

**C. MICHAEL HOMES, INC.**  
Rapid City, SD 77703

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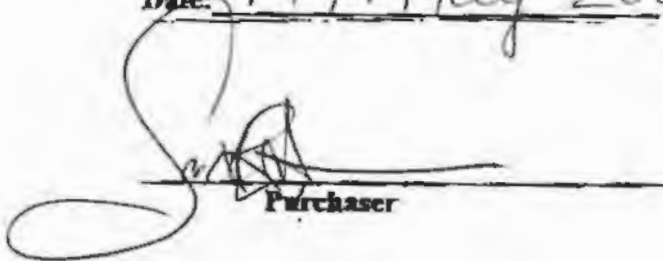
***HAMPDEN HILL CONDOMINIUMS***

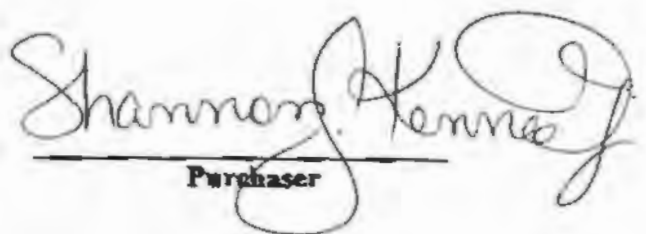
I/We, the undersigned Purchaser(s), hereby certify that I/We have received and read the following documents:

**Master Deed of Hampden Hill Townhomes, "A Condominium", including covenants and attached By-laws**

**Public Offering Statement: Hampden Hill Townhome Condominiums**

Date: 19 May 2006

  
Purchaser

  
Purchaser

**MASTER DEED  
OF  
HAMPDEN HILL TOWNHOMES  
"A CONDOMINIUM"**

American West Communities, Inc., hereinafter referred to as "Grantor" make this Master Deed in Pennington County, South Dakota, on this 11 day of DECEMBER 2001. Such Deed is made pursuant to the provisions and authority of SDCL Chapter 43-15A, known as the South Dakota Condominium Act (hereinafter referred to as the "Act"). The purpose of this Master Deed, made in conformity with the Act, is to submit the property as described below now owned by the Grantor in fee simple to the provisions of the Act. The Grantor desires to submit the property hereinafter described to the formation of a condominium, which is hereinafter known as the "Hampden Hill Townhomes". Grantor states that neither he nor any member of his family have ever occupied or claimed the premises described herein as a homestead.

Article I: Definitions

1. "Parcel"; The entire tract of land described in Article II.
2. "Building"; The Structures containing two (2), three (3) or four (4) residential condominium dwelling units each.
3. "Unit"; That part of each Building that contains rooms designed and intended for a one-family dwelling, and having lawful access to a public way.
4. "Property"; The Parcel, all improvements and structures constructed or contained thereon, including the Building(s), and all the easements, rights, and appurtenances belonging thereto, and all articles of personalty intended for the mutual use, benefit or enjoyment of the Unit Owners and Occupants.
5. "Common Areas and Facilities"; All portions (Common Elements) of the Property except the Units.
6. "Limited Common Areas"; The Common Areas and Facilities such as parking, garage stalls, storage areas, decks, walkways, stairways, and greenway areas as shown on the plot plan and floor plan filed simultaneously herewith as "Exhibit B", or as assigned by the Grantor by designation on the Warranty Deed and filed thereafter, which are assigned and reserved for exclusive use of individual units.
7. "Unit Ownership"; A part of the Property consisting of one Unit and a one-fifty-fourth (1/54) undivided interest in the Common Areas and facilities.
8. "Person"; A natural individual, corporation, partnership, trustee, or other legal entity capable of holding title to real property.

9. "Mortgagee"; A person or entity owning a mortgage on any Unit.
10. "Unit Owner" or "Owner"; The person or persons whose estates or interests, individually or collectively, aggregate fee simple ownership of a Unit. (Also defined as a Co-owner under Chapter 43-15 of South Dakota Compiled Laws.)
11. "Occupant"; Person or persons, including Unit Owner or other than a Unit Owner, who are in possession of a Unit.
12. "Association"; Hampden Hill Owners Association, Inc., a non-profit Corporation incorporated according to SDCL chapter 47-22, operating in accordance with the Master Deed and By-laws.
13. "Board of Directors" or "Board"; The Board of Directors of the Association.
14. "By-laws"; The regulations, which govern the conduct of the Association and attached to this Master Deed as Exhibit A.
15. "Phase"; Phase one (1) is that portion of the Property consisting of two (2) Buildings, each containing four (4) Units, and Phases two (2) through eight (8) is that portion of the Property consisting of fourteen (14) Buildings, each containing three (3) Units and Phase nine (9) is that portion of the Property consisting of two (2) Buildings, each containing two Units.

#### ARTICLE II: Legal Description

Parcel D of MJK Subdivision, City of Rapid City, as shown by the Plat recorded in Book 25 of Plats on Page 72 in the Office of The Register of Deeds, Pennington County, South Dakota.

#### ARTICLE III: General Description

The Hampden Hill Townhome Condominiums are located at 863 to 899 East Minnesota Street, Rapid City, South Dakota. The Condominiums are developed by American West Communities, Inc., A South Dakota Corporation. Phase I shall contain two (2) Buildings, each consisting of four (4) Units, each Unit containing 1120 square feet, two bedrooms, two bathrooms, laundry area, kitchen, dining area, living room, a 6' X 14' deck and individual heating equipment and each Unit shall be assigned a single parking garage. Each of Phases II through VIII shall contain two (2) Buildings each consisting of two (2) Units of 784 square feet each, consisting of two bedrooms, one bathroom, one kitchen, a dining area, living room, washer/dryer area, individual heating equipment and an attached individual garage of at least 18 X 20 feet, and one (1) Unit of 1,232 square feet consisting of two bedrooms, one bathroom, one kitchen, a dining area, living room, utility room, individual heating equipment and an attached garage of at least 12 X 28 feet. Phase IX shall contain two (2) buildings each consisting of two (2) Units of 784 square feet each, consisting of two bedrooms, one bathroom, one kitchen, a dining

area, living room, washer/dryer area, individual heating equipment and an attached individual garage of at least 18 X 20 feet. A site plan showing the location of each building on the above described real Property is attached hereto, marked as Exhibit B, and is incorporated herein.

#### ARTICLE IV: Owner's Rights, Interests, Covenants, and Restrictions

Grantor hereby establishes by this declaration a plan for the individual ownership of certain interests in real property consisting of that area or space contained in each of the Units in each Building, and the undivided interest in the Common Areas and Facilities.

Grantor, does hereby make the following declaration as to divisions, covenants, restrictions, limitations, conditions and uses to which the above-described real property and improvements thereon may be put, hereby specifying that said declaration shall constitute covenants to run with the land and shall be binding on said Grantors, their successors and assigns, and all subsequent owners of all or any part of said property and improvements, together with their grantees, successors, heirs, executors, administrators, devisees or assigns:

1. **Use of Units.** Each Unit shall be used for single family residential purposes only and not for any business, trade, commercial or industrial purpose whatsoever except that individuals may conduct non-nuisance, inoffensive businesses from their homes that require no employees other than those living in the residence. Exception shall be that one (1) Unit may be designated and utilized as a rental/sales/management office, owned individually or severally, until such time as the Board of Directors may vote to terminate this usage.

2. **Appearance and Landscaping.** No modification to the exterior appearance of any Unit shall be made without permission of the Association. Limited landscaping variations, such as flower beds, may be allowed within Limited Common Areas and/or any areas specifically assigned to individual Units.

3. **Parking.** No on-street parking is permitted. Residents' vehicles shall be parked within the provided garages when possible and additional vehicles shall be parked in additional spaces provided for each Unit. No boat, truck, trailer or camper shall be parked at any Unit except within the provided garage. Guests with recreational vehicles shall be allowed to park at a Residence, in the designated spaces, for a maximum of forty-eight (48) hours. No vehicle shall be allowed to park in any location that interferes with access to any other location or that unduly obstructs vision and view. Outdoor repair of any vehicle or equipment is prohibited, and no vehicle without a current license plate shall be parked at any location.

4. **Pets.** No animals of any kind shall be raised, fed or kept by any Owner, except dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose. All pets must be confined primarily to

the Owner's property. Pets outside must be in an enclosure or on a leash. Number of pets shall be limited to two (2) per household. Noisy pets, disruptive pets or pets deemed to present a danger or hazard, including barking dogs, shall not be kept on the property and any owner with an uncontrolled noisy, disruptive or dangerous pet shall be required to remove the animal from the property immediately upon notice from the Board of Directors. Pet owners shall be required to maintain all exterior areas where pets are exercised and all pet droppings shall be immediately removed by pet owner. Violation of any of these regulations may result in the Board of Directors ruling that any or all pets be removed from the violating residence.

