. Owners may not reallocate Limited Common Areas and Facilities between or among Units.

8. OPTION TO EXPAND

8.1 Declarant hereby reserves, pursuant to Sections 57-8-10(4) and 57-8-13.6 of the Act, the option to expand the Project (the "Option to Expand") upon the terms and provisions set forth in this Section 8 without the prior consent of the Owners or the Owners Association. Each Option to Expand must be exercised no later than seven (7) years from the date of recording this Declaration. Declarant shall have the right to exercise the rights under this Section 8 with respect to the portion of the Property Declarant owns in fee simple or has an option to purchase. The terms and conditions of the Option to Expand shall be as follows:

8.1.1 Subject to the power granted Declarant in paragraph 8.1.3 below, the real property subject to the Option to Expand consists of the real property referred to as the Additional Land, being more particularly described as follows:

PHASE 2

A PARCEL OF LAND LYING WITHIN THE SOUTHWEST 1/4 OF SECTION 5, TOWNSHIP 2 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, SALT LAKE COUNTY, UTAH, MORE PARTICULARLY DESCRIBED AS:

COMMENCING AT A SALT LAKE COUNTY BRASS CAP MONUMENT MARKING THE CENTERLINE INTERSECTION OF 4500 SOUTH STREET AND 900 EAST STREET, FROM WHICH THE C.1/4 CORNER BEARS S.89°54'45"E. 788.92 FEET ALONG THE CENTERLINE OF 4500 SOUTH AND N.00°10'35"W. 242.38 FEET; THENCE S.89°51'30"W. ALONG THE CENTERLINE OF 4500 SOUTH STREET 14.75 FEET AND SOUTH 1232.85 FEET TO THE WEST RIGHT-OF-WAY LINE OF 900 EAST STREET AND THE POINT OF BEGINNING;

THENCE S.04°54'30"E. 88.76 FEET ALONG SAID RIGHT-OF-WAY ; THENCE WEST 282.80 FEET; THENCE NORTH 96.44 FEET; THENCE EAST 255.60 FEET TO A POINT OF CURVATURE OF A 28.00-FOOT RADIUS CURVE TO THE RIGHT; THENCE SOUTHEASTERLY 21.72 FEET ALONG THE ARC OF SAID CURVE, HAVING A CENTRAL ANGLE OF 44°27'03" AND BEING SUBTENDED BY A CHORD THAT BEARS S.67°46'29"E. 21.18 FEET TO THE CURVES END AND THE POINT OF BEGINNING. CONTAINS 0.62 ACRES OF LAND MORE OR LESS.

PHASE 3

A PARCEL OF LAND LYING WITHIN THE SOUTHWEST 1/4 OF SECTION 5, TOWNSHIP 2 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, SALT LAKE COUNTY, UTAH, MORE PARTICULARLY DESCRIBED AS:

COMMENCING AT A SALT LAKE COUNTY BRASS CAP MONUMENT MARKING THE CENTERLINE INTERSECTION OF 4500 SOUTH STREET AND 900 EAST STREET, FROM WHICH THE C.1/4 CORNER BEARS S.89°54'45"E. 788.92 FEET ALONG THE CENTERLINE OF 4500 SOUTH AND N.00°10'35"W. 242.38 FEET; THENCE S.89°51'30"W. ALONG THE CENTERLINE OF 4500 SOUTH STREET 286.41 FEET AND SOUTH 933.69 FEET TO THE POINT OF BEGINNING;

THENCE S.12°20'00"E. 128.27 FEET TO A FOUND 5/8" IRON PIN LS# 3370; THENCE S.05°04'32"E. 43.64 FEET; THENCE S.85°15'47"W. 18.55 FEET; THENCE SOUTH 92.16 FEET; THENCE WEST 62.75 FEET; THENCE N.45°00'00"W. 39.60 FEET; THENCE NORTH 83.59 FEET TO A POINT OF CURVATURE OF A 364.00-FOOT RADIUS CURVE TO THE LEFT; THENCE NORTHWESTERLY 78.35 FEET ALONG THE ARC OF SAID CURVE, HAVING A CENTRAL ANGLE OF 12°20'00" AND BEING SUBTENDED BY A CHORD THAT BEARS N.06°10'00"W. 78.20 FEET TO THE CURVES END; THENCE N.12°20'00"W. 39.44 FEET; THENCE N.32°40'00"E. 19.18 FEET; THENCE N.77°40'00"E. 86.44 FEET TO THE POINT OF BEGINNING. CONTAINS 0.56 ACRES OF LAND MORE OR LESS.

PHASE 4

A PARCEL OF LAND LYING WITHIN THE SOUTHWEST 1/4 OF SECTION 5, TOWNSHIP 2 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, SALT LAKE COUNTY, UTAH, MORE PARTICULARLY DESCRIBED AS:

COMMENCING AT A SALT LAKE COUNTY BRASS CAP MONUMENT MARKING THE CENTERLINE INTERSECTION OF 4500 SOUTH STREET AND 900 EAST STREET, FROM WHICH THE C.1/4 CORNER BEARS S.89°54'45"E. 788.92 FEET ALONG THE CENTERLINE OF 4500 SOUTH AND N.00°10'35"W. 242.38 FEET; THENCE S.89°51'30"W. ALONG THE CENTERLINE OF 4500 SOUTH STREET 527.72 FEET AND SOUTH 930.92 FEET TO A FOUND 5/8" IRON PIN LS # 3370 AND THE POINT OF BEGINNING;

THENCE N.77°40'00"E. 103.27 FEET; THENCE S.12°20'00"E. 106.67 FEET TO A POINT OF CURVATURE OF A 332.00-FOOT RADIUS CURVE TO THE RIGHT; THENCE SOUTHEASTERLY 71.47 FEET ALONG THE ARC

OF SAID CURVE, HAVING A CENTRAL ANGLE OF 12°20'00" AND BEING SUBTENDED BY A CHORD THAT BEARS S.06°10'00"E. 71.33 FEET TO THE CURVES END; THENCE SOUTH 83.59 FEET; THENCE S.45°00'00"W. 33.94 FEET; THENCE WEST 71.55 FEET TO A POINT OF CURVATURE OF A 318.00-FOOT RADIUS CURVE TO THE LEFT; THENCE SOUTHWESTERLY 33.24 FEET ALONG THE ARC OF SAID CURVE, HAVING A CENTRAL ANGLE OF 5°59'19" AND BEING SUBTENDED BY A CHORD THAT BEARS S.87°00'20"W. 33.22 FEET TO A POINT OF INTERSECTION WITH A NON-TANGENT LINE; THENCE N 89°29'02" W 44.39 FEET; THENCE N.24°36'42"E. 34.56 FEET; THENCE N.20°23'18"W. 83.99 FEET; THENCE N.67°41'00"E. 11.49 FEET TO A FOUND 5/8" IRON PIN LS# 145787; THENCE N.64°55'00"E. 51.48 FEET TO A FOUND 5/8" IRON PIN LS # 145787; THENCE N.19°10'00"W. 72.50 FEET; THENCE N.22°05'00"E. 61.70 FEET TO THE POINT OF BEGINNING. CONTAINS 0.92 ACRES OF LAND MORE OR LESS.

PHASE 5

A PARCEL OF LAND LYING WITHIN THE SOUTHWEST 1/4 OF SECTION 5, TOWNSHIP 2 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, SALT LAKE COUNTY, UTAH, MORE PARTICULARLY DESCRIBED AS:

COMMENCING AT A SALT LAKE COUNTY BRASS CAP MONUMENT MARKING THE CENTERLINE INTERSECTION OF 4500 SOUTH STREET AND 900 EAST STREET, FROM WHICH THE C.1/4 CORNER BEARS S.89°54'45"E. 788.92 FEET ALONG THE CENTERLINE OF 4500 SOUTH AND N.00°10'35"W. 242.38 FEET; THENCE S.89°51'30"W. ALONG THE CENTERLINE OF 4500 SOUTH STREET 336.06 FEET AND SOUTH 1224.04 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 91.91 FEET; THENCE WEST 98.46 FEET; THENCE SOUTH 11.16 FEET; THENCE S.80°37'48"W. 144.51 FEET; THENCE N.12°31'20"W. 101.56 FEET; THENCE N.50°56'39"E. 19.40 FEET TO A POINT OF INTERSECTION WITH A NON-TANGENT 286.00-FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHEASTERLY 93.78 FEET ALONG THE ARC OF SAID CURVE, HAVING A CENTRAL ANGLE OF 18°47'15" AND BEING SUBTENDED BY A CHORD THAT BEARS N.80°36'23"E. 93.36 FEET TO THE CURVES END; THENCE EAST 155.88 FEET TO THE POINT OF BEGINNING. CONTAINS 0.60 ACRES OF LAND MORE OR LESS.

8.1.2 Subject to the provisions of paragraph 8.1.3 below, the Option to Expand may be exercised at different times as to portions of the Additional Land and in any order elected by the Declarant. No assurance is made with regard to which portions of the Additional Land, if any, will be added to the Project or the order in which such portions will be so expanded. In the event the Option to Expand is exercised with respect to a portion of the

Additional Land, the Option to Expand may subsequently be exercised with respect to any other portion of the Additional Land.

8.1.3 Declarant shall not be restricted in the location of improvements on the Additional Land or in the number of Units that may be created on the Additional Land, except as may be required by applicable zoning requirements, ordinances or regulations, provided the Project when completed shall not exceed 72 Units. The foregoing limitations on the number of Units to be constructed in the Project are set forth herein for the purpose of satisfying Section 57-8-10(4)(a)(vii) of the Act. With respect to any portion of the Additional Land, if any, that will be added to the Project, 100% of such Additional Land and 100% of the floor area of all Units that may be created on it shall be restricted exclusively to residential purposes, including parking. The foregoing statement as it is set forth herein is for the purpose of satisfying Section 57-8-10(4)(a)(viii) of the Act.

8.1.4 The Units to be located on the Additional Land shall be subject to the same uses as provided in Section 9 hereof. Declarant reserves the right to exercise all Developmental Rights with respect to any Units located on the Additional Land.

8.1.5 Declarant anticipates that the Units to be built on the Additional Land shall be substantially identical to the Units depicted on the Map in terms of quality of construction, the principal materials to be used, and architectural style. However, no assurances are made by Declarant in regard to the foregoing statement. Structures other than buildings containing Units may be erected on the Additional Land. Further improvements may include recreational facilities, parking areas, walkways and landscaping of the Common Areas and Facilities contained therein. Declarant reserves the right to add additional Limited Common Areas and Facilities to the Additional Land without limitation. All improvements to portions of Additional Land added hereto shall be substantially completed before the addition of such Additional Land hereto.

8.1.6 The ownership interest in the Common Areas and Facilities for all Units in the Project shall be changed at the time Declarant records an Amendment and a Supplemental Map reflecting Declarant's exercise of the Option to Expand in accordance with the provisions set forth in paragraph 8.1.7 below. Such changes in ownership interest shall be reflected in an Amendment to this Declaration to be recorded in the Office of the Recorder of Salt Lake County, Utah. It is contemplated that there may be multiple Amendments filed by Declarant, and such Amendments are hereby expressly authorized.

8.1.7 Declarant shall calculate and revise the undivided interest for each Unit in Common Areas and Facilities based upon the following formula:

$$\frac{\text{Number of points assigned to a Unit pursuant to Section 6.2 hereof}}{\text{Total number of points assigned to all the Units}} = \text{Undivided Interest in the Common Areas and Facilities of the Project}$$

Declarant shall have the right to adjust the resulting ownership interests of all Units in the Common Areas and Facilities of the Project as may be necessary to assure that the total ownership interest equals 100% as required by the Act.

8.1.8 Each Owner, by execution of a contract for deed or the acceptance of a deed to a Unit in the Project, shall be deemed to have consented to all provisions of this Section, including the procedure for adjustment of Unit ownership interests pursuant to paragraph 8.1.7 hereof. After the filing for record of any Amendment to this Declaration and the Supplemental Map reflecting Declarant's exercise of the Option to Expand, or any part thereof, legal and equitable title to each Unit thereby created within the Additional Land including its appurtenant ownership interest in the Common Areas and Facilities shall be vested in and held by Declarant and none of the other Owners shall have any claim or title to or interest in such Unit or its appurtenant ownership interest in the Common Areas and Facilities.

8.1.9 Declarant shall not be required to obtain the consent of any Owners or of any other person or entity having any right or interest in all or any portion of the Project prior to or subsequent to adding all or portions of the Additional Land.

8.1.10 No provision of this Section 8 shall be amended without the prior written consent of Declarant so long as it owns or has the right to acquire any Units in the Project.

8.1.11 Declarant, at Declarant's own expense, shall obtain a general liability insurance policy in an amount not less than \$1,000,000 for each occurrence, to cover any liability to which Owners of previously sold Units are exposed as the result of Project development by Declarant in exercising the Option to Expand the Project, as provided in this Section 8.1.

8.1.12 Each time Declarant exercises the Option to Expand the Project to add some of the Additional Land to the Project, Declarant shall send to VA a copy of the amendment to this Declaration that is recorded in the Office of the Recorder of Salt Lake County, Utah for such purpose.

8.2 Other than the exercise of the Option to Expand the Project by Declarant, in accordance with the provisions of Section 8.1 above, the Project shall not be merged with a successor condominium regime without the prior written approval of VA. Such VA approval shall not be required for Declarant to exercise the Option to Expand the Project to add the Additional Land to the Project in accordance with the provisions of Section 8.1 above.

8.3 Any liens or encumbrances arising in connection with Declarant's development of the Additional Land shall not adversely affect the rights of the existing Owners or the priority of the First Mortgages on existing Units. In the event FNMA holds any Mortgage secured by any existing Unit, at the time the Additional Land is to be added to the Project, the Owners Association shall deliver to FNMA title evidence, in a form satisfactory to FNMA, disclosing any lien, easement or other encumbrance affecting the Additional Land or that will affect the Project after the addition of the Additional Land.

9. NATURE AND INCIDENTS OF UNIT OWNERSHIP

9.1 Each Unit is and shall hereafter be a parcel of real property that may be separately held, conveyed, devised, mortgaged, encumbered, leased, rented, used, occupied, improved and otherwise affected in accordance with the provisions of this Declaration.

9.2 Subject to the limitations contained in this Declaration, each Residential Owner shall have the non-exclusive right to use and enjoy the Common Areas and Facilities and the exclusive right to occupy and use such Residential Owner's Unit and any Limited Common Areas and Facilities designated for exclusive use by such Residential Owner.

