

DECLARATION OF CONDOMINIUM

for the

KELLY EAST CONDOMINIUMS ADDITION TO THE TOWN OF JACKSON

Upon recording, please return to
Brenda Wylie
Wylie Law Firm LLC
Post Office Box 4574
Jackson, Wyoming 83001

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GRANTOR: KELLY EAST LLC
GRANTEE: THE PUBLIC
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**Declaration of Condominium
for the
Kelly East Condominiums Addition to the Town of Jackson**

This DECLARATION OF CONDOMINIUM FOR THE KELLY EAST CONDOMINIUMS ADDITION TO THE TOWN OF JACKSON is made this _____ day of _____, 200____, by Kelly East, LLC, a Wyoming limited liability company (the "Declarant"), pursuant to the Condominium Ownership Act, Wyoming Statute § 34-20-101 et seq. (the "Act").

PART ONE: INTRODUCTIONS TO THE COMMUNITY

KELLY EAST, LLC, as the developer of Kelly East Condominiums Addition to the Town of Jackson has established this Declaration to provide a governance structure and a flexible system of standards and procedures for the overall development, administration, maintenance and preservation of Kelly East Condominiums Addition to the Town of Jackson as a master planned residential condominium community.

ARTICLE I - CREATION OF THE COMMUNITY

1.1 Purpose and Intent. The Declarant, as the owner of the real property described on Exhibit "A" intends by the recording of this Declaration to create a general plan of development and Declaration for the planned community known as Kelly East Condominiums Addition to the Town of Jackson. This Declaration provides for the overall development, administration and maintenance of the real property now or hereafter comprising Kelly East Condominiums Addition to the Town of Jackson. An integral part of the development plan is the creation of Kelly East Homeowners Association, an association comprised of all owners of Condominium Units in Kelly East Condominiums Addition to the Town of Jackson, to own, operate and/or maintain various Common Elements and community improvements and to administer and enforce this Declaration and the other Governing Documents referred to in this Declaration.

1.2 Binding Effect; Enforceability. All property described on Exhibit "A" hereto and any additional property that is made a part of this Declaration in the future by filing one or more Supplemental Declarations in the Public Records, shall be owned, conveyed and used subject to all of the provisions of this Declaration, which shall run with the title to such property. This Declaration shall be binding upon all Persons having any right, title or interest in any portion of the Properties, their heirs, successors, successors-in-title, and assigns. This Declaration shall be enforceable in perpetuity by the Declarant, as long as Declarant owns any Condominium Units or Townhome Lots within the Properties, and/or the Board.

1.3 Governing Documents. The Governing Documents create a general plan of development for Kelly East Condominiums Addition to the Town of Jackson which may be supplemented as set forth herein. In the event of a conflict between or among the Governing Documents and any such additional covenants or restrictions, the Governing Documents shall control. In the event of a conflict among provisions of the various Governing Documents, the following shall be the order of priority of the documents: (i) Articles; (ii) Declaration, and any amendments or supplements thereto; (iii) Bylaws; and (iv) Master Rules and Regulations. Any provision appearing in a document higher in priority to another document shall control. Any documents not included in this list shall have the priority stated in such document, if any.

Nothing in this Section shall preclude any Supplemental Declaration or other recorded covenants applicable to any portion of the Properties from containing additional restrictions or provisions that are more restrictive than the provisions of this Declaration. The Association may, but shall not be required to, enforce any such covenants, restrictions or other instruments. All provisions of the Governing Documents shall apply to all Owners as well as their respective family members, tenants, guests and invitees. If any provisions of this Declaration is determined by judgment or court order to be invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications.

ARTICLE II - DEFINITIONS

The terms used in Governing Documents shall generally be given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms shall be defined as set forth below.

2.1 "Association". Kelly East Homeowners Association, a Wyoming non-profit corporation, its successors or assigns.

2.2 "Base Assessment". Assessments levied on all Townhome Lots and Condominium Units subject to assessment under Article VIII to fund Townhome Common Expenses and Condominium Common Expenses, as determined in accordance with Section 8.1

2.3 "Board of Directors" or "Board". The body responsible to the membership for operations of the Association, selected as provided in the Bylaws and generally serving the same role as the board of directors under Wyoming corporate law.

2.4 "Bylaws". The Bylaws of Kelly East Homeowners Association, as the same may be amended from time to time.

2.5 "Condominium Common Elements". "Condominium Common Elements" shall mean the Condominium General Common Elements, Condominium Limited Common Elements, in the aggregate, or a portion thereof. Each Owner shall own an undivided interest in the Condominium Common Elements as a tenant in common with all the other Owners in the proportions provided in Exhibit "B" attached hereto and incorporated herein, and, except as otherwise limited in this Declaration, shall have the right to use the Condominium Common Elements for all purposes incident to the use and occupancy of his Condominium Unit, which right shall be appurtenant to the Condominium Unit.

2.6 "Condominium Common Expenses" or "Condominium Unit Common Expenses". The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Condominium Units, including any reasonable reserve(s), as the Board may find necessary and appropriate pursuant to the Governing Documents

2.7 "Condominium" or "Condominium Unit". "Condominium" or "Condominium Unit" shall mean those certain individual air spaces as designated and delineated on the Condominium Plat. Each Condominium Unit shall consist of that part of each Condominium building as bounded by the interior surfaces of the perimeter walls, floors, ceilings, windows and window frames, doors and door frames, and trim, and the interior surfaces of built-in fireplaces, if any, as shown and numbered on the Condominium Plat. Each Condominium shall include all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of its finished

surfaces and the exterior surfaces so described. All other portions of the walls, floors or ceilings (including common walls to separate Condominium Units) shall be a part of the Condominium General Common Elements. In addition, each Condominium shall include the following: (a) all spaces, nonbearing interior partitions and all other fixtures and improvements within the boundaries of the Condominium Unit; (b) all outlets, lines and ducts of utility service lines, including but not limited to power, light, gas, hot and cold water, heating and waste disposal, within the boundaries of the Condominium Unit; and (c) all heating and hot water apparatus exclusively serving the Condominium. The interior surfaces of a perimeter window or door means at the points at which such surfaces are located when such windows or doors are closed, the physical windows and doors themselves are part of the Condominium General Common Element as herein defined. This Declaration provides a means for ownership in fee simple of separate interests in the Condominium Unit together with an undivided fee simple interest in the Condominium Common Elements, as those terms are herein defined.

2.8 “Condominium General Common Elements”, “Condominium General Common Elements” means the entire real property and improvements on Lot 1 and Lot 2 as set forth on the Condominium Plat for Kelly East Condominiums Addition to the Town of Jackson excepting all Condominium Units and all Condominium Limited Common Elements as shown on such Condominium Plat. Without limiting the generality of the foregoing, the Condominium General Common Elements shall include: (i) the real property designated as Condominium General Common Elements and/or Common Area on Lot 1 and Lot 2 of the Condominium Plat for Kelly East Condominiums Addition to the Town of Jackson; (ii) all appurtenances; (iii) all pipes, ducts, flues, chutes, conduits, wires and other utility installations to (but not at) the outlets, and (iv) such component parts of walls, floors, ceilings, columns, roofs and other structures and installations that are outside of the Condominium Unit boundaries as delineated or described on the Condominium Plat and herein. Condominium General Common Elements may be referred to herein as “Condominium General Common Element” and on the Condominium Plat as “GCE” and/or “Common Area”.