5. Annoyance. No obnoxious or offensive activity shall be carried on within any Unit or within the Common Areas or Limited Common Areas, nor shall anything be done therein which may be or may become an annoyance or nuisance to the neighborhood including, but not limited to, excessive noise, loud music, loud parties or fireworks. No firearms shall be discharged and no noisy recreational vehicles, such as motorcycles, dirt bikes or snowmobiles shall be allowed to operate except for access from an Owner's home across the common driveways for access to the public right-of-way.

6. Signs. No sign of any kind shall be displayed to the public view on any Unit, Common Area or right of way except for entrance signs, directional signs, signs for traffic control or safety, community "theme areas", signs on Units with names of Occupants and such signs as may be erected and maintained by the Declarant or the Association. No signs or advertising devices of any character shall be erected, posted, or displayed upon, in, or about any Unit within the property, provided however, that one temporary real estate sign not exceeding six (6) square feet in area may be erected adjacent to any Unit placed upon the market for sale or rent. Any such temporary real estate sign shall be removed promptly following the sale or rental of such Unit. This covenant shall not apply to signs of the Declarant during the period of sales activity of the Declarant.

7. Fences. There shall be no fencing allowed whatsoever.

8. Towers, Antennas and Clotheslines. There shall be no towers, antennas, clotheslines or satellite dishes located on or adjacent to any Unit unless specifically approved by the Board of Directors.

9. Trash. All garbage or similar waste shall be kept in sanitary containers and other equipment for disposal of garbage and shall be kept in a clean, sanitary and fire safe condition. Trash and garbage containers shall not be permitted to remain in public view except on days of trash collection. The Board of Directors may specify size and type of containers allowed.

10. Garages. Garage doors shall be maintained in a closed position whenever possible.

ARTICLE V: Condominium Regime

Grantor, in order to establish such property as a condominium regime, hereby covenants and agrees that he divides said real property including all improvements thereon, into the following:

1. Fifty-four (54) separately designed and legally described estates in real property, each consisting of a Unit, with its appurtenant undivided interest in the Common Areas and Facilities are shown on Exhibit "B". Phase one (1) shall contain eight (8) Units. Phases two (2) through eight (8) shall each contain six (6) Units, and Phase nine (9) shall contain four (4) Units. The square footage of each Unit expressed in Exhibit "C-1", "C-2", "C-3" and "C-4" is approximate and may vary from the floor plans. Each of the Units located in each multi-family Building shall occupy that space contained within a boundary comprised of the interior unfinished surface of its peripheral walls and the interior unfinished surfaces of the base flooring and the ceiling. Unfinished surfaces shall exclude such things as paint, wallpaper, finished flooring, appliances, cabinets, closets, heating, cooling and air conditioning equipment, built-in fixtures, and electrical and electronic devices and fixtures, which shall be the responsibility of the Owner. The boundary of each Unit shall also extend to the outside surface of all of its doors, windows, decks and/or patios. Each Unit has a separate electrical service; separate heating plant, and separate air-conditioner. Each Unit is capable of individual utilization having its own exit to the common area and the public way. Each Building shall also contain garage-parking stalls. Each Unit will be sold to one or more Owners, each acquiring particular and exclusive property right thereto, together with an undivided interest in the common element. The common element shall include: Common Areas and Facilities and Limited Common Areas as herein listed, which are necessary for their adequate use and enjoyment, all of the above in accordance with Chapter 43-15A of the South Dakota Codified Laws.

2. Phase I shall contain two (2) Buildings consisting of four (4) Units, each Unit containing 1120 square feet, two bedrooms, two bathrooms, laundry area, kitchen, dining area, living room, a 6' X 14" deck and individual heating equipment and each Unit shall be assigned a single parking garage. Each Phase II through VIII shall contain two (2) Buildings each consisting of two (2) Units of 784 square feet each, consisting of two bedrooms, one bathroom, one kitchen, a dining area, living room, washer/dryer area, individual heating equipment and an attached individual garage of at least 18 X 20 feet, and one (1) Unit of 1,232 square feet consisting of two bedrooms, one bathroom, one kitchen, a dining area, living room, utility room, individual heating equipment and an attached garage of at least 12 X 28 feet. Phase IX shall contain two (2) buildings each consisting of two (2) Units of 784 square feet each, consisting of two bedrooms, one bathroom, one kitchen, a dining area, living room, washer/dryer area, individual heating equipment and an attached individual garage of at least 18 X 20 feet. The boundary of each Unit shall vary in accordance with inevitable future sag, expansion and structural adjustments.

3. The remaining portion of the real property described and referred to herein as the "Common areas and Facilities" includes but is not limited to: the land, foundations,

main walls and roofs of the multi-family Buildings, garage or storage spaces, mechanical or metering areas, driveways, parking areas, exterior walks and stairways, and any recreation areas as such may later be developed, and the utility network throughout the condominium project.

4. No Unit shall be converted or subdivided into two or more units.

5. No Owner of a Unit shall alter, remove, or construct upon any load-bearing wall or surface, within a Unit, without first obtaining written approval from the Board of Directors of the Association. No Owner may at any time compromise the fire rated portions of the partitions between the Units.

6. If after appropriate approval a Unit is modified by an Owner, such alteration, removal or restoration shall not affect the separate legal status of each such Unit, as established by this Master Deed.

7. Each Unit in Phase one (1) shall own the exclusive right to a separately identified garage-parking stall. Each Unit in Phases two (2) through nine (9) shall own the exclusive right to an attached garage. Such right shall be appurtenant to each Unit. Permanent parking stalls may be assigned by an appropriate amendment to this Master Deed, by the Grantor, or as later determined by the Board. Additional exterior parking stalls may be assigned to each unit as the Developer sees fit. Decks, patios, stairways and stoops that service individual Units are "Limited Common Areas". Each Unit Occupant shall be responsible for snow removal from a patio or deck. It is not intended that the plumbing lines, pipes, wiring, cables, vents, conduits, foundations, etc, of each Building are Limited Common Areas of the Units.

8. The Condominium shall have as its mailing addresses:

863-899 E. Minnesota Street  
(Plus appropriate Unit #)  
Rapid City, SD 57701

#### ARTICLE VI: Assessments and Allocations

Each Owner shall be responsible for one-fifty-fourth (1/54) of the Common Expenses, as specified in this paragraph. Except as otherwise noted, all expenses of operation, maintenance, repair, improvement, or alteration of the common areas and facilities, together with common real estate taxes, reserves and assessments will be allocated among and assessed equally to all Unit Owners. Assessments for the creation and maintenance of an operating reserve fund will also be allocated among and assessed equally to all Unit Owners. All assessments, insurance premiums and common utility costs shall be allocated among and assessed equally among all Unit Owners.

Purchaser at closing shall, in addition to payment of the first month's regular assessments, deposit the sum of \$90.00 (estimated amount for two months of common

charges) into the Association escrow reserve established by Developer, the same to be retained in escrow at Rushmore State Bank and transferred to the Owner's Association for deposit to a segregated fund when control of the Owner's Association is transferred to the Unit Owners as provided in the Master Deed and Bylaws. The operating funds may not be utilized by the Developer to defray any of its expenses, reserve contributions or construction costs or to make up any budget deficits while Developer is in control of the Owner's Association. However, when unsold Units hereafter are sold, the Developer may reimburse itself for funds paid to the Owner's Association for an unsold Unit's share of the operating funds by using funds collected at closing when the Unit is sold. Each Unit in this condominium shall be subject to this provision at the time of initial sale from the Developer.

#### ARTICLE VII: Common Areas and Facilities

1. No person shall use any part of the Common Areas or Facilities in any manner contrary to such rules and regulations as may be promulgated from time to time by the Association; provided that such rules and regulations do not unduly restrict ingress and egress from the Owner's Unit or any Common Areas assigned to that Owner.
2. Except for Limited Common Areas including, but not limited to, private decks and patios, walkways, stairways and assigned garages, and subject to Law, the by-laws and the rules and regulations promulgated by the Association, all Unit Owners may use the Common Areas and Facilities. Such use shall be made by Owners in such manner as will not restrict, interfere with, or impede the use thereof by other Owners.
3. The maintenance, repair, management and operation of the Limited Common Areas and Common Areas and Facilities shall be the responsibility of the Association, but nothing herein shall be construed so as to preclude the Association from delegating to persons, firms, or corporations of their choice such duties as may be imposed upon the Association by terms of this Master Deed and as are approved by the Board of Directors.
4. Expenses incurred for the maintenance, repair, management, improvement, and operation of the Common Areas, Limited Common Areas and Facilities, together with the particular real estate taxes and assessments so levied against such Common Areas and Facilities, shall be assessed equally to all Unit Owners and collected from each Owner in accordance with provisions contained in Article VI.
5. Assessments for the creation and maintenance of an operating reserve fund will be allocated among and assessed equally to each Unit Owner. Costs for General Liability insurance, fire and extended coverage insurance, shall likewise be allocated and assessed equally to each Unit Owner. Real estate taxes levied against Common Areas shall also be allocated and assessed equally to each Unit Owner. Real estate taxes which are assessed by a county or municipality directly to each Unit and Owner shall be paid by the Unit Owner in a timely fashion. Expenses for applicable utilities shall also be allocated among and assessed equally to each Unit Owner.