9.3 Each Residential Owner shall keep the interior of his Unit, including without limitation the Furnishings, interior walls, windows, ceilings, floors and permanent fixtures and appurtenances thereto, in a sanitary condition and in a good state of repair. In the event that any such Unit should develop an unsanitary condition or fall into a state of disrepair and in the event that the Owner of such Unit should fail to correct such condition or state of disrepair promptly following written notice from the Management Committee, the Management Committee shall have the right, at the expense of the Owner and without liability to the Owner for trespass or otherwise, to enter said Unit and correct or eliminate said unsanitary condition or state of disrepair. Residential Owners of adjoining Units may not reallocate or change the boundaries of such Units. No Residential Owner may subdivide his Unit.

9.4 The Management Committee shall have the right to enter into any Unit for the purpose of cleaning, maintenance, repairs, including emergency repairs, and for the purpose of abating a nuisance, or a known or suspected dangerous or unlawful activity.

9.5 The persons or entities who are at the time of reference Residential Owners shall, by virtue of acquiring title to the Unit, automatically be deemed to be members of the Owners Association, the characteristics and nature of which are determined by the Act, this Declaration, the Bylaws, the Articles and other applicable Utah law. Membership in the Owners Association is appurtenant to each Unit and may not be separated or severed therefrom. Every gift, devise, bequest, transfer, encumbrance, conveyance or other disposition of a Unit shall automatically be construed to be a gift, devise, bequest, transfer, encumbrance or conveyance, respectively, of the appurtenant membership in the Owners Association without the need of any separate transfer or assignment document.

9.6 Each Unit shall be deemed to be a parcel and shall be assessed separately for all taxes, assessments, and other charges of the State of Utah or of any political subdivision thereof or of any special improvement district or of any other taxing or assessing authority. All such taxes, assessments, and other charges on each respective Unit shall be separately levied against the Owner thereof. No forfeiture or sale of any Unit for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Unit.

9.7 The parking areas within the Project constitute Common Areas and Facilities and shall be constructed and utilized in compliance with all local ordinances. Certain portions of the parking areas within the Project are identified on the Map as being Limited Common Areas and Facilities, which shall be available for the exclusive use of one or more, but fewer than all of the

Units. The Management Committee shall have the right from time to time to designate which portions of the parking areas comprising Limited Common Areas and Facilities are available for the exclusive use of the Owner of a specific Unit. Such designation may change from time to time as determined by the Management Committee. The portions of the parking areas within the Common Areas and Facilities which are not designated as Limited Common Areas and Facilities shall be available for use by any of the Owners of Units within the Project or their guests or invitees, subject to such rules and regulations as may be promulgated from time to time by the Management Committee.

9.8 Any lease or rental agreement for a Unit must be in writing and must be subject to the terms of this Declaration, Bylaws, rules, and regulations, and other documentation of the Owners Association. An Owner shall not lease such Owner's Unit for an initial term of less than thirty (30) days.

10. VOTING

With respect to any matter to be voted upon by the members of the Owners Association as provided in the Bylaws each Owner of a Unit, including Declarant, either in person, by proxy, or by written ballot, shall be entitled to vote the one (1) vote appurtenant to each Unit owned by such Owner. The voting rights appurtenant to each Unit shall vest upon execution and recording of this Declaration.

11. TITLE TO UNITS

11.1 Title to a Unit within the Project may be held or owned by any person or entity in fee simple.

11.2 Title to a part of a Unit within the Project may not be separated from any other part thereof during the period of ownership, and each Unit, and the undivided interest in the Common Areas and Facilities appurtenant to each Unit shall always be conveyed, devised, encumbered and otherwise affected only as a complete Unit. Every gift, devise, bequest, transfer, encumbrance, conveyance or other disposition of a Unit shall be construed to be a gift, devise, bequest, transfer, encumbrance or conveyance, respectively, of the entire Unit, together with all appurtenant rights created by law and by this Declaration, including appurtenant membership in the Owners Association as herein set forth.

11.3 The Common Areas and Facilities shall be owned in common by all of the Owners, and no Owner may bring any action for partition thereof.

11.4 Each Owner shall have the right to encumber his interest in a Unit with a Mortgage. However, no Owner shall attempt to or shall have the right to encumber the Common Areas and Facilities or any part thereof, except the undivided interest therein appurtenant to his interest in a Unit. Any Mortgage of any Unit within the Project shall be subordinate to all of the provisions of this Declaration, and in the event of foreclosure the provisions of this Declaration shall be binding upon any Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure, or otherwise.

11.5 No labor performed or services or materials furnished with the consent of or at the request of an Owner may be the basis for the filing of a lien against the Unit of any other Owner, or against any part thereof, or against any other property of any other Owner, unless the other Owner has expressly consented to or requested the performance of such labor or furnishing of such services. Express consent shall be deemed to have been given by the Owner in the case of emergency repairs thereto. Labor performed or services or materials furnished for the Project, if authorized by the Owners Association and provided for in this Declaration, shall be deemed to be performed or furnished with the express consent of each Owner. The Owner may remove his Unit from a lien against two or more Units or any part thereof by payment to the holder of the lien of the fraction of the total sums secured by such lien which is attributable to his Unit.

11.6 Every contract for the sale of a Unit and every other instrument affecting title to a Unit within the Project may describe a Unit by the name of the Project, the recording date for this Declaration, the county wherein the Project is located and its Unit Number as indicated in this Declaration or as shown on the Map. Such description will be construed to describe the Unit, together with the undivided interest in the Common Areas and Facilities appurtenant to a Unit, and to incorporate all the rights incident to ownership of a Unit within the Project and all of the limitations on such ownership as described in this Declaration.

12. CERTAIN ADDITIONAL DEVELOPMENTAL RIGHTS

The following additional Developmental Rights are hereby granted or reserved by Declarant:

12.1 Declarant hereby reserves an easement throughout the Project for a period of eight (8) years from the recording of this Declaration for the purpose of completing all improvements contemplated by this Declaration and the Map, including but not limited to improvements to the Additional Land. Declarant's use of the easement reserved pursuant to this Section 12.1 is conditioned on the requirement that Declarant shall repair and restore any damage caused by Declarant as the result of the use of the easement by Declarant. In order for Declarant to use the easement reserved pursuant to this Section 12.1, Declarant must reasonably determine that there is not a reasonably available alternate means of access.

12.2 Declarant hereby reserves the right to maintain sales offices, management offices, signs advertising the Project, and models in any of the Units that it owns or on the Common Areas and Facilities of the Project for a period of ten (10) years from the recording of this Declaration. Declarant shall be entitled to utilize, at any one time, up to 5 Units which it owns and some or all of the Common Areas and Facilities as sales offices, management offices, and models anywhere in the Project. Declarant may relocate sales offices, management offices, and models to other Units or Common Areas and Facilities at any time.

12.3 There is hereby established a Period of Declarant Control of the Owners Association during which period Declarant shall be entitled to vote three (3) votes for every Unit owned by Declarant and during which period Declarant shall have the authority to appoint and remove the Owners Association officers and members of the Management Committee. The Period of Declarant Control shall terminate on the earlier of: (a) five (5) years after the recordation in the Office of the Recorder of Salt Lake County, Utah of the most recently

recorded amendment to this Declaration that is recorded for the purpose of expanding the Project pursuant to Section 8.1 hereof; or (b) one hundred twenty (120) days after the date 75% of the total number of Units in the Project are conveyed to Residential Owners other than Declarant, after all Additional Land has been added to the Project; or (c) the date Declarant delivers to the Owners Association written notice of Declarant's election to relinquish control of the Owners Association.

Notwithstanding the foregoing, to assure the representation of Owners other than Declarant on the Management Committee, at least twenty percent (20%) of the members of the Management Committee shall be elected solely by the vote of the Owners other than Declarant so long as a majority of the voting power of the Owners Association resides in Declarant. A member who has been elected to office solely by the vote of Owners other than Declarant may be removed from office prior to the expiration of his term of office only by the vote of at least a simple majority of the voting power residing in Owners other than Declarant. After termination of the period of Declarant control, the Management Committee shall be elected as provided in the Bylaws.

13. RESTRICTIONS ON USE

The Units, Furnishings, and Common Areas and Facilities, including but not limited to the Limited Common Areas and Facilities, except as otherwise permitted in writing by the Management Committee, shall be used in accordance with the following restrictions:

13.1 No Unit shall be used for commercial purposes; provided, however, that nothing in this Subsection shall prevent (a) Declarant or an affiliated corporation or a duly authorized agent from using any Unit owned by Declarant as sales offices and model Units or a property management office as provided in Section 14.2 hereof, or (b) any Owner or his duly authorized agent from renting his Unit from time to time.

13.2 No noxious, offensive or illegal activity 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 that is or may become a nuisance or may cause embarrassment, disturbance or annoyance to Owners.

13.3 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.

13.4 No signs, flags or advertising devices of any nature, including without limitation political, informational or directional signs or devices, shall be erected or maintained on any part of the Project, except as may be necessary temporarily to caution or warn of danger or except as may be used by Declarant as part of its sales program or as approved by the Management Committee.

13.5 Each Unit occupant shall be permitted to keep two dogs or cats (or one dog and one cat) in the Unit subject to reasonable rules and regulations established by the Management Committee.

13.6 The draperies, shades and other interior window coverings in Units shall present a uniform appearance from the outside of the Units. All draperies, shades or other interior window

coverings shall be installed or employed in each Unit by the Management Committee or with the prior inspection and written approval of the Management Committee. The Management Committee shall have the right to establish rules requiring window coverings to present a uniform appearance from the exterior of the Buildings. Residential Owners shall not erect or display any signs, banners or similar items on, from or in their Units without the prior written consent of the Management Committee.

13.7 It is intended that the outside of Buildings, including the balconies, be kept in a clean and orderly fashion. Therefore, balconies shall not be used for the storage or keeping of household items, equipment, children's toys, bicycles or other similar items. One barbeque per balcony is permitted. Patio furniture is also permitted on balconies, but the storage of household furniture on balconies is not permitted.

13.8 Except as otherwise provided in this Declaration, no Unit, or portions thereof, may be combined with one or more other Units or further divided or subdivided or a fractional portion thereof sold or conveyed so as to be held in divided ownership (as opposed to joint tenancy, tenancy in common, or other form of joint undivided ownership).

13.9 No Owner shall, without the prior written consent of the Management Committee, do any act that would impair the structural soundness or integrity of the Buildings 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 and Facilities.

13.10 There shall be no obstruction of the Common Areas and Facilities by any Owner. Owners shall neither store nor leave any of their property in the Common Areas and Facilities, other than Limited Common Areas and Facilities intended for the exclusive use by the Owner of a particular Unit, except with the prior written consent of the Management Committee.

13.11 Nothing shall be done or kept in any Unit or in the Common Areas and Facilities or any part thereof that would result in cancellation of the insurance on the Project or any part thereof, nor shall anything be done or kept in any Unit that would increase the rate of insurance on the Project or any part thereof over what the Owners Association, but for such activity, would pay, without the prior written consent of the Management Committee. Nothing shall be done or kept in any Unit or in the Common Areas and Facilities or any part thereof that 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 and Facilities or any part thereof shall be committed by any Owner or guest, lessee, licensee, or invitee of any Owner, and each Owner shall indemnify, defend and hold the Owners Association and the other Owners harmless from and against all loss resulting from any such damage or waste caused by him or his guests, lessees, licensees, or invitees.

13.12 No Owner shall violate the rules and regulations for the use of Units and Common Areas and Facilities as adopted from time to time by the Owners Association.

14. OWNERS ASSOCIATION AND MANAGEMENT COMMITTEE

14.1 The management and maintenance of the Project and the administration of the affairs of the Owners Association shall be conducted by a Management Committee consisting of

five (5) natural persons as provided in the Bylaws. The Management Committee and the officers of the Owners Association shall be elected, appointed, removed and replaced as provided in this Declaration and in the Bylaws.

14.2 Except as otherwise provided herein, the Management Committee shall have all the powers, duties and responsibilities as are now or may hereafter be provided by the Act, this Declaration and the Bylaws, including but not limited to the following:

14.2.1 To make and enforce all rules and regulations covering the operation, use and maintenance of the Project, the Units, the Common Areas and Facilities, and the Limited Common Areas and Facilities.

14.2.2 To engage the services of the Manager, accountants, attorneys, or other employees or agents and to pay to said persons a reasonable compensation therefor.

14.2.3 To operate, maintain, repair, improve and replace the Common Areas and Facilities.

14.2.4 To determine and pay the Common Expenses.

14.2.5 To assess and collect the proportionate share of Common Expenses from the Owners, as provided in Section 22 herein.

14.2.6 To grant easements and licenses and enter into contracts, deeds, leases, and/or other written instruments or documents and to authorize the execution and delivery thereof by the appropriate officers.

14.2.7 To open bank accounts and borrow money on behalf of the Owners Association and to designate the signatories therefor.

14.2.8 To purchase, hold, sell, convey, mortgage or lease any one or more Units in the name of the Owners Association or its designee.

14.2.9 To bring, prosecute and settle litigation for itself, the Owners Association and the Project.

14.2.10 To obtain insurance for the Owners Association with respect to the Units and the Common Areas and Facilities, workers' compensation insurance, and any other insurance it deems necessary or appropriate to protect the Owners and the Owners Association.

14.2.11 To repair or restore the Project following damage or destruction or a permanent taking by the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation not resulting in the removal of the Project from the provisions of the Act.

14.2.12 To own, purchase or lease, hold and sell or otherwise dispose of, on behalf of the Owners, items of personal property necessary to or convenient to the management of the business and affairs of the Owners Association and the Management Committee and to the

operation of the Project, including without limitation furniture, furnishings, fixtures, maintenance equipment, appliances and office supplies.

14.2.13 To keep adequate books and records and implement the policies and procedures for the inspection of the books and records of the Project by Owners in accordance with the terms of the Bylaws.

14.2.14 To do all other acts necessary for the operation and maintenance of the Project, including the maintenance and repair of any Unit if the same is necessary to protect or preserve the Project.

14.2.15 To prepare, adopt, amend and disseminate budgets and other information from time to time in accordance with the terms of the Bylaws.

14.2.16 To grant easements and rights-of-way over the Common Areas and Facilities and to approve signage for the Project and enter into contracts with other entities. Such contracts may, among other things, obligate the Owners Association to pay assessments and other costs associated with the maintenance of roads and other amenities that benefit the Owners Association.

14.2.17 Subject to the limitations of the Act, and any other applicable law, the Management Committee may delegate to the Manager by written agreement all of the foregoing powers, duties and responsibilities referred to in this Section 14.2.

14.2.18 The Management Committee may convey or subject to a Mortgage all or portions of the Common Areas and Facilities of the Project, if authorized by the Owners entitled to cast a majority of the Total Votes of the Owners Association. However, all Owners of Units to which any Limited Common Areas and Facilities are appurtenant must agree to convey those Limited Common Areas or Facilities or subject the same to the Mortgage. Any such agreement shall comply with all other applicable provisions of the Act.