2.9 “Condominium Limited Common Elements”, “Condominium Limited Common Elements” means those portions of the Condominium Common Elements as described by Wyoming Statute Section 34-20-103 for the exclusive use of one or more but fewer than all of the Condominium Units, and any Condominium Limited Common Elements specifically allocated to specific Condominium Units herein and/or as shown on the Condominium Plat. Condominium Limited Common Elements may be referred to herein as “Condominium Limited Common Element” and on the Condominium Plat as “LCE”.

2.10 “Condominium Plat”, Shall mean the Condominium Plat of Kelly East Condominiums Addition to the Town of Jackson Addition to the Town of Jackson recorded in the Public Records contemporaneously with this Declaration, consisting of a plat of the Properties, showing a survey and legal description thereof, the location of the buildings with respect to the boundaries of the Properties, together with diagrammatic floor plans of the buildings showing the boundaries of each Condominium Unit within the buildings, including horizontal and vertical locations and dimensions of all boundaries of each Condominium Unit, Condominium Unit numbers identifying the Condominium Units and the Condominium General Common Elements and Condominium Limited Common Elements, together with such other information as may be included therein in the discretion of the Declarant.

2.11 “Declarant”, Kelly East, LLC, or any successor or assign who takes title to any portion of the property described on Exhibit “A” for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately

preceding Declarant.

2.12 "Governing Documents". A collective term referring to this Declaration and any applicable Supplemental Declaration, the Bylaws, the Articles and the Master Rules and Regulations as they may be amended.

2.13 "Limited Common Elements – Deck". "Limited Common Elements – Deck" means those Limited Common Elements for the exclusive use of one or more Lot(s) and/or Condominium Unit(s) as a deck as designated by the Declarant herein, on the Condominium Plat and/or in one or more separately recorded instruments. Limited Common Elements – Deck may also be referred to herein as "Limited Common Elements – Deck" and "LCB-Deck" and on the Condominium Plat as "LCE-D".

2.14 "Limited Common Elements – Parking". "Limited Common Elements – Parking" means those parking spaces within Limited Common Elements for the exclusive use of one or more Lot(s) and/or Condominium Unit(s) for parking as designated on the Condominium Plat and/or Townhome Plat, attached hereto and incorporated herein. Limited Common Elements – Parking may also be referred to herein as "Limited Common Element – Parking" and "LCE – Parking" and on the Condominium Plat and/or Townhome Plat as "LCB – P".

2.15 "Limited Common Elements – Garage". "Limited Common Elements – Garage" means those certain airspace units designated for the exclusive use of one or more Lot(s) and/or Condominium Unit(s) for parking as designated on the Condominium Plat and/or Townhome Plat, attached hereto and incorporated herein. Limited Common Elements – Garage may also be referred to herein as "Limited Common Element – Garage" and "LCB – Garage" and on the Condominium Plat and/or Townhome Plat as "LCB – G".

2.16 "Limited Common Elements – Stairs". "Limited Common Elements – Stairs" means those Limited Common Elements for the exclusive use of one or more Lot(s) and/or Condominium Unit(s) as a stairwell as designated by the Declarant herein, on the Condominium Plat, Townhome Plat and/or in one or more separately recorded instruments. Limited Common Elements – Stairs may also be referred to herein as "Limited Common Element – Stairs" and "LCE – Stairs" and on the Condominium Plat and/or Townhome Plat as "LCE-St".

2.17 "Limited Common Elements – Storage". "Limited Common Elements – Storage" means those Limited Common Elements for the exclusive use of one or more Lot(s) and/or Condominium Unit(s) as storage as designated by the Declarant herein, on the Condominium Plat, Townhome Plat and/or in one or more separately recorded instruments. Limited Common Elements – Storage may also be referred to herein as "Limited Common Element – Storage" and "LCB – Storage" and on the Condominium Plat and/or Townhome Plat as "LCE – Sto".

2.18 "Lot". A portion of the Properties designated on the Condominium Plat and Townhome Plat as a "Lot".

2.19 "Master Rules and Regulations". The Master Rules and Regulations are the rules and regulations adopted by the Board pursuant to Section 3.2 hereof.

2.20 "Member". A Person subject to membership in the Association pursuant to Article VI.

2.21 **"Mortgage"**. A mortgage, a deed to secure debt, or any other form of security instrument affecting title to any Condominium Unit or all or any portion of the Properties "Mortgagee" shall refer to a beneficiary of a deed of trust or holder of a Mortgage.

2.22 **"Owner"**. One or more Persons who hold the record title to any Lot and/or Condominium Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. The term "Owner" shall not refer to any Mortgagee, as herein defined, unless such Mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

2.23 **"Person"**. A natural person, a corporation, a partnership, a trustee, or any other legal entity.

2.24 **"Properties"**. The real property described on Exhibit "A", together with all improvements affixed thereon.

2.25 **"Public Records"**. The official records of the Office of the Clerk of Teton County, Wyoming.

2.26 **"Special Assessment"**. Assessments levied in accordance with Section 8 3

2.27 **"Specific Assessment"**. Assessments levied in accordance with Section 8 4

2.28 **"Supplemental Declaration"**. An instrument filed in the Public Records pursuant to Article IX which subjects additional property to this Declaration, and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.

2.29 **"Townhome Plat"**. Shall mean the Final Plat of Kelly East Townhomes Addition to the Town of Jackson Addition to the Town of Jackson to be recorded in the Public Records contemporaneously with a Supplemental Declaration, pursuant to the reserved rights of Declarant set forth in Section 9.5.

2.30 **"Townhome"**. Each residential structure to be located on a Townhome Lot within the Townhome Plat.

2.31 **"Townhome Common Elements"**. "Townhome Common Elements" shall mean the Townhome General Common Elements and the Townhome Limited Common Elements, in the aggregate, or a portion thereof, and all other real and personal property, including easements for access and utilities, which the Association owns, leases or in which it otherwise holds, or acquires in the future, possessory or use rights for the common use and enjoyment of the Owners of the Townhome Lots.

2.32 **"Townhome Common Expenses"**. The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Townhome Lots, including any reasonable reserve(s), as the Board may find necessary and appropriate pursuant to the Governing Documents.

2.33 **"Townhome General Common Elements"**. "Townhome General Common Elements" means the entire real property and improvements on the Common Area Lot as set forth on the Townhome Plat excepting all Townhome Limited Common Elements as shown on

such Townhome Plat. Townhome General Common Elements may be referred to herein as "Townhome General Common Element" and on the Townhome Plat as "GCE" and/or "Common Area".

2.34 "Townhome Limited Common Elements". "Townhome Limited Common Elements" means those portions of the Townhome Common Elements as described by Wyoming Statute Section 34-20-103 for the exclusive use of one or more but fewer than all of the Townhome Lots, and any Townhome Limited Common Elements specifically allocated to specific Townhome Lots herein and/or as shown on the Townhome Plat. Townhome Limited Common Elements may be referred to herein as "Townhome Limited Common Element" and on the Townhome Plat as "LCE".