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Remington County, South Dakota  
Donna R. Mayer Deed

6. The Grantor, their successors and assigns by this declaration and all future Unit Owners by their acceptance of their deeds, covenant and agree as follows:

- a. That the Common Areas and Facilities shall remain undivided and that no Owner shall bring any action for partition, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the condominium.
- b. Each of said undivided interests shall be deemed conveyed with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the "Unit".
- c. That the share of the undivided interest in the Common Areas and Facilities established herein shall not be changed except by the unanimous consent of the Owners and Mortgagees expressed by an amendment to this Master Deed.
- d. That the Units shall be occupied and used by the respective Owners or Occupants only as a private dwelling for the owner, his or her family, tenants and social guests and for no other purpose except by unanimous consent of the Owners and Mortgagees. Notwithstanding the foregoing, one (1) Unit may be designated and utilized as a rental/sales/management office, by Grantor, or owned individually or severally, until such time as the last Unit is sold and/or the Board of Directors may vote to terminate this usage. Model Units and advertising signs may be maintained on the property until the last Unit is sold.
- e. That the Unit Owners agree that if any portion of the Common Areas and Facilities, encroaches upon any Unit, or any Unit encroaches upon the Common Areas and Facilities or another Unit as a result of construction, reconstruction, repair, shifting, settlement, or movement of any portion of the improvements, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists.

6. The Association shall have the right, but not the obligation, to enter upon any Unit for emergency, security and safety reasons, to perform maintenance pursuant to this Master Deed and the Bylaws, and to inspect, for the purpose of insuring compliance with this Declaration, any Supplemental Declaration, Bylaws and Rules which right may be exercised by any Member of the Board, the Association, officers, agents, employees, and managers, and all policemen, firemen, ambulance personnel and similar emergency personnel in the performance of their public safety duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board of Directors, but shall not authorize entry into any single family

detached dwelling without permission of the Owner, except by emergency personnel acting in their official capacity. In the event that an Owner shall refuse permission for entry, the Board of Directors may apply immediately to the Seventh Judicial Circuit Court for an order authorizing and directing such entry.

ARTICLE VIII: Term of Membership.

That a Unit Owner shall automatically upon becoming an Owner, be a member of the Hampden Hill Owners Association, Inc. and shall remain as a member so long as Unit Ownership exists. The membership ends at such time as the Unit Ownership ends.

ARTICLE IX: Administration of Deed and Bylaws, Liens

The Unit Owners covenant and agree that the administration of the condominiums shall be in accordance with the provisions of this Master Deed and the Bylaws of the Association, which are incorporated herein as Exhibit B.

1. That each Unit Owner, family, tenant or occupant shall comply with the provisions of this Master Deed, the Bylaws, decisions and resolutions of the Association and/or its Board or its managing agent, and failure to comply with any such provisions, decisions, or resolutions shall be grounds for an action to recover sums due for all delinquencies, damages, legal and attorney fees, or injunctive relief.

2. Assessments for the common expenses of the Association shall be made and determined by the Board of Directors and shall be paid by the Unit Owners in accordance with the Master Deed and Bylaws. Each Unit Owner shall be liable for his respective share of the common expenses. In the event such assessment is not timely paid, the amount of such assessment, with interest, costs and reasonable attorneys fees, shall be a continuing lien upon such Unit in accordance with applicable law. Such lien shall be prior to all other liens or encumbrances except for real estate taxes and the first mortgages of record. Each such assessment together with costs, shall also be a personal obligation of the person who owned the Unit at the time the obligation fell due. Such lien may be foreclosed by suit on the Unit in like manner as foreclosure of a mechanics lien under South Dakota law or other lawful action taken by the Board or their agent on behalf of the Association for purposes of debt collection.

3. No Unit Owner may exempt himself or herself from liability for their contributions toward the common expenses by waiver of the use and enjoyment of any of the Common Areas and Facilities or Limited Common Areas or by the abandonment of their Unit.

4. Where the Mortgagee of a first mortgage of record or other purchaser of a Unit obtains title to the Unit as a result of foreclosure of the first mortgage, or such Mortgagee obtains "a deed in lieu of foreclosure", such acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to such Unit, which became due prior to their acquisition of

title. Such unpaid share of common expenses and assessments shall be deemed to be common expense collectible from all Unit Owners as a part of the common annual expenses. However, nothing herein shall waive the obligation of such new Owner to be liable for common expenses and assessments after taking title.

5. That all present and future Owners, tenants, or any other Occupant that might use the Facilities or Buildings in any manner are subject to the provisions of this Master Deed and Bylaws, and that the mere acquisition of a rental estate or occupancy of any of the Units shall signify that the provisions of this Master Deed and the Bylaws are accepted and ratified.

6. That the Units shall not be rented by the Owners for transient or hotel purposes, which shall be defined as a rental of less than 30 days in duration, or rental with the intent to provide hotel services such as food or beverage service, maid service, or other room services. However, nothing herein shall prevent an Owner from renting or leasing their Unit in accordance with the provisions of this Master Deed, the Bylaws, and/or resolutions by the Board on behalf of the Association.

7. That in a voluntary conveyance of a Unit, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments by the Association, up to the time of the grant or conveyance. Any such grantee shall be entitled to a statement of accounts from the Association or its agent, setting forth the amount of assessments due. The Association may not lien the estate of the Grantor for more than the full amount of assessments due, including any interest and penalties.

8. Provisions setting forth the maintenance and repair of the condominiums are as set forth in the Bylaws.

9. The Association or its agent shall, effective as of the date of the execution of the deed conveying the first Unit in Phase I by the Grantor, obtain and maintain insurance as follows: Fire and extended coverage insurance equal to the full insurable replacement value of the value of the Buildings and Facilities, and comprehensive liability coverage of not less than One Million Dollars (\$1,000,000.00), which coverage shall meet the requirements of associations in the State of South Dakota. The Association may add insurance coverage from time to time as deemed necessary by the Board. The Board shall review insurance coverage not less than every 12 months. All insurance premiums shall be assessed and paid as common expenses.

10. In the event of loss or damage to any part of the property by fire or other insured casualty, the cost of reconstruction or repair of which is in excess of Ten Thousand Dollars (\$10,000), the Board shall deposit the funds obtained from the insurance provider into an account with an Escrow Agent or Title Company, as insurance trustees. If upon approved sworn construction statements, the Board determines that the cost of the reconstruction or repair shall be in excess of the insurance proceeds, the following shall occur: In the case of damage to Common Areas or Facilities, the Board shall on behalf of the Association, assess and collect such excess cost from all the owners

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Carrie H. Meyer Deed

in the manner of common expenses, as set forth in the Master Deed and Bylaws: In the case of damage to a Unit, such excess cost shall be assessed to and collected from the individual Owner of such damaged Unit. Such individual amount shall be collected from the Owner, by the Board, prior to beginning reconstruction or repair.

11. Each Owner or Renter may obtain additional insurance at his own expense affording coverage upon his or her personal property and/or for personal liability. If any such insurance should ever reduce the amount of proceeds due the Association in any insurable loss, then the Owner agrees to assign insurance proceeds to the benefit of the Association, to the extent of such reduction.

12. All Owners shall be required to complete repair or reconstruct a damaged Unit promptly and in no event more than 180 days after the date of such damage. If any single event causes damage which is confined to Common Areas and Facilities and/or to no more than one Unit, then the Association shall have the duty to repair or reconstruct the Common Areas and Facilities; and the Owner of the damaged Unit shall have the duty to repair or reconstruct the Unit if requested in writing to by the Association, unless the damage is covered by the blanket condominium insurance policy, which such proceeds shall be used by the Association to repair or reconstruct the Unit.

13. All repairs or reconstruction of the Property will be substantially in accordance with the approved plans and specifications of the condominium project as initially constructed and subsequently improved upon.

14. If at any time the funds for payment of repairs or construction costs are insufficient, additional assessments may be made by the Association to provide for such costs. All Unit Owners shall be liable for the expense of maintenance or replacement made necessary by their acts, negligence, carelessness, or by any member of their family, guests, or tenants, but only to the extent such expense is not met by the insurance coverage of the Association.

15. If any term, covenant, provision, or any portion of this instrument or any exhibit attached hereto or any other document referred to herein held to be invalid or unenforceable for any reason whatsoever, such determination shall not be deemed to alter or impair in any manner whatsoever any other portion of this instrument or exhibit or any other document referred to herein. No provision contained in the Master Deed or Bylaws shall be deemed to have been waived or nullified by any reason or failure to enforce the same for a previous violation.