14.2.19 Members of the Management Committee, the officers and any assistant officers, agents and employees of the Owners Association (i) shall not be liable to the Owners as a result of their activities as such for any mistake of judgment, negligence, or otherwise, except for their own willful misconduct or bad faith; (ii) shall have no personal liability in contract to an Owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the Owners Association in their capacity as such; (iii) shall have no personal liability in tort to any Owner or any person or entity, direct or imputed, by virtue of acts performed by them, except for their own willful misconduct or bad faith, nor for acts performed for them in their capacity as such; and (iv) shall have no personal liability arising out of the use, misuse or condition of the Project, which might in any way be assessed against or imputed to them as a result of or by virtue of their capacity as such.

14.2.20 When a member of the Management Committee is sued for liability for actions undertaken in his role as a member of the Management Committee, the Owners Association shall indemnify him for his losses or claims, and undertake all costs of defense, until and unless it is proven that he acted with willful or wanton misfeasance or with gross negligence. After such proof, the Owners Association is no longer liable for the cost of defense and may

recover costs already expended from the member of the Management Committee who so acted. Members of the Management Committee are not personally liable to the victims of crimes occurring at the Project. Punitive damages may not be recovered against the Owners Association, but may be recovered from persons whose activity gave rise to the damages.

14.3 Neither the Management Committee nor the Manager shall sell any property of the Association except as permitted by the Act.

14.4 The Management Committee may enter into a contract with the Manager for the management of the Project. Such contract shall comply with the requirements of Section 14.2 hereof as applicable to the Project.

14.5 The Owners Association, acting through the Management Committee, shall make available to prospective purchasers of Units within the Project current copies of this Declaration, the Articles, the Bylaws, other rules and regulations adopted by the Management Committee governing or pertaining to the Project, and the most recent audited financial statement of the Owners Association, if an audited financial statement is prepared. As used in this Section 14.5, the term "available" shall at least mean available for inspection, upon request, during normal business hours or under other reasonable circumstances.

14.6 Declarant shall not bind the Owners Association, either directly or indirectly, to any of the following agreements, unless the Owners Association shall have a right of termination thereof which is exercisable without penalty at any time after the expiration of the Period of Declarant Control, upon not more than ninety (90) days notice to the other party thereto:

(a) any management contract, employment contract, or lease of recreational or parking areas or facilities; or

(b) any contract or lease, including franchises and licenses, to which Declarant is a party.

15. MAINTENANCE, ALTERATION AND IMPROVEMENT

15.1 The maintenance, replacement and repair of the Common Areas and Facilities, including without limitation all recreational facilities and the private roads, driveways, walkways and parking lots within the Project, shall be the responsibility of the Owners Association, and the cost thereof shall be a Common Expense. The Owners Association shall also maintain, replace and repair all common porches, and decks and all conduits, ducts, plumbing, and wiring and other central facilities for the furnishing of heat, air conditioning, gas, light, power, water and sewer service. All incidental damages caused to a Unit by the maintenance, replacement and repairs of the Common Areas and Facilities or utility services shall be repaired promptly and the cost thereof charged as a Common Expense.

15.2 Some of the Common Areas and Facilities are or may be located within the Units or may be conveniently accessible only through the Units. The Owners Association shall have the irrevocable right to have access to each Unit and to all Common Areas and Facilities from time to time during such reasonable hours as may be necessary for the cleaning, repair or replacement of any Common Areas and Facilities or for making any emergency repairs at any

time and when necessary to prevent damage to the Common Areas and Facilities or to any Unit. The Owners Association shall also have the irrevocable right to have access to any Unit when necessary in connection with any cleaning, maintenance, repair, replacement, painting, landscaping, construction or reconstruction for which the Owners Association is responsible or for the purpose of abating a nuisance or a known or suspected dangerous or unlawful condition. Such entry shall be made with as little inconvenience to the Owners as is practicable under the circumstances and any damage caused thereby shall be repaired by the Owners Association.

16. INSURANCE

16.1 Commencing not later than the time of the first conveyance of a Unit to an Owner other than Declarant, the Owners Association shall maintain, to the extent reasonably available, insurance as follows:

16.1.1 The Owners Association shall maintain property insurance on the Common Areas and Facilities, including any fixtures and personal property owned by the Owners Association, insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils. Furthermore, any fixtures, equipment or other personal property within Units financed by a mortgage to be purchased by FNMA or FHLMC shall be insured by such policy. All such insurance policies shall have the standard Mortgagee clause and provide for notice to the Mortgagee at least ten days before lapse, material modification or cancellation of the policy. The total amount of insurance, without regard to any deductibles, shall be not less than one hundred percent (100%) of the replacement value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies. In addition, the Owners Association shall obtain, if available, an Inflation Guard Endorsement, an Agreed Amount Endorsement, a Steam Boiler and Machinery Coverage Endorsement (with minimum liability of \$2,000,000 per accident) if the Project has a steam boiler, either a Guaranteed Replacement Cost Endorsement or a Replacement Cost Endorsement, and a Building Ordinance or Law Endorsement.

16.1.2 The Owners Association shall maintain liability insurance in an amount determined by the Management Committee but not less than \$5,000,000 for all claims of personal injury, death and/or property damage arising out of a single occurrence pertaining to property damage in each occurrence covering 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 Units and the Common Areas and Facilities. Such insurance policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Owners Association, its committee members, its officers or the Owners. The scope of coverage must include all other coverage in the kinds and amounts required by private institutional mortgage investors for similar projects in location, construction and use.

16.1.3 Such other insurance in types and amounts as determined from time to time by the Management Committee.

16.2 The insurance maintained under Section 16.1 shall include the Units but need not include improvements and betterments installed by Owners or the personal property of Owners. The Owners Association may carry any other insurance it deems appropriate to protect the Owners Association or the Owners.

16.3 Where applicable, insurance policies carried by the Owners Association shall include the following provisions:

16.3.1 Each Owner, or the Owners Association, as agent for each of the Owners, shall be an insured person under the policy with respect to liability or loss arising out of his interest in the Common Areas and Facilities or membership in the Owners Association.

16.3.2 The insurer waives its right to subrogation under the policy against any Owner or members of his household.

16.3.3 No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Owners Association, will void the policy or operate as a condition to recovery under the policy by another person.

16.3.4 If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same property covered by the policy, then the Owners Association's policy provides primary insurance.

16.3.5 All Owners as a class shall be named as additional insureds in any policy issued to the Owners Association.

16.3.6 The insurer shall acknowledge the insurance trust agreement, if any.

16.4 An insurance policy issued to the Owners Association shall not prevent an Owner from obtaining insurance for his own benefit.

16.5 Any loss covered by the property policy under Section 16.1.1 shall be adjusted with the Owners Association, but the insurance proceeds for that loss shall be payable to an insurance trustee designated for that purpose by the Owners Association and not to the Owners Association or any Mortgagee. The insurance trustee shall hold any insurance proceeds in trust for the Owners Association, Owners and Mortgagees as their interests may appear. The Owners Association or the trustee, as applicable, on behalf of and as trustee for all Owners and Mortgagees, individually and collectively, shall have the authority to adjust losses with respect to insurance secured and maintained by the Owners Association, to pursue claims, negotiate and settle claims, and to enter into agreements relative to the same, and each Owner shall be deemed to have appointed the Owners Association or the trustee, as applicable, as an attorney-in-fact for such purpose. Subject to the provisions of Section 17 of this Declaration, the proceeds shall be disbursed first for the repair or restoration of the damaged property, and the Owners Association, Owners, and Mortgagees shall not be entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the Project is terminated.

16.6 An insurer that has issued an insurance policy under this Section shall issue certificates or memoranda of insurance to the Owners Association and, on written request, to any Owner or Mortgagee. The insurer issuing the policy shall not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Owners Association, each Owner, and each Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

16.7 This Section does not prohibit the Management Committee from acquiring additional or greater amounts of coverage as it reasonably deems appropriate.

16.8 The Management Committee shall require the Manager to obtain and maintain fidelity bonding of the Manager and employees of the Owners Association having control of, or access to, the funds of the Owners Association with loss coverage ordinarily not less than the maximum amount of funds of the Owners Association over which the principal(s) under the bond may reasonably be expected to have control or access at any time. The bonding company shall not cancel or refuse to renew the fidelity bond until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Owners Association, each Owner, and each Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last known addresses. The bonding agreement shall require ten (10) days written notice to the Owners Association or the insurance trustee prior to the delivery of the same notice to each servicer that services a FNMA-owned or FNMA-securitized mortgage in the Project.

16.9 All insurance policies shall be written by a company holding a "B" or better general policyholder's rating or a "6" or better financial performance index rating in Best's Insurance Reports, an "A" or better general policyholder's rating and a financial size category of "VIII" or better in Best's Insurance Reports - International Edition, an "A" or better rating in Demotech's Hazard Insurance Financial Stability Ratings, a "BBBq" qualified solvency ratio or a "BBB" or better claims-paying ability rating in Standard and Poor's Insurer Solvency Review, or a "BBB" or better claims-paying ability rating in Standard and Poor's International Confidential Rating Service. Each insurer must be specifically licensed to transact business within the State of Utah. Policies are unacceptable where (a) under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against the Owners Association, any Owners or a Mortgagee; (b) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders, or members; or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent a Mortgagee or the Owners Association from collecting insurance proceeds. The maximum deductible amount for policies covering Units and Common Areas and Facilities shall be the lesser of \$10,000 or 1% of the policy face amount.

17. DESTRUCTION OR DAMAGE

17.1 In case of fire or any other disaster that causes damage or destruction to all or part of the Project, the Management Committee, with the help of an independent appraiser, shall determine the percentage that was destroyed or substantially damaged. If less than two-thirds (2/3) of the Project was destroyed or substantially damaged, the Management Committee shall arrange for the prompt repair and restoration thereof, using the proceeds of insurance on the Project for that purpose, and the Owners shall be liable for assessment for any deficiency in

proportion to their respective ownership interests in the Common Areas and Facilities. Reconstruction of the Project shall mean restoring to substantially the same condition existing prior to the damage or destruction, with each Unit and the Common Areas and Facilities having approximately the same vertical and horizontal boundaries as before, unless the destruction or damage is by reason of eminent domain, in which event the provisions of Section 19 hereof shall apply.

17.2 If two-thirds (2/3) or more of the Project is destroyed or substantially damaged, the Management Committee shall, within one hundred (100) days after such destruction or damage, call a special meeting of the Owners Association for the purpose of deciding whether or not the Project shall be repaired and restored. If Owners holding three fourths (3/4) or more of the Total Votes of the Owners Association in the Project, in person or by proxy, vote to repair or restore the Project, the Management Committee shall promptly arrange for the reconstruction of the Project using the proceeds of insurance therefrom for that purpose, and the Owners shall be liable for assessment for any deficiency in proportion to their respective ownership interest in the Common Areas and Facilities. If the destruction or damage is by reason of eminent domain, the provisions of Section 19 hereof shall apply. At such election, if Owners holding three-fourths (3/4) or more of the Total Votes of the Owners Association do not vote either in person or by proxy to make provision for reconstruction, the Management Committee shall record with the Recorder of Salt Lake County, Utah a notice that complies with Section 57-8-31 of the Act setting forth such facts, and upon the recording of such notice (i) the Project shall be deemed to be owned in common by the Owners as tenants in common, each Owner owning an undivided interest in the Project equal to his ownership interest in the Common Areas and Facilities; (ii) any liens affecting any of the Units shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the Owners in the Project; and (iii) the Project shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the Project, shall be considered as one fund and shall be divided among all Owners in an amount equal to the ownership interest owned by each Owner in the Project, after first paying out of the respective shares of the Owners, to the extent sufficient for such purposes, all sums necessary to satisfy liens on the undivided interest in the Project owned by each Owner.

18. TERMINATION

18.1 In the event that such fraction or percentage of the Project is destroyed or substantially damaged so as to bring into effect the provisions of paragraph 17.2 above and the Owners do not vote to reconstruct the Project as provided therein, the Project shall be removed from the provisions of the Act without further agreement one hundred and one (101) days after such destruction or damage.

18.2 All of the Owners may remove the Project from the provisions of the Act by an instrument duly recorded to that effect, provided that the holders of all liens affecting any of the Units consent or agree by instruments duly recorded that their liens are transferred to the fractional ownership interest of the Owners in the Project; provided further, as long as Declarant has ownership of Units in the Project, its consent shall also be required to remove the Project from the provisions of the Act.

18.3 After removal of the Project from the Act, the Owners shall own the Project and all assets of the Owners Association as tenants in common, and the respective Mortgagees and lienors shall have mortgages and liens upon the respective undivided interests of the Owners. Such undivided interests of the Owners shall be the same as the ownership interest in the Common Areas and Facilities appurtenant to the Units prior to removal from the Act.

18.4 This Section 18 cannot be amended without consent of all Owners and all record owners of Mortgages on Units.

19. EMINENT DOMAIN

19.1 Whenever any proceeding is instituted that could result in the temporary or permanent taking, injury or destruction of all or part of the Common Areas and Facilities or one or more Units or portions thereof by the exercise of the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation, the Management Committee and each Owner shall be entitled to notice thereof and the Management Committee shall, and the Owners at their respective expense may, participate in the proceedings incident thereto. The Management Committee, on behalf of all Owners, individually and collectively, shall have the authority to represent the Owners Association and all Owners and in such regard shall represent their interests in proceedings, negotiations, settlement and agreements, and each Owner shall be deemed to have appointed the Management Committee as attorney-in-fact for such purpose.

19.2 With respect to the Common or Limited Common Areas and Facilities, any damages or awards shall be determined for such taking, injury or destruction as a whole and not for each Owner's interest therein. After such determination, each Owner shall be entitled to a share in the damages in the same proportion as his ownership interest in the Common Areas and Facilities. This provision does not prohibit a majority of the Owners from authorizing the Management Committee to use such damages or awards for replacing or restoring the Common Areas and Facilities so taken on the remaining land or on other acquired land, provided that this Declaration and the Map are duly amended.

19.3 With respect to one or more Units or portions thereof, the damages or awards for such taking shall be deemed to be proceeds from insurance on account of damages or destruction pursuant to Section 17 above and shall be deposited with the Management Committee as trustee. Even though the damage or awards may be payable to one or more Owners, the Owners shall deposit the damages or awards with the Management Committee as trustee. In the event an Owner refuses to so deposit his award with the Management Committee, then at the option of the Management Committee, either a special assessment shall be made against the defaulting Owner and his Unit in the amount of this award or the amount of such award shall be set off against the sum hereafter made payable to such Owner.

19.4 In the event the Project is removed from the provisions of the Act pursuant to Section 18 above, the proceeds of the damages or awards shall be distributed or used in accordance with the Owners respective undivided interest in the Common Areas and Facilities, and the Owners of the affected Units shall have the rights provided in Section 17.2 above.