2.35 "Townhome Lot". A portion of the Properties designated on the Townhome Plat as a "Townhome Lot".

PART TWO: CREATION AND MAINTENANCE OF COMMUNITY STANDARDS

ARTICLE III - USE AND CONDUCT

3.1 Framework for Regulation. The Governing Documents establish, as part of the general plan of development for the Properties, a framework of affirmative and negative covenants, easements and restrictions which govern the Properties. However, within that framework, the Board and the Members must have the ability to respond to unforeseen problems and changes in circumstances, conditions, needs, desires, trends and technology which inevitably will affect Kelly East Condominiums Addition to the Town of Jackson, its Owners and residents. Toward that end, this Article establishes procedures for modifying and expanding the initial Master Rules and Regulations.

3.2 Rule Making Authority.

(a) The Board shall adopt the initial Master Rules and Regulations. Thereafter, subject to the terms of this Article and the Board's duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board may modify, cancel, limit, create exceptions to, or expand the initial Master Rules and Regulations after sending notice by mail to all Owners concerning any such proposed action as least five (5) business days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken. Such action shall become effective after compliance with Section 3.2(c) below unless disapproved at a meeting of the Members by at least fifty percent (50%) of the total votes entitled to vote on the matter. The Board shall have no obligation to call a meeting of the Members to consider disapproval except upon receipt of a petition of the Members as required for special meetings in the Bylaws. Upon such petition of the Members prior to the effective date of any Board action under this Section 3.2(a), the proposed action shall not become effective until after such meeting is held, and then subject to the outcome of a vote of the Members at such meeting.

(b) Alternatively, the Members, at an Association meeting duly called for such purpose, may adopt rules which modify, cancel, limit, create exceptions to, or expand the Master Rules and Regulations by a vote of more than fifty percent (50%) of the total votes.

entitled to vote on the matter.

(c) At least thirty (30) days prior to the effective date of any action taken under subsections (a) or (b) of this Section, the Board shall send a copy of the new rule or explanation of any changes to the Master Rules and Regulations to each Owner specifying the effective date. The Association shall provide, without cost, a copy of the Master Rules and Regulations then in effect to any requesting Member or Mortgagee.

3.3 Owners' Acknowledgement and Notice to Purchasers. Each Owner is hereby given notice that use of its Lot and/or Condominium Unit is limited by the Master Rules and Regulations as they may be amended, expanded and otherwise modified hereunder. Each Owner, by acceptance of a deed for its Lot and/or Condominium Unit, acknowledges and agrees that the use, enjoyment and marketability of his or her Lot and/or Condominium Unit can be affected by this Declaration and that the Master Rules and Regulations may change from time to time. All purchasers of Lots and/or Condominium Units are on notice that changes may have been adopted by the Association that are not recorded in the Public Records. Copies of the current Master Rules and Regulations may be obtained from the Association.

3.4 No Mining, Excavating or Drilling. No property within Kelly East Condominiums Addition to the Town of Jackson shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing geothermal resources, oil, gas, or other hydrocarbons, minerals, rocks, stones, gravel, sand, top soil, or earth. Nothing contained herein shall be construed to limit the rights of the owner of mineral interests severed from the surface of any portion of the Properties prior to the recording of this Declaration and nothing herein shall prevent the Declarant from moving dirt, gravel rocks and other soils necessary for the development of the Properties.

3.5 Protection of Owners and Others. No rule shall be adopted in violation of the following provisions, except as may be specifically set forth in this Declaration (either initially or by amendment) or in the initial Master Rules and Regulations:

(a) **Equal Treatment.** Similarly situated Owners shall be treated similarly by the Board and the Association.

(b) **Displays.** The rights of Owners to display religious and holiday signs, symbols, and decorations on a Lot or inside a Condominium Unit(s) of the kinds normally displayed in dwellings located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt reasonable time, place, and manner restrictions with respect to displays visible from other Condominium Units and/or Lots. No rules shall regulate the content of political signs; however, rules may regulate the time, place and manner of posting such signs (including design criteria).

(c) **Activities Within Dwellings.** No rule shall interfere with the activities carried on within the confines of dwellings, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of the Properties, that generate excessive noise or traffic or parking, that create unsightly conditions visible outside the dwelling, or that create an unreasonable source of annoyance as reasonably determined by the Board.

(d) **Insurance Rates.** Nothing shall be done or kept on the Properties which

would increase the rate of insurance or cause the cancellation of insurance on any Lot, Condominium Unit, the Townhome Common Elements and/or the Condominium Common Elements without prior written approval of the Board.

(e) **Allocation of Burdens and Benefits.** No rule shall alter the allocation of financial burdens among the various Lots and/or Condominium Units to the detriment of any Owner over that Owner's objection expressed in writing to the Association. This provision does not affect the right to increase the amount of assessments or to levy Specific Assessments as provided by Article VIII.

(f) **Abridging Existing Rights.** If any rule would otherwise require Owners to dispose of personal property which they maintained in or on a Lot and/or Condominium Unit prior to the effective date of such rule, or to vacate a Lot and/or Condominium Unit in which they resided prior to the effective date of such rule, and such property was maintained or such occupancy was in compliance with this Declaration and all rules previously in force, such rule shall not apply to any such Owners without their written consent

(g) **Rights to Develop.** No rule or action by the Association or Board shall impede the Declarant's right to develop the Properties or any property annexed into the regime of the Properties as provided for herein.

The limitations in subsections (a) through (g) of this Section 3.5 shall only limit rulemaking authority exercised under Section 3.2; they shall not apply to amendments to this Declaration adopted in accordance with Article XIII.

3.6 Domestic Animals. Each Condominium Unit shall be entitled to a maximum of no more than one (1) Household Pet. Each Townhome Lot shall be entitled to a maximum of no more than two (2) Household Pets. The term Household Pet(s) means generally recognized Household Pets such as dogs, cats, birds, rodents and non-poisonous reptiles. Household Pets may not be kept for any commercial purpose, may not be kept in unreasonable numbers, and may not cause an unreasonable amount of noise, odor, or do not otherwise become a nuisance to other Owners. All Owners or Occupants with Household Pets shall keep the animals restrained and controlled at all times so they do not cause a nuisance to others and do not harass or endanger others. "Nuisance" means any noisy animal, any vicious animal, any non-domestic household pet, or any animal which chews, tears, digs in or scratches, litters or soils, destroys, or in any other manner injures clothing, garbage containers, gardens, flower beds, lawns, trees, shrubbery, or any other property within the Properties. Excessive, continued, or untimely barking, molesting passersby, chasing vehicles, habitually attacking other animals or trespassing upon private property in such a manner as to damage property shall also be deemed a nuisance. "Noisy animal" means any animal which habitually, constantly, or frequently disturbs the sleep, peace, or quiet of any person. The Board shall have, and is hereby given, the right and authority to determine in its sole discretion that Household Pets are being kept for commercial purposes, or are otherwise a Noisy animal or a Nuisance to other Owners or occupants, or that a Owner is otherwise in violation of this Section, and to take such action or actions as it deems reasonably necessary to remedy the violation. Without limiting the generality of the foregoing, the Association may require the owner or custodian of a dog that barks or howls excessively, or of a Household Pet with other offensive habits, to confine such animal indoors. Further, the Association may require an Owner, at its own expense, to remove such pet determined by the Association to be a Noisy animal or a Nuisance pet and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the Condominium Unit or Lot and remove the Noisy animal or a Nuisance and any such action shall not be deemed a trespass.