#### Article X: Mortgagee Provisions

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units in the Properties. The provisions of this Article apply to both this Master Deed and to the Bylaws, notwithstanding any other provisions contained therein.

1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

- a. Any condemnation loss or any casualty loss which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;
- b. Any delinquency in the payment of assessments or charges owned by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Declaration or Bylaws relating to such Unit or the Owner or Occupant which is not cured within 60 days.
- c. Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or
- d. Any proposed action which would require the consent of a specified percentage of Eligible Holders.

2. First Mortgagees may, jointly or singly, pay taxes or other charge which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

3. Other Provisions for First Lien Holders. To the extent possible under South Dakota Law:

- a. Any restoration or repair of the Properties after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this Declaration and the original plans and specifications unless the approval is obtained of the Eligible Holders of first Mortgages on Units to which at least 51% of the votes of Units subject to Mortgages held by such Eligible Holders are allocated.
- b. Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible Holders of first Mortgages on Units to which at least 51% of the votes of Units subject to Mortgages held by such Eligible Holders are allocated.

4. Amendments to Documents. The following provisions do not apply to amendments to the constituent documents or termination of the Association made as a result of destruction, damage, or condemnation pursuant to Article X, 3(a) and (b), or to amendment by Grantor in accordance with Article XII.

a. The consent of Voting Members representing at least 67% of Owners' votes and of the Grantor, so long as it owns any land or Units, subject to the Master Deed, and the approval of the Eligible Holders of first Mortgages on Units to which at least 51% of the votes of Units subject to a Mortgage appertain, shall be required to terminate the Association.

b. The consent of Voting Members representing at least 67% of Owners' votes and of the Grantor, so long as it owns any land or Units, subject to the Master Deed, and the approval of Eligible Holders of first Mortgages on Units to which at least 51% of the votes of Units subject to a Mortgage appertain, shall be required materially to amend any provisions of the Declaration, Bylaws, or Articles of Incorporation, or to add any material provisions thereto which establish, provide for, govern, or regulate any of the following:

- i. voting;
- ii. assessments, assessment liens, or subordination of such liens;
- iii. reserves for maintenance, repair, and replacement of the Common Area;
- iv. insurance or fidelity bonds;
- v. rights to use the Common Area;
- vi. responsibility for maintenance and repair of the Properties;
- vii. expansion or contraction of the Properties or the addition, annexation, or withdrawal of Properties to or from the Association;
- viii. boundaries of any Unit;
- ix. leasing of Units;
- x. imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer or otherwise convey his or her Unit;
- xi. any provisions included in the Declaration, Bylaws, or Articles of Incorporation which are for the express benefit of holders, guarantors, or insurers of first Mortgages on Units.

5. No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

6. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

7. Amendment by Board. Should the Federal National Mortgage Association subsequently delete any of its respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may record an amendment to this Article to reflect such changes.

8. Applicability. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or South Dakota law for any of the acts set out in this Article.

9. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

#### Article XI: Condemnation

If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board, acting on the written direction of voting members representing at least 67% of the total Member votes in the Association and of the Developer, as long as the Developer owns any property described herein) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice. The award made for such taking shall be payable to the Association as Trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which the improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking, the Developer, so long as the Developer owns any property described herein, and voting members representing at least 67 % of the total votes in the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board of Directors. The provisions of Article VII, Section 3 and 4 regarding funds for maintenance and repair of the damage or destruction shall apply.

If the taking does not involve any improvement on the Common Area, or if a decision is made not to restore or repair, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors shall determine.

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Donna H. Neyer Deed

Article XII: Amendment

1. By Grantor. Until termination of the Grantor's control rights under 1.2 of the Associations Bylaws, Grantor may unilaterally amend this Declaration for any purpose. Thereafter, the Grantor may unilaterally amend this Declaration if such amendment is (a) necessary to bring any provision into compliance with any applicable governmental statutes, rule, regulation, or judicial determination; (b) necessary to enable any reputable title insurance company to issue title insurance coverage on the Units; or (c) required by an institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans, including, for example, the Federal National Mortgage Association to enable it to make, purchase, insure or guarantee mortgage loans on the Units; or (d) otherwise necessary to satisfy the requirements of any governmental agency. However, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing. So long as the Grantor still owns property described in Article II for development as part of the Properties, it may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner.

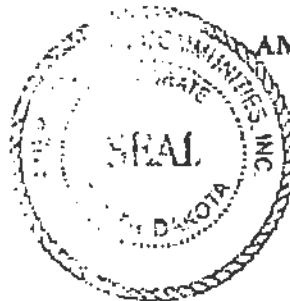
2. By Owners. Thereafter and otherwise, this Master Deed may be amended only in accordance with the provisions of Article X. 4.

3. Validity and Effective Date of Amendments. Amendments to this Declaration shall become effective upon recordation in the land records of Pennington County, South Dakota, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority so to consent, and no contrary provision in an Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke, or modify any right or privilege of the Grantor without the written consent of the Grantor or the assignee of such right or privilege.

IN WITNESS WHEREOF, Grantors do hereby execute this instrument this 11th day of December, 2001.



AMERICAN WEST COMMUNITIES, INC.

Grantor: Ronald A. Baker  
Ronald A. Baker, President  
Hampden Hill Townhome Condominiums  
Developer



## EXHIBIT "A"

BY-LAWS  
OF  
HAMPDEN HILL OWNERS ASSOCIATION, INC.

The following are the By-Laws of Hampden Hill Owners Association, Inc., a South Dakota non-profit corporation (the "Association") and are subject to and made a part of the "Master Deed of Hampden Hill Townhomes, a Condominium".

Article I Definitions.

1. Terms: The terms used in these By-Laws shall have the same meaning as they have in the Master Deed, except as otherwise specified herein.

Article II Membership.

1. Member defined: As specified in the Master Deed, the person or persons defined as the Unit Owner or Owners, shall be Members of the Association. A person shall cease to be a Member at such time as that person ceases to be a Unit Owner.

2. Registration of Owner and Occupant: It shall be the duty of each Owner and Occupant to register with the Secretary of the Association in writing (a) the name and address of such Owner or Occupant, (b) the nature and evidence of such Owner's interest in the Unit, (c) the address(es) at which the Owner or Occupant desires to receive notice, if entitled to receive such notice, (d) and the name of the Owner which shall be authorized to vote with respect to that Unit ownership. Failure to select a voting representative and notify the Secretary may waive the Unit owners right to vote, but shall not waive the Owner's obligations under the By-laws or Master Deed.

3. Non-Transfer of Membership Rights: The interest and rights of a Member in the funds and assets of the Association cannot be assigned, pledged, encumbered or transferred in any manner, except as an appurtenance to an Owner's Unit.

Article III Association Meetings.

1. Place of Meetings: All meetings of the Members of the Association shall be held at the office of the Association or at such other place as may be designated by the Board of Directors.

2. Annual Meetings: The annual meeting of Members shall be held on the Second Saturday of May of every year unless a majority of the Members designate another date. Any matter that is properly brought before an annual meeting of the Members shall be a proper subject for discussion and/or action by the Members.

3. Special Meetings and Notices: Special meetings of the Members may be called by the President. Special meetings must be called and scheduled to be held within 45 days of the written request of at least one-third of the eligible Members. Owners of record who are registered, shall receive notice of all meetings at least 14 days in advance of the meeting. No special meeting shall be called within 30 days of the regular annual meeting date.

4. Quorum: The presence of two-thirds of the voting Members, in person or by proxy, shall constitute a quorum for the transaction of any official business. In the event that a quorum shall not be present at any meeting, the meeting shall be adjourned from time to time, until a quorum is present. The quorum, once established shall continue to exist to conduct the business at that meeting.

5. Association Voting Rights: The Association may not cast any vote or be counted to determine a quorum as to any Unit ownership that the Association may have.

6. Voting Registration: At the beginning of each meeting the Secretary shall present a written list of the Unit numbers or addresses, the respective name(s) of the Owner(s) and of the eligible Occupants entitled to notice of such meeting.

7. Order of Business: The Board of Directors shall adopt a practical order of business format for annual and special meetings and shall rely on Roberts Rules of Order as a guide to run the meetings.

#### Article IV Voting.

1. Entitlement: Each Unit shall be entitled to one Vote.

2. Authority to Cast Vote: At any meeting of the Members, a properly registered Member or proxy grantee shall be entitled to cast the one Vote for their respective Unit.

3. Voting by Proxy: A Member may cast the Vote by proxy. The Association shall approve and provide the proxy form. Proxies must be registered with the Secretary prior the meeting in which the proxy grantee expects to cast a Vote.