19.5 If one or more Units are taken, in whole or in part, and the Project is not removed from the provisions of the Act, the taking shall have the following effects:

19.5.1 If the taking reduces the size of a Unit and the remaining portion of the Unit may be made tenantable, the Unit shall be made tenantable. If the cost of such work exceeds the amount of the award, the additional funds required shall be assessed against the Owners of the Unit. The balance of the award, if any, shall be distributed to the Mortgagee of such Unit, to the extent of the unpaid balance of its Mortgage, and the excess, if any, shall be distributed to the Owner of such Unit.

19.5.2 If the taking destroys or so reduces the size of a Unit that it cannot be made tenantable, the award shall be distributed to the Mortgagee of such Unit to the extent of the unpaid balance of its Mortgage and the excess, if any, shall be distributed to the Owner of such Unit. The remaining portion of such Unit, if any, shall become a part of the Common Areas and Facilities and shall be placed in condition for use by all Owners in the manner approved by the Management Committee. The ownership interest in the Common Areas and Facilities appurtenant to the Units that continue as part of the Project shall be adjusted in accordance with the formula set forth in Section 8.1.7 of this Declaration, to distribute the ownership of the Common Areas and Facilities among the reduced number of Owners.

19.6 Changes in Units, in the Common Areas and Facilities, and in the ownership of the Common Areas and Facilities that are affected by the taking referred to in this Section 19 shall be evidenced by an amendment to this Declaration and the Map, which need not be approved by the Owners.

20. MORTGAGEE PROTECTION

20.1 The Management Committee shall maintain a roster of Owners, which roster shall include the mailing addresses of all Owners. The Management Committee will also maintain a roster containing the name and address of each First Mortgagee of a Unit, if the Management Committee is provided notice of such First Mortgage by way of a certified copy of the recorded instrument evidencing the First Mortgage and containing the name and address of the First Mortgagee and a statement that the Mortgage is a First Mortgage. The First Mortgagee shall be stricken from the roster upon request by such First Mortgagee or upon receipt by the Management Committee of a certified copy of a recorded release or satisfaction of the First Mortgage. Notice of such removal shall be given to the First Mortgagee unless the removal is requested by the First Mortgagee.

20.2 The Management Committee shall give to any First Mortgagee on the roster written notification of any default by the mortgagor of the respective Unit in the performance of such mortgagor's obligations under this Declaration that remains uncured for sixty (60) consecutive days. Furthermore, the Management Committee shall provide any First Mortgagee with any written notice as described in Section 20.6 below, upon First Mortgagee's written request for such notice (such request to include the number of the Unit securing the First Mortgage).

20.3 Except as otherwise required by the Act, a First Mortgagee of any Unit who comes into possession of the Unit pursuant to the remedies provided in the First Mortgage or foreclosure of the First Mortgage, or by way of deed or assignment in lieu of foreclosure shall take the property free of any claims for unpaid assessments or charges against the mortgaged Unit which accrued prior to the time such First Mortgagee comes into the possession of the Unit, except for claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessment or charges to all Units, including the mortgaged Unit. Furthermore, upon such foreclosure or deed or assignment in lieu of foreclosure, any rights with respect to any Unit which have been suspended with respect to the defaulting Owner shall be reinstated.

20.4 Except as otherwise required by the Act, any liens created under the Act, pursuant to this Declaration or the Bylaws upon any Unit shall be subject and subordinate to and shall not affect the rights of a First Mortgagee under a First Mortgage on such Unit made in good faith and for value; provided, however, that any lien created after a foreclosure sale shall have the same effect and be enforced in the same manner as provided in the Act, this Declaration and/or the Bylaws.

20.5 No amendment to this paragraph shall adversely affect a First Mortgagee who has recorded a valid First Mortgage prior to the recordation of any such amendment.

20.6 First Mortgagees shall have the following rights:

20.6.1 The right to inspect Owners Association documents and records on the same terms as the Owners;

20.6.2 The right to receive written notice of all material amendments to this Declaration, the Articles, and the Bylaws;

20.6.3 The right to receive written notice of any extraordinary actions of the Owners Association;

20.6.4 The right to receive written notice of any property loss, condemnation or eminent domain proceeding affecting the Common Areas and Facilities resulting in losses greater than 10% of the annual budget or affecting any Unit insured by the Owners Association in which the First Mortgagee has an interest;

20.6.5 The right to receive written notice of any termination, lapse or material modification of an insurance policy held by the Owners Association;

20.6.6 The right to receive written notice of any default by an Owner of a Unit subject to a First Mortgage held by the First Mortgagee in paying assessments or charges to the Owners Association which remains uncured for sixty (60) consecutive days;

20.6.7 The right to receive written notice of any proposal to terminate this Declaration or dissolve the Owners Association at least 30 days before any such action is taken;

20.6.8 The right of a majority of the First Mortgagees to demand professional management for the Owners Association; and

20.6.9 The right of a majority of the First Mortgagees to demand an audit, at their expense, of the financial records of the Owners Association.

21. AMENDMENT

21.1 Except as otherwise provided in this Declaration or by the Act, the provisions of this Declaration may be amended only by the affirmative vote or written assent of at least a bare majority of the Total Votes of the Owners Association. During the Period of Declarant Control, Declarant shall send to the VA a copy of every amendment to this Declaration immediately following the effective date of the amendment. The percentage of votes necessary to amend a specific clause in this Declaration shall not be less than the percentage of affirmative votes or written assents required for action to be taken under that clause. Any amendment shall be evidenced by an instrument containing a certification from an officer of the Owners Association designated for that purpose, or in the absence of such designation, by the President of the Owners Association that the appropriate consent has been obtained, and shall be duly recorded in the Office of the Recorder of Salt Lake County, Utah. Notwithstanding anything to the contrary contained or implied herein, Declarant reserves the right, without the consent of any other Owners, to amend any provisions of this Declaration to comply with the then existing statutes, regulations or other requirements of the Utah Department of Commerce-Real Estate Division or any other federal, state or local regulatory authority affecting the Project.

21.2 A "material amendment" to this Declaration or an "extraordinary action" (as defined in this Section 21.2) must be approved by (a) Owners entitled to cast at least 67% of the votes of Owners who are present, in person or by proxy or by written ballot, and who vote at such meeting of the Owners Association held in accordance with Subsection 21.2.3 below, and such vote must include at least (i) a majority of the votes of all Owners who are present, in person or by proxy or by written ballot, and who vote at such meeting of the Owners Association other than the Declarant, or (ii) 67% of the Total Votes of the Owners Association, and such vote must include the vote of a majority of all of the Owners other than Declarant, and (b) 51% of the First Mortgagees of the individual Units. Notwithstanding the foregoing, Declarant reserves the right, without the consent of the other Owners, to make changes or revisions to this Declaration to comply with the requirements of HUD, Fannie Mae, Freddie Mac or VA.

21.2.1 For purposes of this Section 21.2, a "material amendment" includes adding, deleting or modifying any provision of this Declaration regarding the following:

- (a) Assessment basis or assessment liens;
- (b) Any method of imposing or determining any charges to be levied against individual Unit Owners;
- (c) Reserves for maintenance, repair or replacement of Common Areas and Facilities;
- (d) Maintenance obligations;

- Facilities;
- (e) Allocation of interests or rights to use Common Areas and
- Project;
- (f) Any scheme of regulation or enforcement of standards for maintenance, architectural design or exterior appearance of improvement on Units;
 - (g) Reduction of insurance requirements;
 - (h) Restoration or repair of Common Areas and Facilities;
 - (i) The addition, annexation or withdrawal of land to or from the
 - (j) Voting rights;
 - (k) Redefinition of any Unit boundaries;
 - (l) Convertibility of Units into Common Areas and Facilities or vice versa;
 - (m) Restrictions affecting leasing or sale of Unit; or
 - (n) Any provision which is for the express benefit of Mortgagees.

21.2.2 For purposes of this Section 21.2, an "extraordinary action" includes:

- (a) Merging or consolidating the Owners Association (other than with another nonprofit entity formed for purposes similar to the Owners Association);
- (b) Determining not to require professional management if that management has been required by the Owners Association documents, a majority of First Mortgagees or a majority vote of the Owners;
- (c) Expanding the Owners Association to include land not previously described in this Declaration, as Additional Land, which increases the overall land area of the Project or number of Units by more than 10%;
- (d) Abandoning, partitioning, encumbering, mortgaging, conveying, selling or otherwise transferring or relocating the boundaries of the Common Areas and Facilities (except for (i) granting easements which are not inconsistent with or which do not interfere with the intended use of the Common Areas and Facilities; (ii) dedicating any portion of the Common Areas and Facilities as required by a public authority; (iii) limited boundary-line adjustments made in accordance with the provisions of this Declaration or (iv) transferring any portion of the Common Areas and Facilities pursuant to a merger or consolidation with a nonprofit entity formed for purposes similar to the Owners Association);
- (e) Using insurance proceeds for purposes other than construction or repair of the insured improvements; or

(f) Making capital expenditures (other than for repair or replacement of existing improvements) during any period of 12 consecutive months costing more than 20% of the annual operating budget of the Owners Association).

21.2.3 For meetings of the Owners to approve a material amendment or extraordinary action: (i) at least 25 days advance notice to all Owners is required (at least 10 days notice is required in the case of a meeting for other purposes); (ii) the notice must state the purpose of the meeting and contains a summary of any material amendments or extraordinary actions proposed; (iii) the notice must contain a copy of the proxy or ballot that can be cast in lieu of attendance at the meeting; and (iv) the quorum requirement is at least 20% of the Total Votes of the Owners Association.

21.2.4 Any material amendment which changes the rights of any specific class of Owners must also be approved by Owners entitled to cast at least 51% of the votes of all Owners of such class present, in person or by proxy or by ballot, and voting at any meeting of the Owners Association held in accordance with Subsection 21.2.3 above, or at least 51% of the total authorized votes of all Owners of such class.

21.2.5 The following material amendments and extraordinary actions must be approved by Owners entitled to cast at least 67% of the Total Votes of the Owners Association, including at least a majority of the Total Votes of the Owners Association entitled to be cast by Owners other than Declarant, and by 67% of the First Mortgagees of the individual Units:

- (a) Termination of this Declaration or other termination of the Project;
- (b) Dissolution of the Owners Association, except pursuant to a consolidation or merger; and
- (c) Conveyance by the Owners Association of all Common Areas and Facilities.

21.2.6 During the Period of Declarant Control, all material amendments and extraordinary actions must have the approval of VA, if VA has guaranteed any loans secured by Units in the Project.

21.2.7 All other amendments (other than material amendments or extraordinary actions) must be approved by at least a majority of the votes entitled to be cast by all Owners present, in person or by proxy or by ballot, and voting at any meeting of the Owners Association at which a quorum is present, or in writing by Owners entitled to cast at least a majority of the Total Votes of the Owners Association.

22. ASSESSMENT OF UNITS BY THE OWNERS ASSOCIATION

22.1 The making and collection of assessments by the Owners Association from Owners of Units for their share of Common Expenses shall be pursuant to the Bylaws and subject to the following provisions:

22.1.1 Each Owner, including Declarant, for each Unit which it owns, shall be liable for a proportionate share of the Common Expenses, such share being the same as the ownership interest in the Common Areas and Facilities appurtenant to the Unit owned by such Owner. Two separate and distinct funds shall be created and maintained hereunder; one for operating expenses and one for capital expenses. Such combined expenses shall constitute the Common Expenses, and the funds received from Common Assessments under this Section 22 shall be the Common Expense Fund. Common Assessments shall include both Regular Common Assessments and Special Common Assessments. Until the Owners Association makes an assessment for Common Expenses, the Declarant shall pay all Common Expenses. After an assessment has been made by the Owners Association, Regular Common Assessments must be made at least annually, based on a budget adopted at least annually by the Owners Association in accordance with the provisions of this Declaration and the Bylaws. Regular Common Assessments shall be levied against each separate Unit, and shall commence as to all Units of the Project on the first day of the month following the closing of the first sale of a Unit.

22.1.2 The Owners Association shall provide notice, by first class mail to all Owners, of any increase in the Regular Common Assessments not less than thirty (30) nor more than sixty (60) days prior to the date the increased Regular Common Assessment is due.

22.1.3 In addition to the Regular Common Assessments, the Association may levy in any calendar year Special Common Assessments applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, or a described capital improvement upon any Common Areas and Facilities, including the necessary fixtures and personal property related thereto, and other costs, expenses of operation or shortfalls in the collection of Common Assessments from the Owners. The portion of any Special Common Assessment levied against a particular Unit shall be equal to the percentage of undivided interest in the Common Areas and Facilities appurtenant to such Unit. The Management Committee shall provide notice by first class mail to all Owners of any Special Common Assessments not less than thirty (30) nor more than sixty (60) days prior to the date such Assessment is due.

22.1.4 All Common Assessments shall be due as determined pursuant to the Bylaws. Common Assessments and any installments thereof not paid on or before ten (10) days after the date when due shall bear interest at the rate of eighteen percent (18%) per annum, or at such lower rate of interest as may be set by the Management Committee, from the date when due until paid. Furthermore, Owners who do not pay their Common Assessments when due shall be subject to a late fee in the amount of \$5.00 per day, plus interest, adjustable from year to year at the discretion of the Management Committee pursuant to the Cost of Living Index. Any payments of Common Assessments shall be first applied to accrued interest and late fees, and then to the Common Assessment payment first due. All Common Assessments to pay a judgment against the Owners Association may be made only against the Units in the Project at the time the judgment was entered, in proportion to their liabilities for Common Expenses. If any Common Expense is caused by the misconduct of any Owner, the Owners Association may assess that expense exclusively against such Owner's Unit(s). If the Owners' percentage interests in the Common Areas and Facilities are reallocated, assessments for Common Expenses and any installment thereof not yet due must be recalculated in accordance with the reallocated percentage interests of the Owners.