No owner or keeper of any animal who is visiting or working on the Properties shall be permitted to allow such animals to run free. Also, no pet or animal shall be restrained by leash, cord, chain, rope, or other attachment fixed to any vehicle, post, tree, or other structure or object within the Properties thereby allowing such animal to become a nuisance or interfere with pedestrian or vehicular traffic in and around any public area within the Properties. Contractors, sub-contractors and any other person providing services to a Condominium Unit may not bring dogs onto the Properties.

The Owner of a Lot or Condominium Unit where a Household Pet is kept, as well as the legal owner of such pet (if not such Owner), shall be jointly and severally liable for any and all damage and destruction caused by the pet, and for any clean-up of driveways, walkways, Common Elements or other Condominium Units necessitated by such Household Pet. All animals not considered to be a domestic Household Pet, including, but not limited to pigs, poultry, fowl, wild animals, cattle, sheep and goats, are prohibited from being maintained or cared for on the Properties or in a Lot or Condominium Unit thereof.

Litters of puppies or kittens may remain on the Properties for no more than 90 days, after which time the limit of 2 Household Pets per Lot or Condominium Unit shall prevail.

3.7 Vehicle Parking, Storage, Operation and Repair.

(a) "Permitted Vehicles" shall mean all passenger automobiles and one ton or smaller pick-up trucks. Only Permitted Vehicles may be parked on the LCE-Parking. Except for the allowance of Permitted Vehicles on the LCE-Parking, parking is prohibited on the Properties.

(b) No boats, trailers, buses, motor homes, campers (on or off road supporting vehicles), snowmobiles, go carts, recreational vehicles, golf carts, trucks, industrial or commercial vehicles (both cabs or trailers), abandoned or inoperable vehicles (as defined below), or any other similar vehicles (collectively, the "Prohibited Vehicles") shall be parked or stored in or upon the Properties, and no vehicle of any kind shall be maintained, repaired, repainted, serviced or rebuilt on the Properties. This restriction shall not prevent the non-commercial washing and polishing of vehicles and boats, together with activities normally incidental thereto

(c) Notwithstanding the foregoing, Prohibited Vehicles may be temporarily parked on the Properties for loading, delivery or emergency purposes, but only for the time required to accomplish such purpose, and as necessary for the construction or maintenance of the Properties upon compliance with the Master Rules and Regulations.

(d) An "abandoned or inoperable vehicle" shall mean any motorized vehicle which does not display a current valid motor vehicle license and registration tag or which does not have an operable propulsion system within the vehicle.

(e) In the event that the Board shall determine that a vehicle is abandoned or inoperable, or is otherwise in violation of the provisions of this Section 3.7, a written notice of violation describing said vehicle shall be personally delivered to the vehicle owner (if such owner can be reasonably ascertained) or shall be conspicuously placed upon the vehicle (if the owner cannot be reasonably ascertained), and if the offending vehicle is not removed within seventy-two (72) hours thereafter, the Board shall have the right to remove and store the offending vehicle, or cause the vehicle to be removed and stored, at the sole expense of the

Owner granted the exclusive right to the LCE- Parking on which the vehicle is located and to enter upon such Limited Common Element for such purpose, all without liability on the part of the Board.

3.8 Garbage Storage. Garbage set out for pick up shall be stored in wildlife-proof dumpsters or containers, and shall not, in any event, be set out in such a manner to allow persons, vehicles, animals, or weather to scatter such garbage among the Properties.

3.9 Nuisance. No noxious or offensive activity shall be carried on upon the Properties or any Lot or Condominium Unit within the Properties, nor shall anything be done or placed thereon which may be or become a nuisance, or cause unreasonable embarrassment, disturbance or annoyance to other Owners or occupants in their enjoyment of their Lots and/or Condominium Units, or in their enjoyment of the Common Area. Without limiting the foregoing, no horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of the Properties and improvements located thereon, shall be placed or used upon any Lot and/or Condominium Unit.

3.10 Fencing. No fencing shall be erected or maintained on the Properties.

3.11 Temporary Structures Prohibited. No temporary structures, such as trailers, tents, tree houses, shacks or other similar buildings shall be permitted on any portion of the Properties, except during construction or as authorized by the Board.

3.12 Satellite Dishes. Except as otherwise approved by the Board, a 18" or smaller diameter satellite dish shall be permitted on any Lot and/or Condominium Unit, provided that such satellite dish must be visually shielded from adjacent Lots and Condominium Units with shielding approved by the Board before such satellite dish is installed.

3.13 Noxious Weeds and Exotic Plant Species. Sources of all sod, seed and landscaping materials shall not contain noxious weeds or exotic species disfavored by the Teton County Weed and Pest Department. The Association may adopt and enforce a program in cooperation with the Teton County Weed and Pest Department to eradicate noxious weeds present or occurring on the Properties. In no event shall the Association have an obligation to chemically or manually remove noxious weeds or exotic plant species from the Properties.

ARTICLE IV – CONDOMINIUM DECLARATION

4.1 Estates of an Owner. Lots 1 and 2 of the Condominium Plat are hereby divided into Condominium Units, each consisting of a separate interest in a Condominium Unit and an undivided interest in common in the Condominium Common Elements in accordance with the Condominium Plat which sets forth the Condominium Common Elements appurtenant to each Condominium. Declarant hereby declares that the property identified on Condominium Plat together with all improvements located thereon and every part thereof (the "Project") is held and shall be held, conveyed, devised, leased, rented, encumbered, used, occupied and improved subject to the provisions of this Declaration, each and all of which provisions are hereby declared to be in furtherance of the general plans and scheme of condominium ownership referred to in this Declaration and are further declared to be for the benefit of the Condominiums and every part thereof and for the benefit of each Owner. The percentage of ownership interest in the Condominium Common Elements which is to be allocated to each Condominium for purposes of assessments and voting shall be the same as set forth on **Exhibit "B"**. Such undivided interests

in the Condominium Common Elements are hereby declared to be appurtenant to the respective Condominium.

4.2 Title. Title to a Condominium Unit may be held or owned by an entity and in any manner in which title to any other real property may be held or owned in the State of Wyoming.

4.3 Inseparability. No part of a Condominium Unit or of the legal rights comprising ownership of a Condominium Unit may be separated from any other part thereof during the period of Condominium ownership prescribed herein, so that each Condominium and the undivided interest in the Condominium Common Elements shall always be conveyed, devised, encumbered, and otherwise affected only as a complete Condominium Unit. Every gift, devise, bequest, transfer, encumbrance, conveyance, or other disposition of a Condominium Unit shall be presumed to be a gift, devise, request, transfer, encumbrance, or conveyance, respectively, of the entire Condominium Unit, together with all appurtenant rights created by law or by this Declaration.