4. Vote Required: A two-thirds majority vote at a meeting where a quorum is present shall be considered a concurring Vote of the Members, except where a different Vote is specifically called for in the Master Deed, Articles, By-Laws, or the Act.

5. Cumulative Voting: There shall be no cumulative voting except for the election of Directors of the Board.

6. Action without meeting: Any action which might be taken at a Member's meeting may be taken upon the written consent of all those entitled to vote.

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Dorva H. Moyer Deed

Article V Reports.

1. Annual Report: The Treasurer shall be required to prepare an Annual Report on behalf of the Association to be provided to every Owner within 120 days after the close of the fiscal year. The report shall contain a minimum of the following:

- a. A balance sheet;
- b. An operating income statement; and
- c. A statement of changes in financial position for the fiscal year.

Such annual report shall be prepared on an audited basis by an independent public accountant.

2. Inspection by Members and Mortgagees: The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first mortgage on a Unit, any Member, or the duly appointed representative of any of the foregoing, at any reasonable time and for purpose reasonably related to his or her interest in the Unit: The Declaration, Bylaws and Articles of Incorporation, any amendments to the foregoing, the Rules of the Association, the membership roster, books of account, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the office of the Association or at such other place within the properties as the Board shall designate.

The Board shall establish reasonable rules with respect to:

- a. Notice to be given to the custodian of the records;
- b. Hours and days of the week when such an inspection may be made; and
- c. Payment of the cost of reproducing copies of documents requested.

Every Director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make a copy of relevant documents at the expense of the Association.

Article VI Board of Directors.

1. Board of Directors:

- 1.1 The affairs of the Association shall be governed by a Board of three (3) Directors, each of whom shall have one (1) equal vote.

1.2 The first Board of Directors shall consist of those persons elected by the Developer who shall serve for staggered terms. Each Director shall be elected for a three (3) year term provided however, that the initial Directors shall have at least one (1) Director for a one (1) year term and one Director for a two (2) year term. It being the intent of these Bylaws that no more than one (1) Director's term should expire in any one (1) year.

Following the appointment of the initial Board of Directors, the Directors shall be selected by the Grantor in its sole discretion and shall serve at the pleasure of the Grantor until the first to occur of the following:

a. January 1, 2005; or

b. When thirty (30) units are owned by unit owners other than the Developer, the Developer shall promptly notify the Members and a special meeting of the Members shall be held within sixty (60) days thereafter on a call by the Developer. At said meeting, Members shall elect three (3) managing Board of Directors Members. One (1) for a three (3) year term, one (1) for a two (2) year term and one (1) for a one (1) year term. Of the total membership of the Board at that time, at least one (1) of the Board Members shall represent the Developer.

Upon the first to occur of the dates January 1, 2005 or the date when forty (40) units are owned by Unit Owners, other than the Developer, the Developer shall promptly notify the Members and a special meeting of the Members shall be held within sixty (60) days thereafter on a call by the Board of Directors and the Developer. At said meeting, the Board Member(s) representing the Developer shall resign and the Members shall elect any unfilled Board of Director's seats at that time. Board Members shall be elected in staggered terms to promote continuity of management as required above.

2. Number and Qualification: After the initial Board of Directors, the Board shall consist of three (3) Directors, all of whom shall be Members.

3. Term of Office: Subject to 1.2 above, the term of each Director shall be three (3) years. A Director shall hold office until a successor has been elected and accepted the office, or until a director has been removed in accordance with the provisions of these By-Laws.

4. Powers and Duties: The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association, and may take any action except such actions which by the Act, by the Master Deed or by these By-Laws may not be delegated to the Board of Directors by the Members. Such powers and duties shall include but shall not be limited to the following:

a. Operation, maintenance, repair and replacement of the Common Areas and Facilities.

- b. Determine the Common expenses required for the affairs of the Association, which shall include all ordinary and necessary operating expenses for the Property, and the establishment of a reserve for future repair, replacement, and improvement.
- c. Levy and collect the assessments for common expenses from the Owners.
- d. Employment for the Association of a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board of Directors may delegate such powers as are necessary to perform the Manager's assigned duties, but shall not delegate policy making authority. The Grantor, or an affiliate of the Grantor, may be employed as Managing Agent or Manager.
- The Association shall not be bound, either directly or indirectly, by any management contract executed by the initial Board of Directors unless such contract contains a right of termination exercisable by the Association, with or without cause and without penalty, at any time after termination of the control period referred to in Article VI, Section 1 of these Bylaws.
- e. Adoption and implementation of Rules and Regulations governing the operation and the permitted uses of the Property, including conduct of Owners, Occupants and guests.
- f. Preparation and submission to the Owners of the annual report.
- g. Maintaining of bank accounts on behalf of the Association and designating the signatories required.
- h. Purchasing, leasing or acquiring any Units offered for sale, lease, foreclosure, or surrendered to the Association.
- i. Selling, conveying, mortgaging, or otherwise dealing with Units acquired by the Association.
- j. Repair, replacement or improvements to the common elements.
- k. Imposition of reasonable charges including costs and attorneys fees, for the evaluation, preparation, and recordation of amendments to the Master Deed, resale certificate, or statements of unpaid assessments.
- l. Imposition of charges for late payment of assessments and levy reasonable fines for violations of the Master Deed, By-Laws, and Rules and Regulations of the Association.

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Donna H. Haver Deed

m. Institution, defense or intervention in litigation or administrative proceedings in the Association's name on behalf of the Association or two or more of the Unit Owners in matters affecting the Condominium.

n. Obtaining insurance for the Property pursuant the Master Deed and By-Laws.

o. Making repairs, additions or renovations to the Property in accordance to the Master Deed and the By-Laws.

p. Commencement of appropriate legal action for collection of assessments for Common Expenses as hereinafter provided.

5. Meetings and Notice: An annual meeting of the Board of Directors shall be held immediately following the Annual meeting of the Members. Special meetings may be called by the President or Secretary within seven (7) days notice to the Board of Directors. If all directors are present at any meeting, the notice requirement shall be waived.

6. Quorum: A majority of members of the Board of Directors shall be deemed to be not less than three (3), to conduct any business.

7. Vacancies: A vacancy on the Board of Directors shall be filled by a person elected by at least three (3) of the remaining Directors. That person shall serve out the term vacated.

8. Removal: Any Director may be removed from the Board by Members casting a majority vote of all the Owners at a duly scheduled meeting of the Members.

9. Compensation: No Director shall receive compensation for any service he or she may render in his or her capacity as a Director unless such compensation is expressly approved at a meeting of the Members. However any Director may be reimbursed for actual expenses incurred performing Association business, by resolution of the Board of Directors.

10. Fidelity Bonds: At such time as 30 Units have been declared, the Board of Directors shall obtain, as a common expense, a Fidelity Bond or Bonds, if generally available at reasonable cost, covering all persons responsible for handling Association funds including, but not limited to, the Board of Directors and any employee. The Board shall determine the amount of the Fidelity coverage in its best business judgment but if reasonably available shall secure coverage equal to not less than one-fourth (1/4) of the annual base assessments on all Units plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and all require at least thirty (30) days prior written notice to the Association of any cancellation, substantial modification or renewal.

#### Article VII Officers.

1. Principal Officers: The Officers of the Association shall be the President, Vice-President and Secretary/Treasurer, all of whom shall be elected by the Board of Directors. The Board may from time to time elect such other Officers as they judge necessary to conduct the

business of the Association. Any Member of the Board of Directors may also hold any position as Officer of the Association.

2. Election of Officers: The Officers shall be elected annually by the Board of Directors and shall serve at the pleasure of the Board.

3. Removal of Officers: Upon an affirmative vote of the majority of the Board of Directors, any Officers may be removed, and their successor elected by a majority vote of the Board of Directors.

4. President: The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Board of Directors. He shall have all of the general powers of supervision and execution of contracts and other obligations on behalf of the Association. The Board of Directors may from time to time, prescribe other duties for the President and other Officers.

5. Vice President: The Vice President, if elected, shall take the place of the President and perform those duties whenever he or she is absent or unable to act.

6. Secretary/Treasurer: The Secretary/Treasurer shall record the minutes of all meetings of the Board of Directors and the Members, and shall keep and have all books and records of all Board meetings and actions, and all Member meetings and actions; in addition to the registration duties. The Secretary/Treasurer shall additionally have custody of all intangible property of the Association, including funds, securities, evidences of indebtedness, and shall give bond in such sum and with such sureties as the Board may require. These documents shall also include all assessment rolls, Owner's accounts, reserve or project funds, bank account ledgers and the annual report. The books of the Association shall be kept in accordance with good accounting practices and as directed by the Board of Directors. The Board of Directors may designate some or all of these functions be undertaken by a contracted professional, such as an Accountant or Management Agent.