22.1.5 The Management Committee shall have the right to assess a fine against the Owner of a Unit, after the requirements of this Section 22.1.5 have been met, for a violation of the rules and regulations of the Owners Association, which have been promulgated in accordance with the Act, this Declaration and the Bylaws. Before assessing a fine against the Owner of a Unit, the Management Committee shall give written notice to the Owner of the Unit of the violation, which notice shall inform the Owner that a fine will be imposed if the violation is not cured within the time limit provided in this Declaration, the Bylaws or the rules and regulations adopted by the Management Committee, which cure period shall be in any event at least 48 hours. A fine assessed under this Section 22.1.5 shall: (a) be made only for a violation of a rule or regulation which is specifically listed in this Declaration, the Bylaws or the rules and regulations adopted by the Management Committee as an offense which is subject to a fine; (b) be in the amount specifically provided for in this Declaration, the Bylaws or the rules and regulations for that specific type of violation, not to exceed \$500; and (c) accrue interest at the rate of eighteen percent (18%) per annum, or at such lower rate of interest as may be set by the Management Committee, if the fine is not paid on or before ten (10) days after the date that the notice of the fine is sent to the Owner. Cumulative fines for a continuing violation may not exceed \$500 per month. The Owner of a Unit who is assessed a fine under this Section 22.1.5 may request an informal hearing to protest or dispute the fine by delivering written notice to the Management Committee of the request for a hearing, which notice shall be delivered to the Management Committee within thirty (30) days after the date the fine is assessed. The informal hearing before the Management Committee shall occur within thirty (30) days after the date that the Owner of the Unit delivers to the Management Committee written notice requesting the hearing. At the hearing, one or more members of the Management Committee shall present in an informal setting evidence of the violation of the rule or regulation which gave rise to the fine. The Owner contesting the fine shall be entitled to present evidence in an informal setting to challenge the alleged occurrence of the violation of the rule or regulation and such other evidence and information as the Owner determines to be applicable or appropriate. The Management Committee shall issue its decision in writing with respect to such Owner's protest or dispute within ten (10) days following the conclusion of the hearing. No interest or late fees may accrue until after the hearing has been conducted and a final decision has been rendered. The Owner of a Unit may appeal a fine issued under this Section 22.1.5 by initiating a civil action within one hundred eighty 180 days after: (a) a hearing has been held and a final decision has been rendered by the Management Committee as described in this Section 22.1.5; or (b) the time for the Owner to request an informal hearing under this Section 22.1.5 has expired without the Owner making such a request. A fine assessed under this Section 22.1.5 which remains unpaid after the time has expired for an Owner to commence a civil action to appeal the fine, as provided in the foregoing sentence, becomes a lien against the Unit owned by such Owner within the Project in accordance with the same standards as a lien for the non-payment of Common Assessments as provided in Section 23.1.6 of this Declaration.

22.1.6 There shall be a lien upon the applicable Unit for all unpaid Regular and Special Common Assessments, together with late fees, interest and costs (including attorneys' fees) charged pursuant to this Declaration and the Act and for unpaid fines as provided in Section 22.1.5 hereof. The lien for unpaid Regular and Special Common Assessments, fines, and related charges shall be effective upon recordation in the Office of the Recorder of Salt Lake County, Utah of a written notice of lien by the Management Committee or the Manager. Such lien shall be superior (prior) to all other liens and encumbrances except liens and encumbrances

recorded before recordation of this Declaration, a Mortgage on a Unit guaranteed by VA, a First Mortgage on a Unit as provided for in Section 20.3 hereof and assessments, liens and charges in favor of the state or any political subdivision thereof, for taxes and other governmental assessments or charges past due and unpaid on the Unit. The sale or transfer of any Unit pursuant to mortgage foreclosure of a First Mortgage or any proceeding in lieu thereof extinguishes the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer of a Unit pursuant to a mortgage foreclosure of a First Mortgage or any proceeding in lieu thereof relieves such Unit from liability for any assessments thereafter becoming due or from the lien thereof. Such lien may be enforced by judicial foreclosure or by non-judicial foreclosure in the same manner in which mortgages and deeds of trust on real property may be foreclosed in the State of Utah. A lien for unpaid assessments shall be enforced in accordance with the provisions of this Section 22 or the then applicable provisions of the Act. The lien procedures described herein do not prohibit actions to recover sums for which the Act creates a lien or prohibit the Owners Association from taking a deed in lieu of foreclosure. A judgment or decree in any action brought hereunder must include costs and reasonable attorneys' fees for the prevailing party. The Management Committee upon written request shall furnish to an Owner a statement setting forth the amount of unpaid assessments against the Unit. This statement must be furnished within ten (10) business days after receipt of the request and is binding on the Owners Association, the Management Committee, the Manager and every Owner, in favor of all who rely on such statement in good faith. All Regular and Special Common Assessments, fines, late fees, interest and costs payable by an Owner to the Owners Association, as provided in this Declaration, shall be the personal obligation of the Owner who is the Owner of the applicable Unit at the time the Regular or Special Common Assessment, fines or other charge is assessed. Even though the lien against the applicable Unit for all unpaid Regular and Special Common Assessments, fines, interest and costs continues until paid as provided in this Declaration, the personal obligation of an Owner for delinquent amounts shall not pass to such Owner's successor in title or interest, unless such delinquent amounts are assumed by the successors or unless required by applicable law.

22.2 The Management Committee shall include in the periodic assessments to the Owners amounts representing sums to be set aside and accumulated in a reserve fund to be used for the periodic maintenance, repair and replacement of the Common Areas and Facilities of the Project. Additionally, the Management Committee shall establish a working capital fund for the initial months of the Project operations equal to at least a 2 months estimated Regular Common Assessment for each Unit.

22.3 The Management Committee shall not expend funds designated as reserves for any purpose other than the repair, restoration, replacement or maintenance of major components of the Common Areas and Facilities for which the Owners Association is responsible and for which the reserve fund was established or for litigation involving such matters. Nevertheless, the Management Committee may authorize the temporary transfer of money from the reserve account to the Owners Association's operating account from time to time to meet short-term cash flow requirements and pay other expenses. Any such funds so transferred shall constitute a debt of the Owners Association, and shall be restored and returned to the reserve account within three (3) years of the date of the initial transfer; provided, however, the Management Committee may, upon making a documented finding that a delay in the restoration of such funds to the reserve account would be in the best interests of the Project and the Owners Association, delay such

restoration until the time it reasonably determines to be necessary. The Management Committee shall exercise prudent fiscal management in the timing of restoring any transferred funds to the reserve account and shall, if necessary, levy a Special Common Assessment to recover the full amount of the expended funds within the time limit specified above. Any such Special Common Assessment shall not be subject to the limitations set forth in Section 22.1.3 hereof. If the current replacement value of the major components of the Common Areas and Facilities which the Owners Association is obligated to repair, replace, restore or maintain is equal to or greater than one-half of the total budgeted Common Expenses for any fiscal year, then at least once every three (3) years the Management Committee shall cause a study to be conducted of the reserve account of the Owners Association and its adequacy to satisfy anticipated future expenditure requirements. The Management Committee shall thereafter annually review the reserve account study and shall consider and implement necessary adjustments to reserve account requirements and funding as a result of that review. Any reserve account study shall include, at a minimum:

(a) Identification of the major components which the Owners Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a useful life of less than thirty (30) years;

(b) Identification of the probable remaining useful life of the items identified in subparagraph a, above, as of the date of the study;

(c) An estimate of the cost of repair, replacement, restoration or maintenance of each item identified in subparagraph a, above, during and at the end of its useful life; and

(d) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore or maintain each item during and at the end of its useful life, after subtracting total reserve funds as of the date of the study.

For purposes of this Section, the term "reserve account requirements" means the estimated funds which the Management Committee has determined are required to be available at a specified point in time to repair, replace or restore those major components which the Owners Association is obligated to maintain.

22.4 If an Owner shall at any time lease his Unit and shall default in the payment of assessments, the Management Committee may, at its option, so long as such default shall continue, demand and receive from any tenant of the Owner the rent due or becoming due, and the payment of such rent to the Management Committee shall be sufficient payment and discharge of such tenant and the Owner for such assessments to the extent of the amount so paid.

23. EASEMENTS

23.1 If any part of the Common Areas and Facilities encroaches or shall hereafter encroach upon a Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas and Facilities, or upon an adjoining Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachments

shall not be considered to be encumbrances either on the Common Areas and Facilities or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any improvement constructed or to be constructed within the Project, by error in the Map, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

23.2 Improvements, including Units, Common Areas and Facilities and Limited Common Areas and Facilities, constructed as subsequent phases of the Project, if any, may encroach upon portions of the Common Areas and Facilities of earlier phases of the Project. A perpetual easement for such encroachment and the activities necessary to repair, maintain and operate such improvements is hereby granted.

23.3 Declarant shall have a transferable easement over, across and within the Property for the purposes of (i) completing construction of the Project and improvements therein as shown on the Map and for doing all things reasonably necessary or appropriate in connection therewith, (ii) connecting the Buildings to other adjoining structures or buildings, and (iii) constructing pedestrian bridges, walkways or other connecting devices capable of adjoining the Buildings, and other buildings which may be constructed in the Project, to other structures or buildings to be constructed in the Project. It is contemplated that Declarant or another party may construct additional buildings, as subsequent phases of the Project, which may encroach upon portions of the Common Areas and Facilities, and Declarant shall also have an easement over, across and within the Common Areas and Facilities for such purposes.

23.4 Each Owner shall have a non-exclusive easement for ingress and egress over, upon and across the Common Areas and Facilities as necessary for access to such Owner's Unit and for utilities serving such Unit and to any Limited Common Areas and Facilities appurtenant to such Owner's Unit, and shall have the right to the horizontal, vertical and lateral support of such Owner's Unit. In addition each Owner shall have a non-exclusive easement of use and enjoyment in the Common Areas and Facilities which is appurtenant to and passes with title to such Owner's Unit. The right of access for necessary ingress and egress to the Unit and utility services cannot be suspended by the Owners Association for violations of this Declaration or nonpayment of assessments. The Owner's easement rights shall be subject to the following limitations:

23.4.1 The right of the Owners Association, acting through the Management Committee, without Owner, Mortgagee and agency approvals, to grant easements across the Common Areas and Facilities for any purpose not inconsistent with the use of the Common Areas and Facilities by the Owners;

23.4.2 The right of the Owners Association, acting through the Management Committee, without Owner, Mortgagee and agency approvals, to adopt regulations governing the use of Common Areas and Facilities, and the personal conduct of Owners, occupants and guests thereon;

23.4.3 The right of the Owners Association, acting through the Management Committee, without Owner, Mortgagee and agency approvals, to charge reasonable admission or other fees for special or extraordinary uses of the Common Areas and Facilities; and

23.4.4 The right of the Owners Association, acting through the Management Committee, without Owner, Mortgagee or agency approvals, to suspend the right of any Owner, and the rights of any Owner's household, tenants, guests and invitees to use recreational facilities or other portions of the Common Areas and Facilities (to the extent that access and utility service are not impaired) for a period not to exceed 60 days, unless such rights are suspended for failure to pay assessments, in which case such rights may be suspended until the assessments are fully paid.

23.5 The Owners Association and the Manager shall have an easement to make such use of the Common Areas and Facilities as may be necessary or convenient to perform the duties and functions that it is obligated or permitted to perform pursuant to this Declaration, including without limitation the right to construct and maintain the Common Areas and Facilities for use by the Owners and the Owners Association.

23.6 All conveyances of Units within the Project hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve such easements as are provided herein, even though no specific reference to such easements appears in any such conveyance.

24. NOTICES

Any notice permitted or required to be delivered as provided herein may be delivered either personally, by first class mail, by express mail or overnight courier service providing proof of delivery, or by telecopy or facsimile transmission. Notice to Owners shall be addressed to each Owner at the address given by such Owners to the Management Committee for the purpose of service of such notice or to the Unit of such Owner if no such address has been given to the Management Committee. Notice shall be deemed given when actually received if personally delivered or sent by overnight courier; if faxed, when the fax is received, except that if the fax is received at a time other than the normal business hours of the office at which it is received, on the next regular business day; and if by mail, the earlier of the day actually received or the third business day after the notice is deposited in the United States Mail, properly addressed and postage prepaid. Such address may be changed from time to time by notice in writing to the Management Committee addressed to:

Management Committee
The Villages at Millcreek Owners Association, Inc.
11075 South State Street, Suite 30
Sandy, Utah 84070

25. NO WAIVER

The failure of the Management Committee or its agents or designees to insist, in one or more instances, upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration or the Bylaws, to exercise any right or option herein contained or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition or restriction; but such term, covenant, condition or restriction shall remain in full force and effect. The receipt and acceptance by the Management Committee or its agents or designees of the payment of any

assessment from an Owner with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by the Management Committee of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Management Committee.

26. ENFORCEMENT

26.1 All Owners, guests or lessees of an Owner, persons under Owner's control, and the Owners Association shall strictly comply with the provisions of this Declaration, the Bylaws and the rules and regulations of the Owners Association and decisions issued pursuant thereto. Failure to so comply shall be grounds for: (i) an action to recover sums due for damages or injunctive relief or both, maintainable by the Management Committee or its agent or designee on behalf of the Owners, or in an appropriate case, by an aggrieved Owner; and/or (ii) the Management Committee to impose monetary penalties, temporary suspensions of an Owner's right to the use of a Unit or the Common Areas and Facilities, or other appropriate discipline so long as any such Owner has been given notice and has had an opportunity to present a written or oral defense to the charges in a hearing. The Management Committee shall determine whether the Owner's defense shall be oral or written. After the hearing, but before any disciplinary action is taken, the Owner shall be notified of the decision of the Management Committee. The Management Committee may delegate to the Manager, the power and authority to carry out disciplinary actions duly imposed.

26.2 The Owners Association shall not have the power to cause the absolute forfeiture of an Owner's right, title or interest in the Project on account of the Owner's failure to comply with the provisions of this Declaration or the rules and regulations of the Owners Association for the Project except pursuant to:

26.2.1 The judgment of a court; or

26.2.2 A foreclosure for the failure of an Owner to pay assessments duly levied by the Owners Association.

27. ALTERNATIVE DISPUTE RESOLUTION

27.1 Declarant, the Owners Association, its officers, and directors, all Owners or other parties subject to this Declaration (each a "Bound Party") agree to encourage the amicable resolution of disputes involving any Bound Party without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances or disputes described in Section 27.2 (collectively, "Claims") to the procedures set forth in Section 27.3.

27.2 Unless specifically exempted below, all Claims arising out of or relating to the interpretation, application or enforcement of this Declaration, or the rights, obligations and duties of any Bound Party under this Declaration or relating to the design or construction of improvements on the Property shall be subject to the provisions of Section 27.3. Notwithstanding the foregoing sentence, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 27.3 (collectively "Claims Exempt from Dispute Resolution"):

27.2.1 any suit or action by the Owners Association against any Bound Party for delinquent assessments of any nature or to enforce any of Section 22;

27.2.2 any suit by the Owners Association or Declarant to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Owners Association's ability to act under and enforce the provisions of Sections 13 and 15;

27.2.3 any suit between or among Owners which does not include Declarant or the Owners Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of this Declaration;

27.2.4 any suit in which any indispensable party is not a Bound Party; and

27.2.5 any suit as to which any applicable statute of limitations has expired or would expire within 180 days of giving the Notice required by Section 28.3.

27.3 The following constitute the mandatory procedures for resolving all Claims other than the Claims Exempt from Dispute Resolution.

27.3.1 Any Bound Party initiating a Claim ("Claimant") against any other Bound Party ("Respondent") (the Claimant and the Respondent referred to herein being individually referred to as a "Party," or collectively referred to as the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

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

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

(c) the proposed remedy; and

(d) the fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

27.3.2 The following constitute the procedures for negotiation or mediation to resolve Claims.

(a) The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Management Committee may appoint a representative to assist the Parties in negotiation.