4.4 Partition Not Permitted. The Condominium Common Elements shall be owned in common by all owners of Condominium Units and no owner may bring any action for partition thereof.

4.5 Owner's Right to Condominium Common Elements and Condominium Limited Common Elements. Subject to the limitations contained in this Declaration, each Owner shall have the nonexclusive right to use and enjoy the Condominium General Common Elements shown on the Condominium Plat and defined herein. Each Owner shall have the exclusive right to use and enjoy the Condominium Limited Common Elements designated to such Owner on the Condominium Plat.

4.6 Taxes and Assessments. Each Owner shall execute such instruments and take such actions as may reasonably be specified by the Association to obtain separate real property tax assessments of the interest of each Owner in each Condominium Unit. If any taxes or special district or other assessments may, in the opinion of the Association, become a lien on the Properties or any part thereof, the Association shall pay the same and assess the same to the Owner or Owners responsible therefore. Each Owner shall pay the taxes or assessments assessed against her/his Condominium Unit, or interest therein, or his/her interest in the Condominium Common Elements or any part of any or all of the foregoing. Each Owner shall pay all taxes, rates, impositions, and assessments levied against the Properties or any part of the Condominium Common Elements in proportion to her/his interest in the Condominium Common Elements, such payment to be made to the Association at least thirty (30) days prior to the delinquency of such tax or assessment. Each such unpaid tax or assessment shall bear interest at eighteen percent (18%) per annum from and after the time the same becomes payable by each Owner and shall be secured by the lien created by Section 8.8 hereof. Notwithstanding the foregoing, taxes, assessments, or other charges attributable to the Condominium Common Elements shall be apportioned among the Owners of Condominiums as provided in Article VIII hereof.

4.7 Owner's Rights with Respect to Interiors. Except as provided in this Declaration, each Owner shall have the exclusive right to paint, repaint, tile, wax, paper, or otherwise maintain, refinish, and decorate the interior surfaces of the walls, ceilings, floors, doors and clean the exterior and interior surfaces of the windows, all of which form the boundaries of his/her Condominium and all walls, ceilings, floors, and doors within such boundaries.

4.8 **Declarant's Right Incident To Construction.** Declarant, and persons it shall select, shall have the right to ingress and egress over, upon, and across the Condominium Common Elements, the right to store materials thereon and to make such other use thereof as may be reasonably necessary incident to complete development of the Properties.

4.9 **Legal Description.** Every contract for the sale of a Condominium Unit and every other instrument affecting title to a Condominium Unit may describe that Condominium Unit by the number shown on the Condominium Plat and this Declaration as each appears on the records in the Office of the Teton County Clerk, in the following fashion:

Unit _____ as shown on the Condominium Plat of Kelly East Condominiums Addition to the Town of Jackson Addition to the Town of Jackson, appearing in the Records in the Office of the Teton County Clerk as Plat No. _____ as defined and described in Declaration of the Kelly East Condominium Addition to the Town of Jackson recorded in the Records in the Office of the Teton County Clerk, in Book _____ of Photo at Pages _____ to _____, and all amendments or supplements thereto.

Such description will be construed to describe the Condominium, together with the appurtenant undivided interest in the Condominium Common Elements and to incorporate all the rights incident to ownership of a Condominium Unit and all the limitations on such ownership as described in this Declaration.

ARTICLE V – MAINTENANCE AND REPAIR BY OWNER; RESTRICTIONS ON LIMITED COMMON ELEMENTS; PARKING

5.1 **By each Owner.** The responsibility of each Owner shall be to maintain, repair and replace, at his expense, the heating equipment, water heater, and any portion of any other utility service facilities or apparatus servicing his Condominium Unit exclusively.

5.2 **Limited Common Elements – Storage; Limited Common Elements - Garage.** The following items are prohibited from being stored within a Limited Common Elements – Storage and/or Limited Common Element-Garage: paint, highly flammable materials, food products and any item that attracts vermin or produces an odor.

5.3 **Limited Common Elements – Yard; Limited Common Elements - Decking**
No outside clothing lines or other outside clothes drying or airing facilities shall be permitted whatsoever on the LCE-Yard and/or LCE-Decking. There shall be no outside recreational or playground equipment permitted on the Properties except upon prior written approval by the Board. There shall be no outside cutting and/or storage of firewood on the LCE-Yard and/or LCE-Decking.

PART THREE: COMMUNITY GOVERNANCE AND ADMINISTRATION

ARTICLE VI – THE ASSOCIATION AND ITS MEMBERS

6.1 **Function of Association.** Every Owner of a Townhome Lot and/or Condominium Unit shall be a member of the Association. If title to a Townhome Lot or Condominium Unit is held by more than one person, the membership related to that Townhome

Lot or Condominium Unit shall be shared by all such persons in the same proportionate interests and by the same type of tenancy in which the title to the Townhome Lot and/or Condominium Unit is held. An Owner shall be entitled to one membership for each Townhome Lot and/or Condominium Unit owned by him. No person or entity other than an Owner may be a member of the Association, and the Association Bylaws always shall so state and shall in addition state that the memberships in the Association may not be transferred except in connection with the transfer of a Townhome Lot and/or Condominium Unit; provided, however, that the rights of membership may be assigned to a Mortgagee as further security for a loan secured by a lien on a Townhome Lot and/or Condominium Unit.

6.2 Voting. The Owners shall have one equal vote for each Townhome Lot and/or Condominium Unit in which they hold the interest required for membership under Section 6.1. All votes shall be cast as provided in Section 6.2(a).

(a) **Exercise of Voting Rights.** The vote for each Townhome Lot and/or Condominium Unit owned by a Member shall be exercised by the Owner of the Townhome Lot and/or Condominium Unit. In any situation where there is more than one Owner of such Townhome Lot and/or Condominium Unit, the vote for such Townhome Lot and/or Condominium Unit shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the vote of such Townhome Lot and/or Condominium Unit shall be suspended if more than one Person seeks to exercise it.

(b) **Commencement of Voting Rights.** Voting rights as to each Townhome Lot and/or Condominium Unit shall vest upon transfer of a deed of conveyance of a Townhome Lot and/or Condominium Unit to an Owner.

6.3 Transfer. Except as otherwise expressly stated herein, any of the rights, interests, and obligations of the Association set forth herein or reserved herein may be transferred or assigned to any other person or entity; provided, however, that no such transfer or assignment shall relieve the Association of any of the obligations set forth herein. Any such transfer or assignment shall not revoke or change any of the rights or obligations of any Owners as set forth herein.

6.4 Amplification. The provisions of this Article are amplified by the Association Bylaws; provided, however, that no present or future provision of such Bylaws shall substantially alter or amend any of the rights or obligations of the Owners set forth herein.

ARTICLE VII – ASSOCIATION POWERS AND RESPONSIBILITIES

7.1 Acceptance and Control of Association Property.

(a) The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible real and personal property including the Townhome Common Elements and the Condominium Common Elements.

(b) The Declarant and its designees may convey real or personal property to the Association.