#### Article VIII Operation of the Property.

1. Common Expenses: Common Expenses shall mean and include all expenses approved or incurred by the Board of Directors or by Officers of the Association and shall include all those items identified as Common Expenses in the Master Deed and By-Laws.

2. Budget and Levy: The Board of Directors shall from time to time, and at least annually, prepare a budget of Common Expenses for the Association. They shall allocate, assess and levy such Common Expenses among the Owners according to their respective undivided interest in the Common Areas and Facilities. Each Unit shall be responsible for 1/54th of the total Common Expenses and other applicable levies.

The budget and levy shall include in addition to the Common Expenses as set forth in the Master Deed, such amounts as the Board deems proper for adequate reserve fund for periodic maintenance, repairs and replacement of Common Areas and Facilities, as well as the Buildings.

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The Board of Directors shall fix the amount of the annual assessment against each Unit prior to December 1<sup>st</sup> of the preceding year for which the assessment is made. Written notice of the assessment amount shall be given, prior to that same date, to each Owner. The Board of Directors shall, upon request of any Member, furnish copies of each budget on which such Common Expenses and the assessment are based, to the Owner and to his First Mortgagee. Annual budgets, annual and special assessments may be amended by the Board of Directors, if necessary.

3. Payment of Common Expenses: All Owners shall be obligated to pay the Common Expenses assessed and levied by the Board of Directors pursuant to paragraph 2 of this Article VIII. Such assessment shall be due in monthly installments in advance on the First day of each month of the year for which the assessments are made, or when designated by the Board in the case of a special assessment. Any mortgagee acquiring a first mortgage interest from any Owner of a Unit and its appurtenant undivided interest in Common Areas and Facilities may, as a condition of the loan, include in the mortgage note or deed a requirement that the mortgagor, upon execution of the mortgage deed, make a monthly deposit with the mortgagee of an amount each month sufficient to pay when due and payable the Common Expenses attributable to that Unit. The mortgage note or deed may further provide that a default in making such deposit shall be a default under the terms of the mortgage deed. In the event that mortgagee collects the monthly installments, such mortgagee shall remit the monthly installments to the Association.

4. Default in Payment of Assessments: Late Charges. Payment of assessments made on or before ten (10) days after the due date shall not bear interest. In the event any Owner fails to make payment on or before ten (10) days after the due date, such Owner shall be obligated to pay interest at 18%, from the due date, until paid in full. In addition to these late charges the Owner shall also pay all expenses, including reasonable attorney fees, and any other fees incurred by the Association in collecting the full assessments, late charges and interest that is due. The Association shall have the right to lien any Unit with assessments more than 30 days in arrears, and may foreclose on this lien as provided by law for foreclosure of mechanics lien. Notice shall be sent to the first mortgagee, if any, seven days prior to the lien filing.

5. Minutes: The Board of Directors shall cause to be kept at the registered office of the Association, records of actions, meetings and minutes of the Board of Directors and meetings of the Members. Records of the Owners, first mortgagees, and all accountings shall also be kept. Such records shall also include all budgets, receipts and authorizations for expenditures, as well as individual accounting for each Unit and all assessments.

#### Article IX Amendment to By-Laws.

These By-Laws may be amended only under the following conditions:

1. Amendment Recording: The amendment must be set forth in an amendment to the Master Deed and such amendment must be duly recorded in the office of the Register of Deeds, Pennington County, South Dakota; and

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2. Amendment Approval: The amendment must be approved by the Vote of Owners who own at least sixty-seven percent (67%) of the Units. This Vote must be cast in person or by Proxy at a duly held meeting of the Members. If any proposed Amendment affects the first mortgagees, then fifty-one percent (51%) of the first mortgagees must also approve the amendment prior to its implementation. Any mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to mortgagee by certified or registered mail, return receipt requested. The Developer must approve any amendment, as well, prior to its implementation, until the Developer has transferred all Units to ownership other than himself.

#### Article X Indemnification of Officers and Directors.

1. Indemnification: The Association shall indemnify every Director and Officer, and their heirs against all loss, cost and expense, including attorneys fees, reasonably incurred in connection with any action, suit, or proceeding to which they may be made a party, as a result of their administering the affairs of the Association. Any such loss or costs incurred by the Association shall be considered a Common Expense of the Members. Nothing in this section, however, shall obligate the Association to indemnify any Owner who is or has been a Director or Officer, with respect to any duties or obligations arising solely from their capacity as an Owner.

#### Article XI Miscellaneous.

1. Notices: All notices hereunder shall be sent U.S. Mail, except those matters that include documents that must be recorded or that include lien documents or other actions that may be part of a legal action. Those such documents shall be sent U.S. Mail Certified. All notices to each Owner, first mortgagee, or agent shall be sent by U.S. Mail to their respective address as registered with the Secretary. All notices are deemed to have been given when deposited in the U.S. Mail.

2. Invalidity: The invalidity of any part of these By-Laws shall not impair or affect in any manner the validity, enforceability, or effectiveness of the balance of these By-Laws.

3. Non Waiver: No restriction, condition, obligation, or provision contained in these By-Laws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

4. Corporate Seal: The Association shall have no Corporate Seal.

5. Election under the IRS Code: The Board shall make and file all elections required pursuant to Section 28 of the IRS Code of 1954 or any replacement thereof, in order to be exempt from taxation.

6. Fiscal Year: The Fiscal Year of the Association shall be as determined by the Board of Directors.

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Pennington County, South Dakota  
Donna K. Mayer Deed

The undersigned hereby certifies that the foregoing By-Laws are adopted as the By-Laws of the Hampden Hill Owners Association, Inc., a non-profit Corporation in South Dakota, effective this 11<sup>th</sup> day December, 2001.



Ronald A. Baker, President  
American West Communities, Inc.  
Developer  
Hampden Hill Townhome Condominiums

Prepared by Ronald A. Baker, 2040 West Main Street, Suite 100, Rapid City, SD 57702 388-8160

# EXHIBIT B

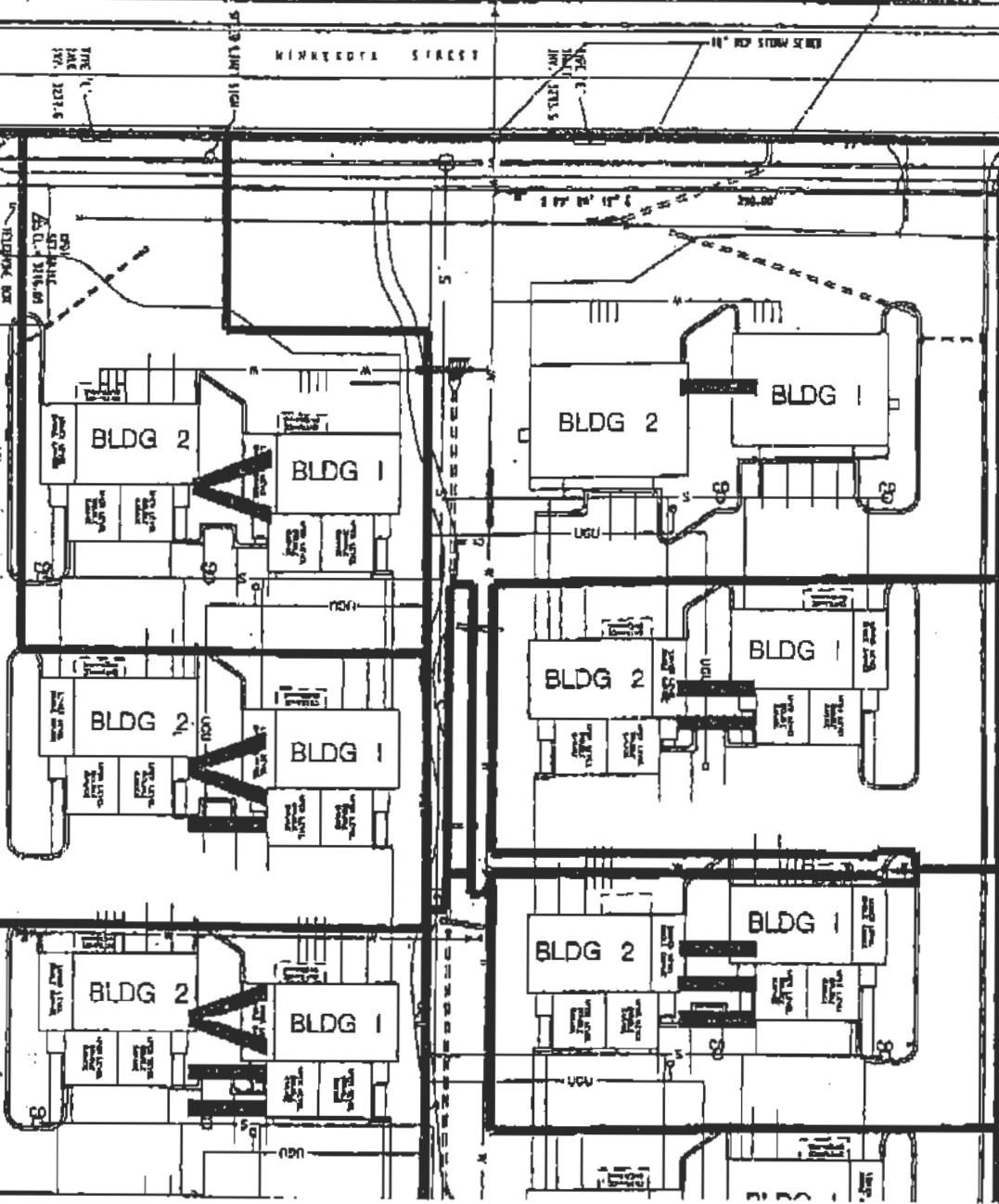
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STAIRS TO BE LOCATED AT 2 1/2' TO 3' FROM WALLS AND 3' FROM CORNERS