(b) If the Parties do not resolve the Claim within 30 days after the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have an additional 30 days to submit the Claim to mediation under the auspices of an independent mediation service designated by the Owners Association,

or, if the Parties otherwise agree, to an independent agency providing dispute resolution services with substantial experience with comparable disputes.

(c) If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, that nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

(d) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation, or within such other time as determined by the mediator or agreed to by the Parties, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

(e) Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all charges of the mediator. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with this Section 27.3 and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section 27.3. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including, without limitation, attorneys' fees and court costs.

27.3.3 Upon Termination of Mediation, Claimant shall thereafter be entitled to submit the matter to binding arbitration. Any arbitration proceeding will: (i) proceed in Salt Lake City, Utah; (ii) be governed by the Federal Arbitration Act (Title 9 of the United States Code); and (iii) be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). Any arbitration proceeding will be before a single arbitrator. The parties shall use reasonable efforts to agree upon a single arbitrator within ten (10) days after written notice from one party to the other requesting arbitration. If the parties are unable to agree upon an arbitrator within such ten-day period, at any time thereafter either party may require that the arbitrator be selected according to the Commercial Arbitration Rules of the AAA. The arbitrator will be a neutral attorney who practices in the area of commercial real estate or business law. The arbitrator will determine whether or not an issue is arbitrable and will give effect to the statutes of limitation in determining any Claim. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. In any arbitration proceeding, the arbitrator will decide (by documents only or with a hearing at the arbitrator's discretion) any pre-hearing motions which are similar to motions to dismiss for failure to state a claim or motions for summary adjudication. In any arbitration proceeding, discovery will be permitted and will be governed by the Utah Rules of Civil Procedure. All discovery must be completed no later than twenty (20) days before the hearing date and within 180 days of the commencement of arbitration proceedings. Any requests for an extension of the discovery periods, or any discovery disputes, will be subject to final determination by the arbitrator upon a

showing that the request for discovery is essential for the party's presentation and that no alternative means for obtaining information is available. The arbitrator shall award costs and expenses of the arbitration proceeding in accordance with the provisions of this Declaration. The laws of the State of Utah shall apply in any arbitration proceeding, without regard to its conflict of laws rules.

27.4 Notwithstanding anything contained herein to the contrary and in addition to any requirements prescribed by law, the Owners Association may not submit a Claim against Declarant or an affiliate of Declarant to binding arbitration upon Termination of Mediation, and (if the provisions of Section 27.3 do not apply) may not file any action against Declarant or an affiliate of Declarant arising out of or related to the design, construction, condition or sale of any part of the Property or any improvements thereon, until all of the following have occurred:

27.4.1 In advance of the meeting described in Subsection 27.4.1 below, the Management Committee has provided full disclosure in writing to all Owners of all material information relating to the Claim or action. The material information shall include, without limitation, a statement that describes the manner in which the action will be funded and a statement describing any demands, notices, offers to settle or responses to offers to settle made either by the Owners Association or the Declarant or its affiliate, if applicable.

27.4.2 The Owners Association has held a duly called meeting of the Residential Owners and the Management Committee, at which a majority of all Residential Owners (not merely a majority of those Residential Owners voting in person or by proxy at such meeting), voting in person or by proxy, authorize the submittal of the Claim to arbitration or the filing of the action, as applicable.

27.4.3 The Management Committee has authorized the submittal of the Claim to arbitration or the filing of the action, as applicable.

27.5 DECLARANT AND, BY ACCEPTING A DEED FOR A UNIT, EACH OWNER AGREE TO HAVE ANY DISPUTE RESOLVED ACCORDING TO THE PROVISIONS OF THIS SECTION 27, AND SUCH PARTIES WAIVE THEIR RESPECTIVE RIGHTS TO PURSUE ANY DISPUTE IN ANY MANNER OTHER THAN AS PROVIDED IN THIS SECTION 27. SUCH PARTIES ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS SECTION 27, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH DISPUTES TRIED BEFORE A COURT OR JURY.

28. DECLARANT

The term "Declarant," as used herein shall mean and include D.R. HORTON, INC., a Delaware corporation, and any person or persons who might acquire title from it to all or substantially all unsold Units through foreclosure or deed in lieu of foreclosure, or in the situation where any person purchases all, or substantially all, of the remaining Units in a sale in the nature of a bulk sale.

29. AGENT FOR SERVICE OF PROCESS

The agent for service of process under the Act until the expiration of the Option to Expand under Section 8 shall be Rustin J. Tolbert, whose address is 11075 South State Street, Suite 30, Sandy, Utah 84070. Thereafter, the agent for service of process shall be the Manager.

30. SEVERABILITY

The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision hereof.

31. CAPTIONS

The captions in this Declaration are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration or the intent of any provision hereof.

32. LAW CONTROLLING

This Declaration and the Map shall be construed and controlled by and under the laws of the State of Utah.

33. CONSTRUCTION

The provisions of this Declaration shall be in addition and supplemental to the Act and to all other provisions of law. Wherever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders.

34. EFFECTIVE DATE

This Declaration shall take effect when recorded in the Office of the Recorder of Salt Lake County, Utah.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed by a person duly authorized to execute the same this 8 day of JANUARY, 2004.

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

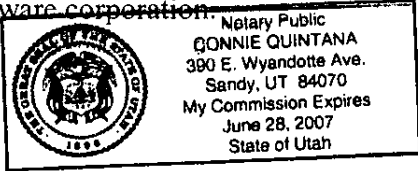
By: Rustin J Tolbert v.p.

Rustin J. Tolbert

Title: Vice President

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

The foregoing instrument was acknowledged before me this 8 day of JANUARY, 2004, by Rustin J. Tolbert, the Vice President of D.R. HORTON, INC., a Delaware corporation.



Gonnie Quintana
Notary Public
Residing at: SANDY, UTAH

My Commission Expires:

6/28/07

**EXHIBIT A
TO
DECLARATION OF CONDOMINIUM
FOR
THE VILLAGES AT MILL CREEK**

(Schedule of Units)

<u>UNIT NUMBER</u>	<u>PAR VALUE OF THE UNIT</u>	<u>PERCENTAGE OF UNDIVIDED INTEREST IN THE COMMON AREAS AND FACILITIES ALLOCATED TO EACH UNIT</u>
Unit 1 of Building A-1	10	8 $\frac{1}{3}$ %
Unit 2 of Building A-1	10	8 $\frac{1}{3}$ %
Unit 3 of Building A-1	10	8 $\frac{1}{3}$ %
Unit 4 of Building A-1	10	8 $\frac{1}{3}$ %
Unit 5 of Building A-1	10	8 $\frac{1}{3}$ %
Unit 6 of Building A-1	10	8 $\frac{1}{3}$ %
Unit 1 of Building B-1	10	8 $\frac{1}{3}$ %
Unit 2 of Building B-1	10	8 $\frac{1}{3}$ %
Unit 3 of Building B-1	10	8 $\frac{1}{3}$ %
Unit 1 of Building B-2	10	8 $\frac{1}{3}$ %
Unit 2 of Building B-2	10	8 $\frac{1}{3}$ %
Unit 3 of Building B-2	10	8 $\frac{1}{3}$ %
		<hr/> 100.00% Total

**EXHIBIT B
TO
DECLARATION OF CONDOMINIUM
FOR
THE VILLAGES AT MILL CREEK**

**BYLAWS
OF
THE VILLAGES AT MILL CREEK
OWNERS ASSOCIATION, INC.**

THESE BYLAWS OF THE VILLAGES AT MILL CREEK OWNERS ASSOCIATION, INC. (these "Bylaws") are adopted by The Villages at Mill Creek Owners Association, Inc. (the "Association").

The administration of the Association shall be governed by the Act, the Declaration, the Utah Revised Nonprofit Corporation Act, (the "Nonprofit Corporation Act") the Articles and these Bylaws. Terms that are capitalized in these Bylaws and which are not otherwise defined herein shall have the meaning set forth in the Declaration of Condominium for The Villages at Mill Creek recorded in the Office of the Recorder of the Salt Lake County, Utah.

1. Application of Bylaws. All present and future Owners, Mortgagees, lessees and occupants of Units and their invitees and guests, and any other persons who may use the facilities of the Project in any manner are subject to the Declaration, these Bylaws and all rules made pursuant hereto and any amendments hereof. The acceptance of a deed or conveyance of a Unit or a Storage Unit, or the occupancy of any Unit, shall constitute an agreement that the provisions of the Declaration and these Bylaws and any rules and regulations made pursuant hereto, as they may be amended from time to time, are accepted, ratified and will be complied with. Membership in the Association is appurtenant to each Unit may not be separated or severed therefrom. Every gift, devise, bequest, transfer, encumbrance, conveyance or other disposition of a Unit shall automatically be construed to be a gift, devise, bequest, transfer, encumbrance or conveyance, respectively, of the appurtenant membership in the Association without the need of any separate transfer or assignment document.

2. Board of Directors/Management Committee.

2.1 The management and maintenance of the Project and the duty to administer the affairs of the Association to fulfill the purposes of the Association shall be accomplished and conducted by the Board of Directors of the Association, who shall constitute the Management Committee, consisting of five (5) natural persons. The first Management Committee shall consist of the members of the Board of Directors designated as such in the Articles, and they shall serve until the first meeting of the members of the Association, at which time an election of all the members of the Management Committee shall be conducted.

2.2 The Declaration establishes a Period of Declarant Control of the Association, during which period the Declarant shall be entitled to vote three (3) votes for every

Unit owned by Declarant and during which period Declarant shall have the authority to appoint and remove the officers and members of the Management Committee. The period of Declarant control shall terminate on the earlier of: (i) five (5) years after the recordation in the Office of the Recorder of Salt Lake County, Utah of the most recently recorded amendment to the Declaration that is recorded for the purpose of expanding the Project pursuant to Section 8.1 of the Declaration; or (ii) one hundred twenty (120) days after the date 75% of the total number of Units in the Project are conveyed to Owners other than Declarant, after all Additional Land has been added to the Project; or (iii) the date Declarant delivers to the Association written notice of Declarant's election to relinquish control of the Association. At the next annual meeting of the members of the Association after the termination of the period of Declarant control, the Owners shall elect a Management Committee of five (5) members. The members and officers of the Management Committee shall take office upon election. Thereafter, at every annual meeting, the Association shall elect the members of the Management Committee to fill those positions becoming vacant at such meeting. The Management Committee may, but shall not be obligated to, inquire of the Owners to identify those having an interest in serving on the Management Committee. Nominations for positions on the Management Committee may be made by petition filed with the Secretary of the Association at least seven (7) days prior to the annual meeting of the Association, which petition shall be signed by ten (10) or more Owners and signed by the nominee named therein indicating his or her willingness to serve as a member of the Management Committee, if elected.

2.3 Voting for the Management Committee shall be by written ballot. At any meeting of the Association, each Owner, either in person or by proxy or by written ballot, shall be entitled to one (1) vote for each Unit in the Project owned by such Owner, multiplied by the number of Management Committee seats to be filled. No Owner may cast more than one (1) vote in favor of a single candidate. Cumulative voting shall not be allowed. In an election of multiple Directors/members of the Management Committee, that number of candidates equaling the number of Directors to be elected, having the highest number of votes cast in favor of their election, are elected to the Board of Directors/Management Committee. When only one Director is being voted upon, the candidate having the highest number of votes cast in his or her favor is elected. The initial members of the Board of Directors/Management Committee shall be the following persons, and each shall hold the office indicated:

Rustin J. Tolbert	President/Member
Bret Miller	Vice President/ Member
William P. Peperone	Vice President/ Member
Connie Quintana	Secretary/Member
Boyd Martin	Treasurer/Member

2.4 Members of the Management Committee shall serve for terms of two (2) years beginning immediately upon their election by the Association; provided, however, that a majority of the members of the Management Committee elected at the first annual meeting following the termination of Declarant control shall serve for initial terms of one (1) year and the

balance shall serve for initial terms of two (2) years. Thereafter, all members of the Management Committee elected shall serve for two-year terms. The members of the Management Committee shall serve until their respective successors are elected, or until their death, resignation or removal. Any member of the Management Committee who fails to attend three consecutive Management Committee meetings or fails to attend at least 25% of the Management Committee meetings held during any fiscal year shall be deemed to have tendered his resignation, and upon acceptance by the Management Committee his position shall be vacant.

2.5 Any member of the Management Committee may resign at any time by giving written notice to the President of the Association or to the remaining Management Committee members. The sale of any such member's Unit or Units resulting in that member no longer owning a Unit in the Project shall constitute a resignation from the Management Committee. The Owners, by a two-thirds vote of all persons present and entitled to vote at any meeting of the Owners at which a quorum is present, may remove any member of the Management Committee with or without cause, other than a member appointed by Declarant during the period of Declarant control. However, a Management Committee member elected solely by the votes of the Owners may only be removed prior to the expiration of his or her term of office by a vote of two-thirds of the voting power residing in the Owners.

2.6 If vacancies shall occur in the Management Committee by reason of the death or resignation of a Management Committee member, the Management Committee members then in office shall continue to act, and such vacancies shall be filled by a vote of the Management Committee members then in office, though less than a quorum. Any vacancy in the Management Committee occurring by reason of removal of a Management Committee member by the Owners may be filled by election at the meeting at which such Management Committee member is removed or any subsequent regular or special meeting of the Association.

2.7 The members of the Management Committee shall receive no compensation for their services, unless expressly approved by the vote or written assent of a majority of the voting power residing in the Owners. Any member of the Management Committee may be employed by the Association in another capacity and receive compensation for such employment; provided further, that such employment shall be approved by vote or in writing by all members of the Management Committee not including the member to be employed.

2.8 The Management Committee, for the benefit of the Project and the Association, shall manage the business, property and affairs of the Project and the Association and enforce the provisions of the Declaration, these Bylaws and the rules and regulations governing the Project. The Management Committee is authorized to adopt rules and regulations governing the use and operation of the Project, which shall become effective 30 days after adoption by the Management Committee. The Management Committee shall have the powers, duties and responsibilities with respect to the Project as contained in the Act, the Nonprofit Corporation Act, the Declaration, the Articles and these Bylaws.

2.9 The meetings of the Management Committee shall be held at least once each calendar quarter at such times and places within the Project, or some other reasonable and suitable location in Salt Lake County, Utah unless a meeting at another location would

significantly reduce the cost to the Association and/or the inconvenience to Management Committee members, as the Management Committee shall determine. A majority of the Management Committee shall constitute a quorum, and if a quorum is present, the decision of a majority of those present shall be the act of the Management Committee. The Management Committee shall annually elect all of the officers of the Association. The election of officers shall be conducted at the first meeting of the Management Committee held subsequent to the annual meeting of the Association.