7.2 Maintenance of Common Elements.

(a) The Association shall maintain, in accordance with the Governing Documents, the Condominium General Common Elements as designated on the Condominium Plat, including but not limited to, the maintenance, repair and replacement of all siding, roofing, exterior windows, exterior doors, asphalt and sidewalks. The costs associated with the maintenance, repair and replacement of the foregoing shall be a Condominium Common Expense;

(b) The Association shall maintain and repair all wood decking, porches, concrete patios, driveways, balconies and exterior stairways located within the Condominium Limited Common Elements as designated on the Condominium Plat. The costs associated with the maintenance, repair and replacement of the foregoing shall be a Condominium Common Expense;

(c) The Association shall maintain and repair the doors located within the Limited Common Elements – Storage. The costs associated with the maintenance, repair and replacement of the foregoing shall be a Condominium Common Expense;

(d) The Association, acting through the Board, shall be obligated to maintain, repair and replace the landscaping and irrigation system located within the Condominium Common Elements and Townhome Common Elements. The costs associated with the maintenance, repair and replacement of the landscaping and irrigation system within the Townhome Common Elements shall be a Townhome Common Expense and the costs associated with the maintenance, repair and replacement of the landscaping and irrigation system within the Condominium Common Elements shall be a Condominium Common Expense;

(e) The Association shall maintain and repair the LCB-Parking and such expense shall be allocated to the Townhome Lots and/or Condominium Units as a Special Assessment;

(f) The Association shall maintain, repair and replace all utility services or other types of elements and easement which are utilized in common, such as, but not limited to, sewer lines or water lines, up to the connection point of each Townhome Lot and/or Condominium Unit.

Notwithstanding the foregoing, all expenses associated with the repair or replacement of items which have been damaged or destroyed by reason of an Owner or any Occupant's act or neglect, or by the act or neglect of any invitee, licensee, occupant or guest of such Owner, shall be assessed as a Specific Assessment against the Condominium Unit or Townhome Lot of such Owner. Any expense associated with the maintenance, repair or replacement of improvements within a Limited Common Element shall be assessed as a Specific Assessment against the Condominium Unit(s) or Townhome Lot to which the Limited Common Element is assigned

7.3 Insurance.

(a) **Required Coverages.** The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance covering "risks of direct physical

loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all Condominium Units and insurable improvements within the Condominium Plat. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement costs of the insured improvements (including all Condominium Units) under current building ordinance and codes. The Declarant shall be named as an additional insured on all policies of insurance covering direct physical loss to any Condominium Unit. Premiums for all insurance on the Condominium Units under this Section shall be assessed against the Owners of the Condominium Units as a Specific Assessment the cost of which shall be divided pro-rata among the Owners of Condominium Units according to those percentages set forth in Exhibit "B";

(ii) Commercial general liability insurance on the Condominium Common Elements and Townhome Common Elements insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage (including primary and any umbrella coverage) shall have a limit of at least one million dollars (\$1,000,000.00) per occurrence with respect to bodily injury and personal injury and property damage; provided, should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall have the option to obtain such additional coverages or limits. If the policy does not contain "severability of interest" in its terms, the Association shall acquire an endorsement to preclude the insurer's denial of a Owner's claim because of negligent acts of the Association or of other Owners; and

(iii) Such additional insurance as the Board, in its best business judgment, determines advisable.

Premiums for all insurance on the Condominium Common Elements shall be assessed by the Board as a Condominium Common Expense. Premiums for all insurance on the Townhome Common Elements shall be assessed by the Board as a Townhome Common Expense.

(b) **Policy Requirements.** The Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Town of Jackson, Wyoming area. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member insured. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 7.3(a). In the event of an insured loss, the deductible shall be treated as either a Townhome Common Expense or Condominium Common Expense in the same manner as the premiums for the applicable insurance coverage except for the deductible attributable to the insured loss of an insured Condominium Unit the cost of which shall be a Specific Assessment as provided for in Section 7.3(a)(i). However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with procedures adopted by the Board, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Condominium Unit or Townhome Lot as a Specific Assessment.

All insurance coverage obtained by the Board shall:

(i) Be written with a company authorized to do business in the State of Wyoming;

(ii) Be written in the name of the Association as trustee for the benefited parties, including the Declarant.

(iii) Not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

(iv) Contain an inflation guard endorsement;

(v) Include an agreed amount endorsement if the policy contains a co-insurance clause;

(vi) Provide a waiver of subrogation under the policy against any Owner or family member of an Owner;

(vii) Include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;

(viii) Include an endorsement precluding cancellation, invalidation, or condition to recovery under the policy on account of any act or omission of any one or more individual Owners, unless such Owner is acting within the scope of its authority on behalf of the Association;

(ix) Provide that the policy will be primary, even if an Owner has other insurance that covers the same loss.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

(i) A waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, its attorneys, the Owners and their tenants, servants, agents, and guests;

(ii) A waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(iii) An endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(iv) An endorsement requiring at least thirty (30) days prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(v) A provision vesting in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any related to the loss.

(c) Restoring Damaged Improvements. In the event of damage to or destruction

of property which the Association is obligated to insure, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Damaged improvements on the property shall be repaired or reconstructed unless the Board, using reasonable judgment and in reliance upon professional estimates and advice, determines either that i) such full repair and/or restoration is physically impossible; or ii) available insurance proceeds are less than eighty percent (80%) of the cost of such repair and/or restoration, and at least seventy-five percent (75%) of the Owners of damaged or destroyed Condominium Unit decide, within sixty (60) days after the determinations set forth in i) and ii) above have been made, not to repair or reconstruct. No Mortgagees shall have the right to participate in the determination of whether the damage or destruction to the insured improvements shall be repaired or reconstructed.

If a decision is made not to restore the damaged improvements, then the insurance proceeds shall be paid to the Owners and Mortgagees as their interests are determined based upon the square footage size of each Condominium Unit and the insurance proceeds available. All mortgages, liens and other charges against the Condominium Units shall be paid out of the insurance proceeds before any proceeds are released to an Owner(s).

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by the Association for the benefit of its Members or the Owners of Condominium Units, as appropriate, and placed in a capital improvements account.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Members, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 7.3(a).

7.4 Compliance and Enforcement.

(a) Every Owner and occupant of a Townhome Lot and/or Condominium Unit shall comply with the Governing Documents. The Board may impose sanctions for violation of the Governing Documents after notice and a hearing in accordance with the procedures set forth in the Bylaws. Such sanctions may include, without limitation:

(i) Imposing reasonable monetary fines (which shall not, except in the case of nonpayment of assessments, constitute a lien upon the violator's Townhome Lot and/or Condominium Unit). In the event that any occupant, guest or invitee of a Townhome Lot and/or Condominium Unit violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator; provided however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board. The fine, in either circumstance, shall be a Specific Assessment against the Owner;

(ii) Suspending an Owner's right to vote;

(iii) Suspending any Person's right to use any Common Elements; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a

Townhome Lot and/or Condominium Unit;

(iv) Suspending any services provided by the Association to an Owner or the Owner's Townhome Lot and/or Condominium Unit if the Owner is more than thirty (30) days delinquent in paying any assessment or other charge owed to the Association;

(v) Exercising self-help or taking action to abate any violation of the Governing Documents in a non-emergency situation;

(vi) Requiring an Owner, at its own expense, to remove any structure or improvements in violation of Article III and to restore the Townhome Lot and/or Condominium Unit to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass. Any costs incurred by the Board in bringing a non-conforming Townhome Lot and/or Condominium Unit into compliance shall be assessed to such Owner as a Specific Assessment,

(vii) Without liability to any Person, precluding any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of Article III from continuing or performing any further activities in the Properties; and

(viii) Levying Specific Assessments to cover costs incurred by the Association to bring a Townhome Lot and/or Condominium Unit into compliance with Governing Documents.