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MINNESOTA STREET

PHASE DEVELOPMENT  
HAMPDEN HILL TOWNHOMES  
PARCEL D OF MJK SUBDIVISION  
RAPID CITY, SOUTH DAKOTA



NOTE: DURING PHASE CONSTRUCTION THE LIMITS OF GRADING

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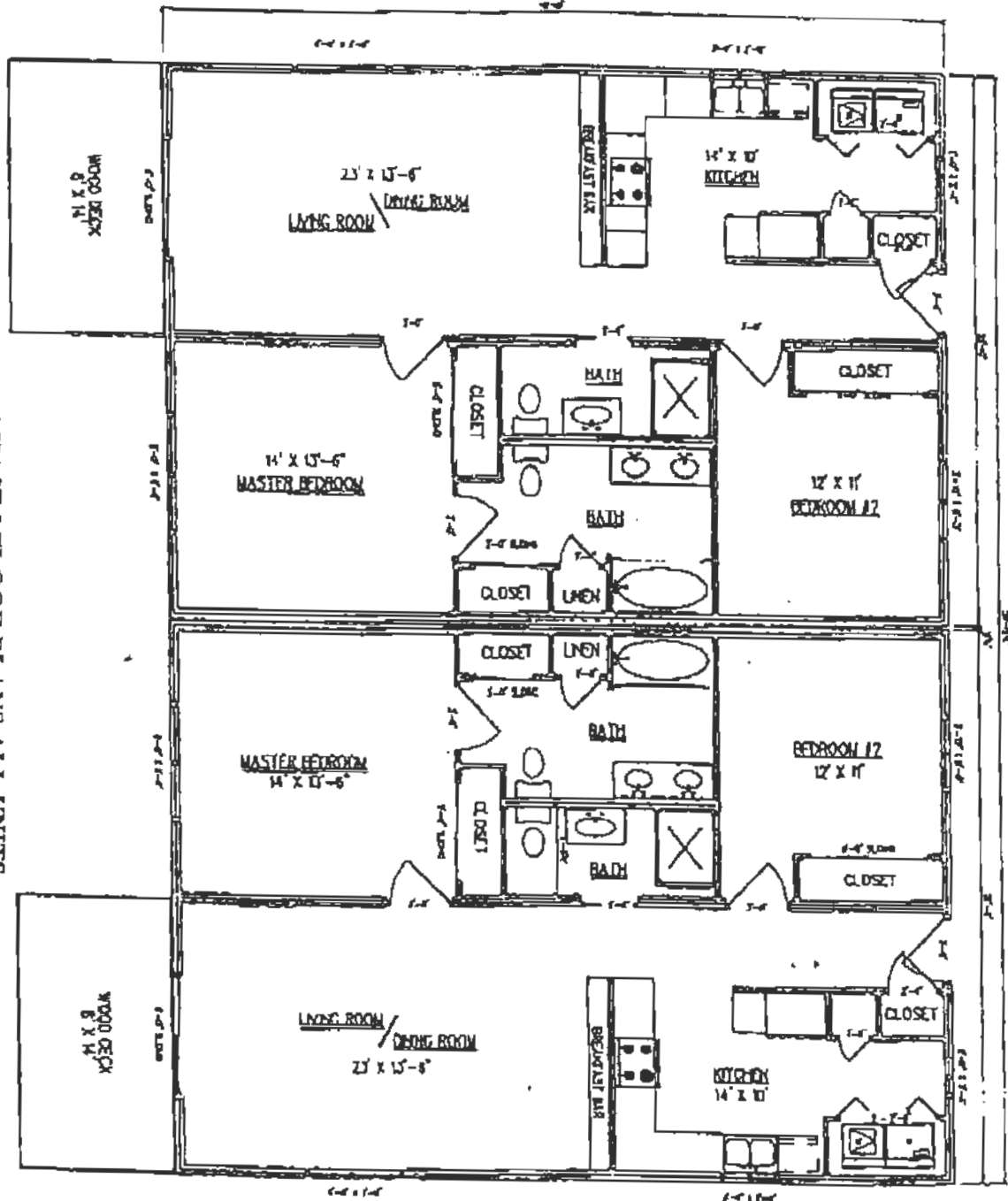
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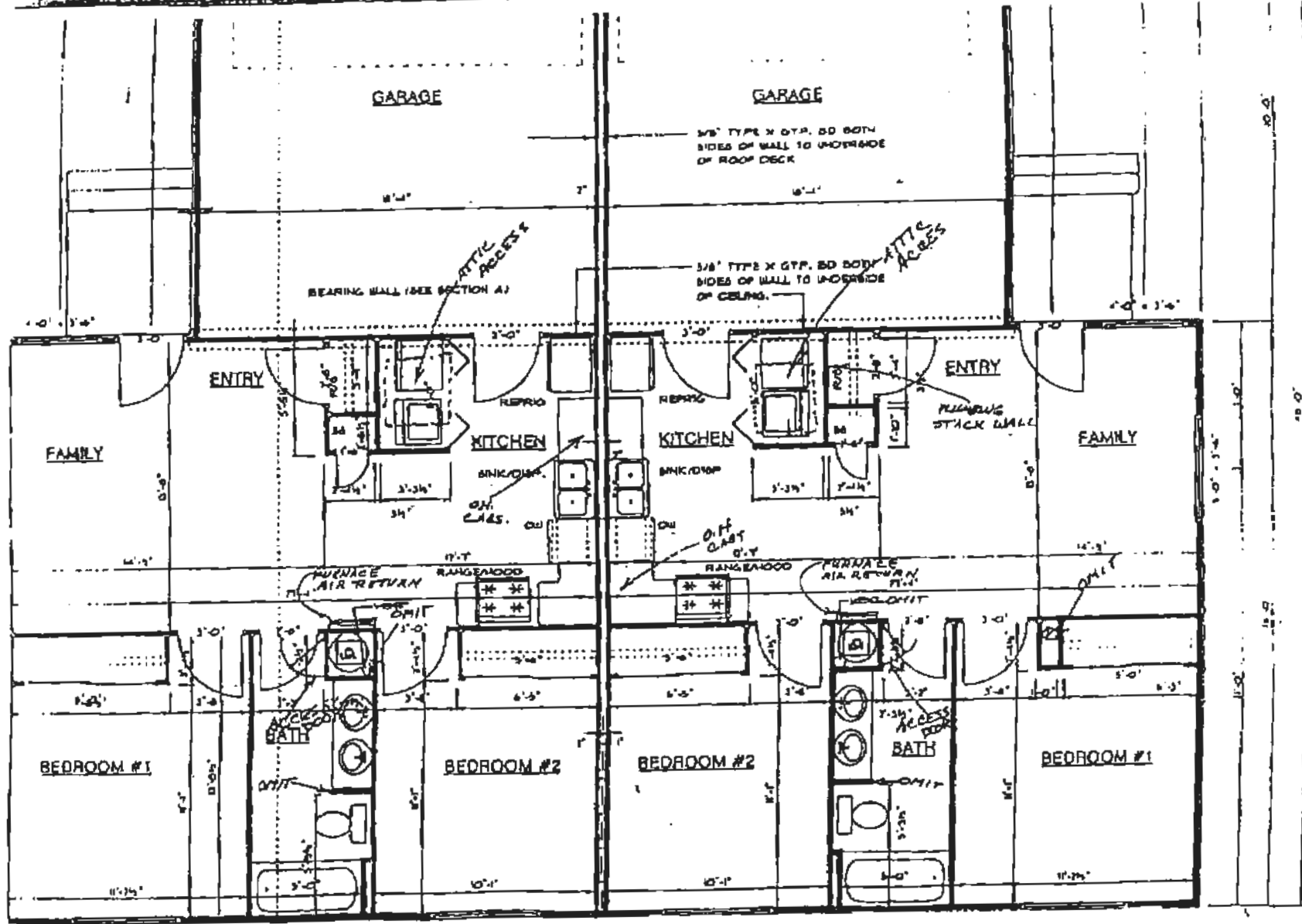
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PHASE I FLOOR PLANS ALL UNITS



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## PUBLIC OFFERING STATEMENT

### PURCHASER SHOULD READ THIS STATEMENT FOR HIS OWN PROTECTION

NAME OF CONDOMINIUM: HAMPDEN HILL TOWNHOME CONDOMINIUMS

LOCATION OF CONDOMINIUM: 861 TO 899 EAST MINNESOTA STREET, RAPID CITY, PENNINGTON COUNTY, SOUTH DAKOTA 57701

NAME OF DEVELOPER: AMERICAN WEST COMMUNITIES, INC.