2.10 Written notice of the time and place of Management Committee meetings shall be posted at a prominent place or places within the Project not less than four (4) days prior to the meeting.

2.11 Special meetings of the Management Committee may be called by written notice signed by any two members of the Management Committee. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. Special meetings shall be held within the Project or some other reasonable location in Salt Lake County, Utah, unless a meeting at another location would significantly reduce the cost to the Association and/or inconvenience to the members of the Management Committee. Written notice of any special meeting shall be posted in a manner prescribed for notice of regular meetings of the Management Committee and shall be sent to all members of the Management Committee not less than 48 hours prior to the scheduled time of the meeting; provided, however, that notice of such meeting need not be given to any member signing a waiver of notice or a written consent to the holding of such meeting. If mailed, such notice shall be deemed to be delivered three (3) days after the date on which such notice is deposited in the U.S. mail, with first-class postage thereon prepaid. If an agenda is prepared for a special meeting, the meeting need not be restricted to discussions of those items listed on the agenda.

2.12 Notices of all regular Management Committee meetings shall be given in writing to each member of the Management Committee not less than five (5) days prior to the meeting, provided that this requirement shall not apply to any member of the Management Committee who has signed a waiver of notice or a written consent to the holding of a meeting.

2.13 Regular and special meetings of the Management Committee shall be open to all members of the Association; provided, however, that the Association members who are not on the Management Committee may not participate in any deliberation or discussion, unless expressly so authorized by the vote of a majority of a quorum of the Management Committee. The Management Committee may, with the approval of a majority of a quorum of its members, adjourn the meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

2.14 Any action required or permitted by the Nonprofit Corporation Act to be taken at a meeting of the Management Committee may be taken without a meeting if each and every member of the Management Committee in writing either: (a) votes for the action; or (b)(i)(A) votes against the action; or (B) abstains from voting; and (ii) waives the right to

demand that action not be taken without a meeting, in accordance with the provisions of the Nonprofit Corporation Act.

2.15 The Association's fiscal year shall be determined by the Management Committee.

2.16 When a member of the Management Committee is sued for liability for actions undertaken in his role as a member of the Management Committee, the Association shall indemnify him for his losses or claims, and undertake all costs of defense, until and unless it is proven that he acted with willful or wanton misfeasance or with gross negligence. After such proof the Association is no longer liable for the cost of defense and may recover costs already expended from the member of the Management Committee who so acted. Members of the Management Committee are not personally liable to the victim of crimes occurring at the Project. Punitive damages may not be recovered against the Association.

2.17 An officer, employee, agent or director of a corporate Owner of a Unit, a trustee or designated beneficiary of a trust that owns a Unit, a partner of a partnership that owns a Unit, and a fiduciary of an estate that owns a Unit may be considered an Owner for the purpose of determining eligibility for membership of the Management Committee. In all events where the person serving or offering to serve as an officer or member of the Management Committee is not the record Owner, they shall file proof of authority in the records of the Association.

2.18 The Management Committee or the officers appointed thereby may delegate to the Manager, or such other persons as it so determines, all of the duties and obligations of the Management Committee set forth herein and in the Declaration to the extent such duties and obligations are properly delegable.

3. Meetings of the Association.

3.1 The first meeting of the Association members shall be held within (6) six months after the closing of the sale of the first Unit sold in the Project. Thereafter, there shall be an annual meeting of the Association at a reasonable place in the Project or at a meeting place as close thereto as reasonably possible, and at a reasonable time as may be designated by written notice by the Management Committee. Notice of the annual meeting shall be delivered to the Owners by first-class mail not less than ten (10) days prior to the date set for said meeting and shall specify the place, day and hour of the meeting and a brief statement of the matters on the agenda which the Management Committee intends to present or believes others will present for action by the Owners. However, if at any annual or special meeting of the Association a material amendment to the Declaration or an extraordinary action (as such terms are defined and described in Section 22.2 of the Declaration) is to be considered, then notice of such meeting shall be delivered to the Owners by first-class mail not less than twenty-five (25) days prior to the date set for such meeting, which notice shall specify the place, day and hour of the meeting and a brief statement of the matters on the agenda which the Management Committee intends to present or believes others will present for action by the Owners. The statement shall include the name, address and a brief biographical sketch, if available, of each person who will stand for election to the Management Committee.

3.2 Special meetings of the Association members may be called by the Declarant, the President, a majority of the Management Committee, or Owners representing at least twenty percent (20%) or more of the Total Votes of the Association and may be held at a reasonable place in the Project or at a meeting place as close thereto as reasonably possible, to consider matters which, by the terms of the Declaration, require the approval of all or some of the Owners or for any other reasonable purpose. Special meetings shall be called by written notice signed by the Declarant, the President, a majority of the Management Committee or by Owners representing at least twenty percent (20%) or more of the Total Votes of the Association, which shall be hand delivered or sent prepaid by United States first-class mail, not less than ten (10) days (and with respect to a special meeting at which a material amendment to the Declaration or an extraordinary action is to be considered—as such terms are defined and described in Section 22.2 of the Declaration—not less than twenty-five (25) days) prior to the date fixed for said meeting, to each Owner at such Owner's address as shown in the records of the Association or to any other mailing address designated in writing by the Owner. Such notice shall specify the place, day and hour of the meeting and a brief statement of the items on the agenda, including the general nature of any proposed amendment to the Declaration or Bylaws, any budgetary changes and any proposal to remove an officer or member of the Management Committee.

3.3 The presence in person or by proxy of Owners holding twenty percent (20%) or more of the Total Votes of the Association at any meeting of the Association held in response to notice to all Owners of record properly given shall constitute a quorum. In the absence of a quorum at a Association meeting, a majority of those present in person or by proxy may adjourn the meeting to another time, but may not transact any other business. An adjournment for lack of a quorum by those in attendance shall be to a date not less than five (5) nor more than thirty (30) days from the original meeting date. The quorum for an adjourned meeting shall also be twenty (20%) or more of the Total Votes of the Association. If the time and place for an adjourned meeting is not fixed by those in attendance at the original meeting, or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to members in the manner prescribed for regular meetings of the Association. At any special meeting of the Association, only those matters of business, the general nature of which was given in the notice of the special meeting, may be voted upon by the Owners. Action by the Owners on a matter other than the election of the members of the Board of Directors/Management Committee is approved if: (a) a quorum exists; (b) the votes cast by the Owners favoring the action exceed the votes cast by the Owners opposing the action; and (c) a greater number of affirmative votes is not required by the Nonprofit Corporation Act or by these Bylaws.

3.4 Any action that may be taken by the Owners at any annual or special meeting of the Association may be taken without a meeting and without prior notice, if one or more consents in writing, setting forth the action taken, are signed by the Owners having not less than the minimum voting power that would be necessary to authorize or take the action at a meeting at which all Owners entitled to vote on the action were present and voted in accordance with the requirements of Section 16-6a-707 of the Nonprofit Corporation Act.

3.5 Any action that may be taken by the Owners at any annual or special meeting of the Association may be taken without a meeting if the Association delivers a written

ballot to every Owner entitled to vote on the matter in accordance with the requirements of Section 16-6a-709 of the Nonprofit Corporation Act. Approval by written ballot pursuant to this Section 3.5 shall be valid only when (a) the time by which all ballots must be received by the Association has passed so that a quorum can be determined; (b) the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. Unless a larger quorum is required pursuant to these Bylaws, or unless otherwise provided in the Nonprofit Corporation Act, for purposes of taking action by written ballot, the number of votes cast by written ballot pursuant to this Section 3.5 constitute a quorum for action on the matter. A written ballot delivered to every Owner entitled to vote on the matter or matters therein, as described in this Section 3.5, may also be used in connection with any annual or special meeting of the Owners, thereby allowing Owners the choice of either voting in person, by proxy or by written ballot delivered by an Owner to the Association in lieu of attendance at such meeting. Any written ballot shall comply with the requirements of Section 16-6a-709 of the Nonprofit Corporation Act and shall be counted equally with the votes of Owners in attendance at any meeting for every purpose, including satisfaction of the quorum requirement.

3.6 For any Units owned by more than one Owner, all of the Owners of such Unit may sign a certificate designating one of the co-Owners as the Owner authorized to cast the one (1) vote appurtenant to such Unit. In such event the Management Committee may rely on such certificate as being sufficient evidence of the authority of the Owner casting the vote appurtenant to such Unit. In the absence of such a certificate, if only one of several Owners of a Unit is present at a meeting of the Association, that Owner is entitled to cast the vote allocated to that Unit. If more than one of the Owners of a Unit is present, the vote allocated to that Unit may be cast only in accordance with the agreement of a majority in interest of such Owners. Absent a certificate of authorization, there shall be deemed to be majority agreement if any one of the Owners casts the vote allocated to the Unit owned without protest made promptly to the person presiding over the meeting by any of the other Owners of such Unit. The right to vote by proxy or by ballot shall exist only where the instrument authorizing such proxy to act or the ballot shall have been executed by the Owner or by its attorney thereunto duly authorized in writing. The instrument authorizing the proxy to act or the ballot shall be delivered at the beginning of the meeting to the secretary of the Association, or such other officer or person who may be acting as the secretary at the meeting. The secretary of the meeting shall enter a record of all such proxies and ballots in the minutes of the meeting. An Owner may revoke a proxy given pursuant to this Section only by actual notice of revocation to the Association. Actual notice includes the Association's receipt of one or more proxies signed by the same Owner. In such event, the proxy with the latest date shall be accepted. A proxy is void if it is not dated or purports to be revocable without notice. Proxies and ballots received by facsimile transmission are valid, if they meet all other requirements under this section. A written ballot may not be revoked.

3.7 Minutes of the annual and special meetings of the Association shall be distributed to each member within sixty (60) days after the meeting.

4. Officers.

4.1 The officers of the Association shall be appointed by the Management Committee, and all officers and employees of the Association shall serve at the will of the Management Committee. The officers shall be a President, Secretary and Treasurer. The offices of Secretary and Treasurer may be combined in the discretion of the Management Committee. The Management Committee may appoint Vice Presidents and such other assistant officers as the Management Committee may deem necessary. No officer shall be required to be an Owner. No officer shall receive compensation for serving as such. Officers shall be annually elected by the Management Committee and may be removed and replaced by the Management Committee. The Management Committee shall require that officers (and other employees of the Association) be subject to fidelity bond coverage.

4.2 The President shall be the chief executive of the Management Committee and shall preside at all meetings of the Association and of the Management Committee and may exercise the power ordinarily allowable to the presiding officer of an association, including the appointment of committees. The President shall exercise general supervision over the Project and its affairs. He shall sign, and the Secretary shall witness on behalf of the Association, all conveyances, mortgages and contracts of material importance to its business. He shall do and perform all acts which the Management Committee may require.

4.3 The Vice President, if any, shall perform the functions of the President in his absence or inability to serve.

4.4 The Secretary shall keep minutes of all proceedings of the Management Committee and of the meetings of the Association and shall keep such books and records as may be necessary and appropriate for the records of the Owners and the Management Committee.

4.5 The Treasurer shall be responsible for the fiscal affairs of the Association but may delegate the daily handling of funds and the keeping of records to the Manager. If there are no Vice Presidents and the President is absent or unable to serve, then the Treasurer shall perform the functions of the President.

4.6 Any officer may prepare, execute, certify and record properly adopted amendments to the Declaration on behalf of the Association.

5. Common Expenses: Assessments.

5.1 All Common Expenses shall be made in accordance with the Declaration.

5.2 No Owner shall be exempt from liability for Common Expenses by waiver of the use or enjoyment of any of the Project or by abandonment of his Unit.

5.3 The Treasurer shall keep detailed records of all receipts and expenditures, including expenditures affecting the Project, specifying and itemizing the maintenance, repair and replacement expenses of the Project and any other expenses incurred. Such records shall be available for examination by the Owners during regular business hours. In accordance with the actions of the Management Committee in assessing Common Expenses against the Units, the

Treasurer shall keep an accurate record of such assessments and of the payments thereof by each Owner.

5.4 All assessments shall be a separate, distinct and personal liability of the Owners at the time each assessment is made. The Management Committee shall have the rights and remedies contained in the Act and in the Declaration to enforce the collection of assessments.

5.5 Any person who shall have entered into a written agreement to purchase a Unit, by written request directed to the Management Committee, shall be entitled to obtain a written statement from the Treasurer setting forth the amount of the monthly, quarterly, annual or other periodic assessment and the amount of unpaid assessments charged against such Unit and its Owner(s), and if such statement does not reveal the full amount of the unpaid assessments as of the date it is rendered, neither the purchaser nor the Unit shall be liable for the payment of an amount in excess of the unpaid assessments shown thereon, provided that the former Owner shall remain so liable for the excess. Any such excess which cannot be promptly collected from the former Owner grantor shall be reassessed by the Management Committee as a Common Expense to be collected from all Owners, including without limitation the purchaser of such Unit, his successors and assigns. The new Owner shall, and the former Owner shall not, be liable for any assessments made after the date of transfer of title, even though the expenses incurred or the advances made by the Management Committee for which the assessment is made relate in whole or in part to any period prior to that date. The Management Committee is authorized to require a reasonable fee for furnishing such statements.

5.6 In addition to the statements issuable to purchasers, the Management Committee shall, upon ten (10) days' prior written request therefor, provide to any Owner, to any person who shall have entered into a binding agreement to purchase a Unit and to any Mortgagee, on request at reasonable intervals a current statement of unpaid assessments for Common Expenses with respect to a Unit. The Management Committee is authorized to require a reasonable fee for furnishing such statements.

5.7 In all cases where all or part of any assessments for Common Expenses and capital contributions and for any expenses of and advances by the Management Committee cannot be promptly collected from the persons or entities liable therefor under the Declaration or these Bylaws, the Management Committee shall reassess the same as a Common Expense without prejudice to its right of collection against such persons or entities, or without prejudice to its lien for such assessments.

6. Litigation.

6.1 If any action is brought by a member of the Management Committee on behalf of the Association, the expenses of suit, including reasonable attorneys' fees and costs, shall be a Common Expense. Except as otherwise provided, if any action is brought against the Owners or against the Management Committee or the officers, employees or agents thereof in their capacities as such, with the result that the ultimate liability asserted would, if proved, be borne by all the Owners, the expenses of suit, including attorneys' fees and costs, shall be a Common Expense. If any action is brought against one or more, but less than all Owners, with

the result that the ultimate liability would, if proved, be borne solely by such Owners, the expenses of suit, including attorneys' fees, shall not be charged to or borne by the other Owners, as a Common Expense or otherwise.

6.2 Except as otherwise provided by the Act, any action brought against the Association, the Management Committee or the officers, employees or agents thereof, in their respective capacities as such, or the Project as a whole, shall be directed to the Management Committee, and shall be defended by the Management Committee; and the Owners and Mortgagees shall have no right to participate in such defense other than through the Management Committee. Actions against one or more, but less than all Owners, shall be directed to such Owners, who shall promptly give written notice thereof to the Management Committee, and shall be defended by such Owners.