In addition, the Board may take the following enforcement procedures to ensure compliance with the Governing Documents without the necessity of compliance with the procedures set forth in the Bylaws:

(i) Exercising self-help in any emergency situation (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations), and

(ii) Bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

In addition to any other enforcement rights, if an Owner fails to properly perform his or her maintenance responsibility after written notice specifying the maintenance required and a reasonable opportunity to perform such maintenance, the Association may record a notice of violation in the Public Records or perform such maintenance responsibilities and assess all costs incurred by the Association against the Townhome Lot and/or Condominium Unit and the Owner as a Specific Assessment. Except in an emergency situation, the Association shall provide the Owner reasonable notice and an opportunity to cure the problem prior to taking such enforcement action.

(b) The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

- (i) the Association's position is not strong enough to justify taking any or further action;
- (ii) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;
- (iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or
- (iv) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed a waiver of the Association's right to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction, or rule.

All remedies set forth in the Governing Document shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action.

The Association may enforce applicable city and county ordinances, if applicable, and permit Town of Jackson, Wyoming to enforce ordinances within the Properties for the benefit of the Association and its Members.

7.5 Implied Rights; Board Authority. The Association may exercise any right or privilege given to it expressly by the Governing Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

7.6 Indemnification of Officers, Directors and Others. The Association shall indemnify every current and former officer, director, and committee member against all damages and expenses, including attorneys fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement or any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under Wyoming law and the Bylaws.

ARTICLE VIII – ASSOCIATION FINANCES

8.1 Budgeting and Allocating Common Expenses. At least sixty (60) days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Condominium Common Expenses for the coming year, including any contributions to be made to a reserve fund pursuant to Section 8.2. The budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Condominium Units, and the amount to be generated through the levy of Base Assessments, Special Assessments and Specific Assessments against each Condominium Unit. The Association is hereby authorized to levy Base Assessments against all Condominium Units

subject to assessment under this Declaration in an amount proportionate to the ownership interests set forth on Exhibit "B" to fund the Condominium Common Expenses. In determining the Base Assessment, the Board may consider any assessment income expected to be generated from any additional Condominium Units reasonably anticipated becoming subject to assessment during the fiscal year.

At least sixty (60) days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Townhome Common Expenses for the coming year, including any contributions to be made to a reserve fund pursuant to Section 8.2. The budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Townhome Lots, and the amount to be generated through the levy of Base Assessments, Special Assessments and Specific Assessments against each Townhome Lot. The Association is hereby authorized to levy Base Assessments against all Townhome Lots subject to assessment under this Declaration to fund the Townhome Common Expenses and each Townhome Lot shall be liable for 1/5 of the total. In determining the Base Assessment, the Board may consider any assessment income expected to be generated from any additional Townhome Lots reasonably anticipated becoming subject to assessment during the fiscal year.

The Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy, which may be either a contribution, an advance against future assessments due from the Declarant, or a loan, in the Declarant's discretion. The Board shall send a copy of the final budget, together with notice of the amount of the Base Assessment to be levied pursuant to such budget, to each Owner not less than forty-five (45) nor more than sixty (60) days prior to the effective date of such budget; provided, however, if the Base Assessment is increased from the previous year's Base Assessment, the Board shall send notice of the increase by first class mail to the Owners not less than thirty (30) nor more than sixty (60) days prior to the increased Base Assessment becoming due. Such budget and assessment shall automatically become effective unless objected to in writing by an Owner within ten (10) days of the effective date of the budget.

Failure of the members to approve a budget or failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

The Board may revise the budget and adjust the Base Assessment from time to time during the year, subject to the notice requirements and the limitations on increases of assessments provided for in Section 8.5.

8.2 Budgeting for Reserves. The Board shall prepare and review at least annually a reserve budget for capital expenses of the Properties. The budget shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall include in the Townhome Lot Common Expense budget and the Condominium Unit Common Expense adopted pursuant to Section 8.1, a capital contribution to fund reserves in an amount sufficient to meet the projected need with respect both to amount and timing by annual contributions over the budget period.

8.3 Special Assessments. In addition to other authorized assessments, the Board

may, subject to the limitations of Section 8.5, levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against the entire membership if such Special Assessment is for Common Expenses or against an individual Condominium Unit or Townhome Lot if such Special Assessment is for an unbudgeted expense relating to less than all of the Condominium Units or Townhome Lots. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. The Board shall provide notice by first class mail to all Owner(s) of the Condominium Unit(s) and/or Townhome Lot(s) subject such Special Assessment not less than thirty (30) nor more than sixty (60) days prior to the Special Assessment becoming due.

8.4 Specific Assessments. The Board shall have the power to levy Specific Assessments against a particular Condominium Unit or Townhome Lot to cover costs incurred in bringing a nonconforming Condominium Unit or Townhome Lot into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of a nonconforming Condominium Unit or Townhome Lot, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the nonconforming Owner prior written notice and an opportunity for a hearing, in accordance with the Bylaws, before levying any Specific Assessment under this section.

8.5 Limitation of Increases of Assessments. Notwithstanding any provision to the contrary, and except for assessment increases necessary for emergency situations or to reimburse the Association, the Board may not impose a Base Assessment that is more than twenty percent (20%) greater than each of those assessments for the immediately preceding fiscal year, nor impose a Special Assessment which in the aggregate exceeds five percent (5%) of the budgeted Common Expenses for the current fiscal year, without a majority vote of a quorum of the Members who are subject to the applicable assessment at a meeting of the Association, or action without meeting by written ballot in lieu thereof signed by all of the Members of the Association.

For purposes of this Section, "quorum" means at least fifty percent (50%) of the total voting power of the Association subject to the applicable assessment.

An emergency situation is any one of the following:

- (a) An extraordinary expense required by an order of a court;
- (b) An extraordinary expense necessary to repair or maintain the Properties or any part of them for which the Association is responsible where a threat to personal safety on the Properties is discovered; or
- (c) An extraordinary expense necessary to repair or maintain the Properties or any part of them for which the Association is responsible which could not have been reasonably foreseen by the Board in preparing and distributing the pro forma budget pursuant to Section 8.1. However, prior to the imposition or collection of such an assessment, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. Such resolution shall be distributed to the Members with the notice of such assessment. In no event shall such resolution become effective against the Declarant so long as the Declarant owns any Condominium Unit(s) within the Properties unless the Declarant consents in writing by executing any such resolution.