ADDRESS OF DEVELOPER: 2040 WEST MAIN STREET, SUITE 100, RAPID CITY, SD 57702

EFFECTIVE DATE OF PUBLIC OFFERING STATEMENT: July 1, 2002

South Dakota law requires that the original seller of condominium units disclose fully and accurately the characteristics of the condominium units being offered for sale. This Public Offering Statement is the means by which such disclosure is to be made. In the event of any misrepresentation made herein, the purchaser should notify the South Dakota Real Estate Commission, 118 West Capital, Pierre, SD 57501

Under the law, no contract for sale of a condominium unit is binding on the purchaser until at least ten (10) days after the purchaser has received a Public Report of the Commission. The purchaser should inspect the condominium unit and all common areas and obtain professional advice.

The South Dakota Real Estate Commission does not warranty the accuracy of the statements made herein, nor has it passed on the merits of the condominium units offered for sale. Registration of a condominium by the South Dakota Real Estate Commission is not an indication that the actual values of the condominium unit is (are) equal to any offering price as stated herein. Any representation which is contrary to the foregoing statements of this paragraph is a violation of state law.

The Public Offering Statement is enclosed with the Public Report of the Commission and made a part hereof.

## (A) THE CONDOMINIUM CONCEPT

Condominium ownership is a relatively new property right, which in effect, combines two older forms of ownership. The Condominium Unit Owner is (1) sole owner of the portion of a building which comprises his living quarters and is (2) one of the many mutual owners (legally speaking, "tenants in common") of common facilities which service his/her and other living quarters and of common areas which the Unit Owner may use and enjoy along with other mutual owners. Each individual Unit Owner has an "undivided interest" in the common elements which means that all Unit Owners have a share in the ownership of all common elements. An undivided interest gives the Unit Owner the right to share in the control of all the common elements, but he must also pay his share of the normal expense of operating and maintaining all the common elements. It is the ownership of an undivided interest in the common elements which set condominium ownership apart from other forms of property ownership.

### South Dakota law defines a condominium as follows:

"Condominium" as used in this chapter, unless the context otherwise requires, shall mean an estate in real property consisting of an undivided interest in portions of a parcel of real property, together with a separate interest in space in a residential, industrial, or commercial building of such real property, such as, but not restricted to, an apartment, office or store. A condominium may include, in addition, a separate interest in other portions of real property. Such estate may, with respect to the duration of its enjoyment, be either an estate of inheritance or perpetual estate, an estate for life, or an estate for years.

## (B) DESCRIPTION OF THE CONDOMINIUM

The Hampden Hill Townhome Condominiums are specifically described in the Master Deed on file in the office of the Register of Deeds, Pennington County, South Dakota, and a copy of the Master Deed is available at the request of the prospective purchaser. The management of the Hampden Hill Townhome Condominiums is controlled by a set of By-Laws, which are also available upon request by a prospective purchaser. . .

The Hampden Hill Townhome Condominiums as described in the Master Deed, shows nine (9) different Phases of construction with varied configurations of Buildings and Unit arrangements as specified in "(C) INDIVIDUAL UNITS".

### (C) INDIVIDUAL UNITS

Phase I of the condominiums consists of two (2) buildings, each with four (4) Units on two (2) levels, plus attached garages in a basement level.

All eight (8) of these Units are two (2) bedroom Units as shown on Exhibits C-1 of the Master Deed. Each Unit contains approximately 1,680 square feet including the garage. Each Unit represents 2% of the entire project.

Phases II through VIII of the condominiums consists of two (2) buildings, each with three (3) Units on two (2) levels, with attached garages.

All twenty-eight upper Units are two (2) bedroom Units with attached garages, as shown on Exhibits C-2 of the Master Deed. Each upper Unit contains approximately 1,144 square feet including the garage. Each Unit represents 1.4% of the entire project.

All fourteen (14) lower Units are two (2) bedroom Units with attached garages, as shown on Exhibits C-3 of the Master Deed. Each lower Unit contains approximately 1,568 square feet including the garage. Each Unit represents 1.9% of the entire project.

Phase IX of the condominiums consists of two (2) buildings, each with two (2) Units on one (1) level, with attached garages.

All four Units are two (2) bedroom Units as shown on Exhibits C-4 of the Master Deed. Each Unit contains approximately 1,144 square feet including the garage. Each Unit represents 1.4% of the entire project.

1. All fifty-four (54) of the Units, including garages, contain 88% of the entire project; and
2. The common area contains 12% of the entire project;
3. Which totals 100% of the entire project.

### (D) COMMON ELEMENTS

The Common Areas and Facilities in which a purchaser will take an undivided interest shall include everything contained on the described property, except for the garage, storage area and apartment, which shall be owned by the purchaser, and certain "Limited Common Areas", as specified in the Master Deed, which shall be designated for the exclusive use of each purchaser. A purchaser's undivided percentage interest in the Common Areas and Facilities shall be that each Unit shares equally in all aspects of all Common Areas and Facilities.

**(E) THE DEVELOPER**

American West Communities, Inc., a South Dakota corporation, is the Developer for the Hampden Hill Townhome Condominiums, whose address is 2040 West Main Street, Suite 100, Rapid City, SD 57702

The principal officer of American West Communities, Inc. is Ronald A. Baker, President and Secretary/Treasurer.

**(F) OFFERING PRICES**

It is expected that the initial offering prices for the Units shall be approximately \$93,900.00 dependant upon the size and location of the Unit. Offering prices are subject to change.

**(G) ENCUMBRANCES**

The Developer is not aware of any covenants, encumbrances, easements, licenses, servitudes or other devices which would restrict the Unit Owner's use and enjoyment of his Unit or the Common Areas and Facilities appurtenant thereto except routine utility easements and the governing By-Laws.

**(H) RESTRICTIONS ON TRANSFER**

See attached By-Laws.

**(I) UNIT OWNERS' ASSOCIATION**

See attached By-Laws.

**(J) SURROUNDING AREA**

The neighborhood adjacent to the condominium project is a mixture of multi-family and residential uses.

**(K) FINANCIAL MATTERS**

The estimated project budget for the first year, including projected average common expense assessments for each Unit are as follows:

## ESTIMATED OPERATING BUDGET

	<u>Unit/ Month</u>	<u>Unit/ Year</u>
Insurance	\$ By occupant (Common Carrier required)	
Electrical	\$ By occupant	\$ <u>  0  </u>
Water and sewer	\$ By occupant	\$ <u>  0  </u>
Trash	\$ 6.50	\$ 78.00
Common area snow removal, lawn care and maintenance	\$ 40.00	\$480.00
Replacement reserve and miscellaneous	\$ 18.50	\$222.00
<b>TOTALS</b>	<b>\$ 65.00</b>	<b>\$780.00</b>

Expenses which arise from operation, maintenance, repair, improvements, or alteration specially benefiting an individual Unit or made necessary by the conduct of an individual Unit Owner may be assessed directly to the Unit Owner.

Common Expenses assessed against the Unit Owner will give rise to a lien of the Owner's condominium Unit, which lien, if unsatisfied, may be enforced by foreclosure or other legal remedies.

The Board of Directors of Hampden Hill Owners Association, Inc. will annually review the adequacy of the insurance coverage for the condominium project and, consequently, the cost of fire, hazard and public liability insurance may increase annually.

**(L) TAXES**

As of the date of the preparation of this Public Offering Statement, the assessed value of the individual condominium units, including the appurtenant interest in the Common Elements, is not yet assessed.

**(M) ZONING, HOUSING AND BUILDING CODES**

The building site is zoned medium density residential. All zoning ordinances, housing codes, building codes, and similar laws affecting the condominium project have been complied with.

(N) WARRANTIES

The purchasers shall receive title by Condominium Warranty Deed containing the usual warranty of title provided by statute.

(O) DOWN-PAYMENT REQUIRED

At the execution of an Earnest Money Contract, purchaser shall be required to pay \$700.00 earnest money per Unit.

DATED this 10<sup>th</sup> day of December, 2001.

AMERICAN WEST COMMUNITIES, INC.

By: 

President