7. Abatement and Enjoyment of Violations by Owners.

7.1 The violation of any rules or regulations adopted by the Management Committee, the breach of any provision contained herein or the breach of any provision of the Declaration shall give the Management Committee the right, in addition to any other rights set forth in these Bylaws:

7.1.1 To enter the Unit in which or as to which such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Owner or Owners, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Management Committee shall not thereby be deemed guilty in any manner of trespass; and/or

7.1.2 To enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach.

7.2 These remedies are cumulative to other remedies provided in the Declaration and these Bylaws, the Act or in any other applicable laws.

8. Records and Accounting.

8.1 The books and accounts of the Association shall be kept in accordance with generally accepted accounting procedures under the direction of the Treasurer.

8.2 A budget for each fiscal year consisting of at least the following information shall be adopted by the Management Committee and distributed to all members of the Association not less than 45 days and not more than 60 days prior to the beginning of the fiscal year to which the budget applies:

8.2.1 Estimated revenue and expenses on an accrual basis.

8.2.2 The amount of the total cash reserves of the Association currently available for replacement or major repair of the Furnishings and the Common Areas and Facilities of the Project and for contingencies.

8.2.3 An itemized estimate of the current replacement costs of, and the estimated remaining life of, and the methods of funding to defray the costs of future repair, replacement or additions to the Furnishings and to major components of the Common Areas and Facilities for which the Association is responsible.

8.2.4 A general statement setting forth the procedures used by the Management Committee in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the Common Areas and Facilities for which the Association is responsible.

8.3 Unless the Association, by a majority of the Total Votes of the Association at the meeting of the Association held after distribution of the proposed budget, rejects the budget, the budget shall be deemed ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Management Committee.

8.4 The Management Committee shall distribute to the Owners an annual report, consisting of the following, within one hundred twenty (120) days after the close of each fiscal year:

- (a) A balance sheet as of the end of the fiscal year.
- (b) An operating (income) statement for the fiscal year.
- (c) A statement of changes in financial position for the fiscal year.
- (d) Any other disclosures required by applicable state law.

8.5 The Management Committee (or the Manager, if so delegated by the Management Committee) shall do the following not less frequently than quarterly:

- (a) Cause a current reconciliation of the Association's operating accounts to be made and review the same.
- (b) Cause a current reconciliation of the Association's reserve accounts to be made and review the same.
- (c) Review the current year's actual reserve revenues and expenses compared to the current year's budget.
- (d) Review the most current account statements prepared by the financial institution where the Association has its operating and reserve accounts.
- (e) Review an income and expense statement for the Association's operating and reserve accounts.

8.6 A copy of the Declaration, the Articles, these Bylaws, the rules and regulations adopted by the Management Committee, the membership register, including mailing

addresses and telephone numbers, books of account and minutes of meetings of the Association, of the Management Committee and of committees of the Management Committee and all other records of the Project maintained by the Association, Manager or managing company (other than privileged or confidential information) shall be made available for inspection and copying by any member of the Association or his duly appointed representative, a First Mortgagee or prospective purchaser at any reasonable time and for a purpose reasonably related to his respective interest at the office where the records are maintained. Upon receipt of an authenticated written request from an Owner, First Mortgagee or prospective purchaser (each, a "Requesting Party") along with the fee prescribed by the Management Committee to defray the costs of reproduction, the manager or other custodian of records of the Association shall prepare and transmit to the Requesting Party a copy of any and all records requested. The Association may, as a condition to permitting a Requesting Party to inspect the membership register or to its furnishing information from the register, require that the Requesting Party 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 Requesting Party's respective interest in the Association. Furthermore, upon written request from a holder, insurer or guarantor of any First Mortgage secured by a Unit, the Association shall be required to prepare and furnish within one hundred twenty (120) days an audited financial statement of the Association for the immediately preceding fiscal year. The Management Committee shall establish reasonable rules with respect to:

8.6.1 Notice to be given to the custodian of the records by the Requesting Party desiring to make the inspection or obtain copies;

8.6.2 Hours and days of the week when such an inspection may be made;

8.6.3 Payment of the cost of reproducing copies of documents requested by a Requesting Party.

Every member of the Management Committee shall have the absolute right at any time to inspect all books, records and documents of the Association and to inspect all real and personal properties owned or controlled by the Association. This right of inspection shall include the right to make extracts and copies of records, subject only to the right of the Association to require that the Management Committee member agree in writing not to use, or allow the use of, the information from the membership register for commercial or other purposes not reasonably related to the business of the Association and the Management Committee member's interest in the Association.

9. Special Committees. The Management Committee by resolution may designate one or more special committees, each committee to consist of two (2) or more of the members of the Management Committee, which to the extent provided in said resolution shall have and may exercise the powers set forth in said resolution. Such special committee or committees shall have such name or names as may be determined from time to time by the Management Committee. All special committees shall keep regular minutes of their proceedings and report the same to the Management Committee when required. The members of such special committee or committees designated shall be appointed by the Management Committee or the

President. The Management Committee or the President may appoint Owners to fill vacancies on each of said special committees occasioned by death, resignation, removal or inability to act for any extended period of time.

10. Rental or Lease of Units by Owners.

10.1 Any Owner who rents or leases his Unit shall file with the Management Committee or Manager a copy of the rental or lease agreement. The provisions of Section 7 of these Bylaws shall apply with equal force to renters or lessees of Units.

10.2 Any Owner who rents or leases or otherwise permits any other person to utilize his Unit shall be responsible for the conduct of his tenants or occupants, and upon written notice from the Management Committee or the Manager, said Owner shall be responsible for correcting violations of the Declaration, Bylaws or rules and regulations committed by such tenants or occupants.

10.3 If an Owner fails to correct violations by tenants within 72 hours of such notice, the Management Committee or Manager shall be deemed to be the agent of the Owner and empowered to take any enforcement action the Owner would be entitled to take, the reasonable costs of such action, including but not limited to fees and costs paid to third parties, to be assessed to the Owner and payable within 30 days of assessment. Such costs shall be collected and enforced in the same manner as Common Expenses under the Declaration.

10.4 The power of the Management Committee or Manager hereunder shall include but not be limited to any and all legal remedies available under the laws of the State of Utah. Any Owner by the act of renting, leasing or otherwise permitting any other person to utilize such Owner's Unit shall be deemed to have consented to these procedures and shall indemnify and save harmless the Management Committee and the Manager from and against any and all liability therefor. It is expressly understood that the remedies available to the Management Committee or Manager shall include but not be limited to the right to seek eviction of the tenant without any liability to the Owner.

11. Amendment of Bylaws. Except as otherwise provided in the Act, the Declaration or these Bylaws, the Bylaws may be amended by the vote or written assent of Owners holding a majority of the Total Votes of the Association. Provided, however, the percentage of the voting power necessary to amend a specific clause or provision shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause. Upon such an affirmative vote, the Management Committee shall acknowledge the amended Bylaws, setting forth the fact of the required affirmative vote of the Owners, and the amendment shall be effective upon recording a copy of the amendment in the Office of the Recorder of Salt Lake County, Utah. Notwithstanding anything to the contrary contained or implied herein, Declarant reserves the right, without the consent of any other Owners, to amend any provisions of these Bylaws to comply with the then existing statutes, regulations or other requirements of the Utah Department of Commerce — Real Estate Division or any other federal, state or local regulatory authority affecting the Project.

12. **Severability.** The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision hereof.

13. **Captions.** The captions herein are inserted only as a matter of convenience and for reference and in no way to define, limit or describe the scope of these Bylaws nor the intent of any provision hereof.

14. **Effective Date.** These Bylaws shall take effect upon adoption by the Management Committee.

15. **Seal.** The Management Committee may by resolution provide a corporate seal which shall be circular in form and shall have inscribed thereon the name of the Association, the state of incorporation and the words "Corporate Seal."

16. **Arbitration.** Any unresolved dispute, disagreement or controversy between Declarant and the Association shall at the request of either party be submitted to an arbitration board of at least three members with one chosen by the Association, the other by the Declarant and a third chosen by the other two arbitrators so chosen. The arbitrators shall act in accordance with the Commercial Arbitration Rules then in effect of the American Arbitration Association. The decision of the majority of such arbitrators shall be binding on the Association and the Declarant. Such decisions shall include the awarding of costs, including reasonable attorneys' fees, as the arbitrators shall determine. The decision of the arbitrators shall be judicially enforceable as a judgment.

17. **Payment of Assessment.** No Owner shall be permitted to convey, hypothecate, sell, or lease such Owner's Unit, unless and until such Owner shall have paid in full to the Management Committee all unpaid common charges assessed by the Management Committee against such Owner's Unit and until such Owner shall have satisfied all unpaid liens against such Unit, except permitted mortgages and mortgages made by Declarant.

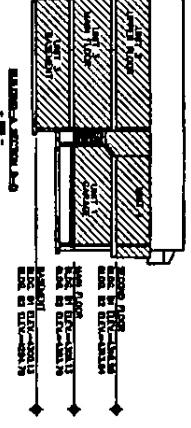
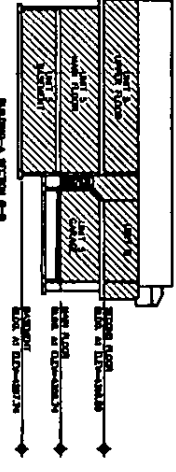
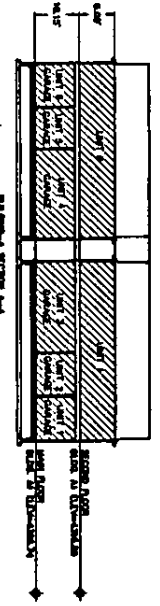
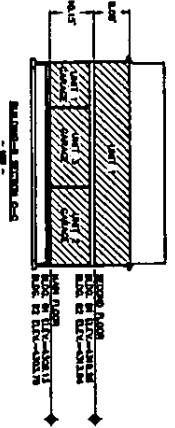
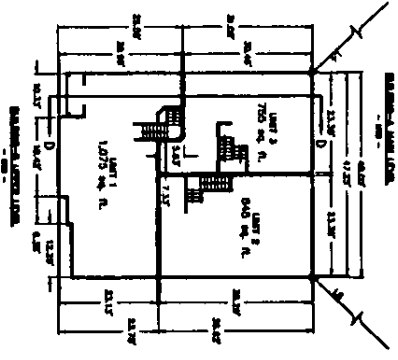
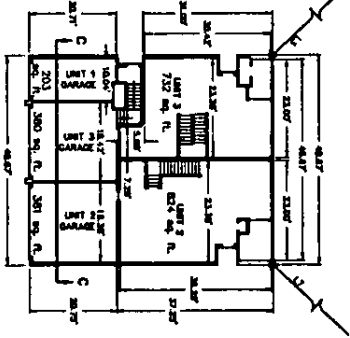
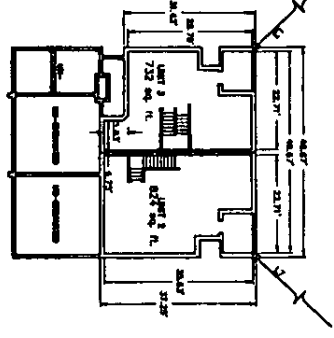
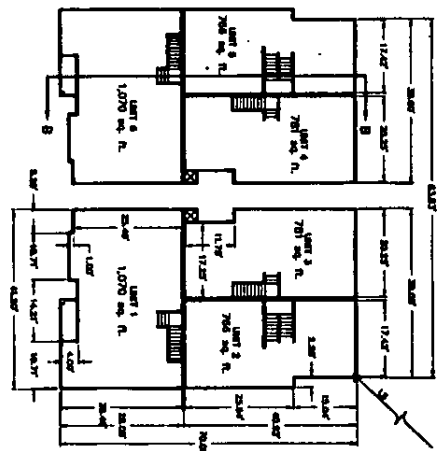
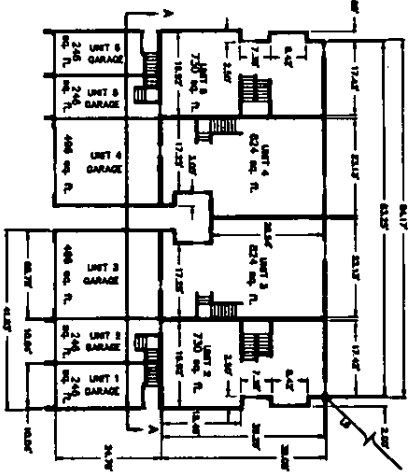
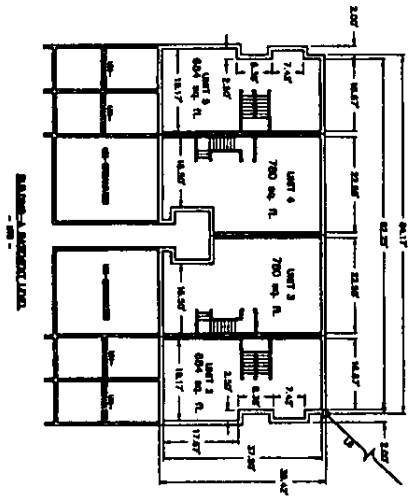
Adopted this 8 day of JANUARY, 2004.

Connie Quintana
Connie Quintana, Secretary

**EXHIBIT C
TO
DECLARATION OF CONDOMINIUM
FOR
THE VILLAGES AT MILL CREEK**

(Reduced Copy of Map)

THE REDUCED COPIES OF THE RECORD OF SURVEY MAP ATTACHED AS EXHIBIT C ARE INCLUDED HEREIN ONLY FOR THE CONVENIENCE OF THE READER OF THIS DECLARATION. ALL REFERENCES TO THE "MAP" CONTAINED IN THE DECLARATION ARE REFERENCES TO THE FULL SIZED AMENDED RECORD OF SURVEY MAP RECORDED, TOGETHER WITH THIS DECLARATION, IN THE OFFICE OF THE RECORDER OF SALT LAKE COUNTY, UTAH, AND NOT TO THESE REDUCTION COPIES.



LAND SURVEYORS INC.
1427 N. 1200 W.
CRAIC, UTAH 84057
(801) 228-1079



CONSULTANTS, INC.
1471 N. 1200 W.
CRAIC, UTAH 84057
(801) 802-8882

VILLAGES AT HILL CREEK
PHASE - 1
AN EXPANDABLE CONDOMINIUM PROJECT
SHEET 2 OF 2
A PART OF LAND IN SOUTHWEST CORNER OF SECTION 4,
TOWNSHIP 2 SOUTH, RANGE 11 EAST, SLABUM,
SALT LAKE COUNTY, UTAH