8.6 Authority to Assess Owners; Date of Commencement of Assessments; Time of Payment. The Board is hereby authorized to levy assessments as provided for in this Article and elsewhere in the Governing Documents. Subject to Section 8.1 and 8.7, the obligation for Condominium Units and Townhome Lots to pay the assessments provided for herein shall commence as to all Condominium Units on the first day of the month following the first conveyance of a Condominium Unit to an Owner and the obligation for Townhome Lots to pay the assessments provided for herein shall commence as to all Townhome Lots on the first day of the month following the first conveyance of a Townhome Lot to an Owner. The first annual assessment shall be adjusted according to the number of days remaining in the fiscal year at the time assessments commence.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Condominium Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in monthly installments. Unless the Board otherwise provides, the Base Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his or her Condominium Unit or Townhome Lot, the Board may require the outstanding balance on all assessments to be paid in full immediately.

8.7 Personal Obligation. Each Owner, by accepting a deed of conveyance or entering into a recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a rate of eighteen percent (18%) per annum or such other rate as the Board may establish, subject to the limitations of Wyoming law), late charges as determined by Board resolution, costs, and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Condominium Unit or Townhome Lot until paid in full. Upon a transfer of title to a Condominium Unit or Townhome Lot, the grantee shall not be personally liable for any assessments and other charges due at the time of conveyance unless expressly assumed by him/her, but such transferred Condominium Unit or Townhome Lot shall remain subject to any liens imposed upon it pursuant to Section 8.8 herein. No first Mortgagee who obtains title to a Condominium Unit or Townhome Lot by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

No Owner may exempt himself from liability for assessments by non-use of the Common Elements by abandonment of his Condominium Unit or Townhome Lot, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

The Association shall, upon request, furnish to any Owner liable for any type of

assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

8.8 Lien for Assessments. Each Owner, by his or her acceptance of a deed of conveyance to a Condominium Unit or Townhome Lot, hereby vests in the Association and its agents the right and power to bring all appropriate actions against such Owner personally for the collection as a debt of any unpaid and delinquent billings for Base Assessments, Special Assessments, Specific Assessments, interest, late fees, enforcement costs and other charges owing by such Owner in accordance with the terms hereof. Additionally, in order to secure payment of any billings for Base Assessments, Specific Assessments, Special Assessments, interest, late fees, enforcement costs and other charges due hereunder, Declarant hereby retains, and each Owner by his or her acceptance of a deed to a Condominium Unit or Townhome Lot, hereby grants the Association and its agents a lien for such Base Assessments, Specific Assessments, Special Assessments, interest, late fees, enforcement costs and other charges for which such Owner is responsible under the terms hereof. The Board, acting on behalf of the Association, is authorized to record a notice of any unpaid amounts secured by such lien in the Office of the County Clerk of Teton County, Wyoming, which shall include a description of the applicable Condominium Unit or Townhome Lot and the name of the Owner thereof and the basis for the amount of the lien. Said lien shall be enforceable by the Association or its agents through all appropriate methods available under applicable Wyoming law for the enforcement of such liens, including without limitation, non-judicial foreclosure pursuant to Wyoming Statutes (as amended from time to time), and the Declarant and each such Owner hereby expressly grant to the Association a power of sale in connection with said lien. The Association may designate a trustee in writing from time to time to post or cause to be posted the required notices and to conduct such foreclosure sale. The trustee may be changed at any time and from time to time by an instrument in writing and signed by the President or a Vice President of the Association and attested by the Secretary or any Assistant Secretary of the Association and filed for record in the Public Records. The lien herein retained and granted is and shall be expressly subordinate in all respects to any Mortgage predating the charge in question (as evidenced by the recording date of a notice of unpaid assessments in the Public Records). Any holder of a Mortgage that predates the date of the charge in question and who acquires title to a Condominium Unit or Townhome Lot through foreclosure of its Mortgage or acceptance of a deed in lieu of foreclosure thereunder, shall not be liable for the unpaid portion of any such charges relating to the Condominium Unit or Townhome Lot in question that arose prior to such acquisition. Additionally, after any such foreclosure or deed in lieu of foreclosure, such Condominium Unit or Townhome Lot shall remain subject to this Declaration and the above-described lien and the new Owner of such Condominium Unit or Townhome Lot shall thereafter be personally liable for all charges of the type described above which relate to such Condominium Unit or Townhome Lot and which become due after such new Owner acquires title to said Condominium Unit or Townhome Lot by foreclosure or by acceptance of a deed in lieu of foreclosure. Except as otherwise provided above as to holders of Mortgages or by applicable law, no sale or transfer of any Condominium Unit or Townhome Lot shall (a) relieve any Owner thereof from personal liability for any of such unpaid charges attributable to the applicable Condominium Unit or Townhome Lot which become due prior to the date of such sale or transfer or (b) satisfy or extinguish the above-described lien in respect of such unpaid charges.

PART FOUR: COMMUNITY DEVELOPMENT

ARTICLE IX – EXPANSION OF THE COMMUNITY

9.1 Expansion by the Declarant. Until the Declarant has sold 100% of the Properties subject to this Declaration, the Declarant may annex additional properties into the regime of this Declaration provided such property is contiguous to the Properties. Such annexation shall be accomplished by filing a Supplemental Declaration in the Public Records describing the property to be annexed and specifically subjecting it to the terms of this Declaration. Such Supplemental Declaration shall not require the consent of Members, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

9.2 Additional Covenants and Easements. The Declarant may subject any portion of the Properties to additional covenants and easements, including covenants obligating the Association to maintain and insure such property and authorizing the Association to recover its costs through the various Assessments as provided for herein. Such additional covenants and easements may be set forth either in a Supplemental Declaration subjecting such property to this Declaration or in a separate Supplemental Declaration referencing property previously subjected to this Declaration. If the property is owned by someone other than Declarant, then the consent of the Owner(s) shall be necessary and shall be evidenced by their execution of the Supplemental Declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

9.3 Effect of Filing Supplemental Declarations. Any Supplemental Declaration filed pursuant to this Article shall be effective upon recording in the Public Records unless otherwise specified in such Supplemental Declaration. On the effective date of the Supplemental Declaration, any additional property subjected to this Declaration shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Declaration

9.4 Budget Considerations. As additional properties are annexed to the Properties pursuant to this Article IX, the budget of the Association may be affected, as well as assessment obligations of the Owners as a result thereof.

ARTICLE X – ADDITIONAL RIGHTS RESERVED TO DECLARANT

10.1 Expansion by the Declarant. Until the Declarant has sold 100% of the Properties subject to this Declaration, the Declarant may annex additional properties into the regime of this Declaration provided such property is contiguous to the Properties. Such annexation shall be accomplished by filing a Supplemental Declaration in the Public Records describing the property to be annexed and specifically subjecting it to the terms of this Declaration. Such Supplemental Declaration shall not require the consent of Members, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

10.2 Additional Covenants and Easements. The Declarant may subject any portion of the Properties to additional covenants and easements, including covenants obligating the Association to maintain and insure such property and authorizing the Association to recover its costs through the various Assessments as provided for herein. Such additional covenants and easements may be set forth either in a Supplemental Declaration subjecting such property to this Declaration or in a separate Supplemental Declaration referencing property previously subjected

to this Declaration. If the property is owned by someone other than Declarant, then the consent of the Owner(s) shall be necessary and shall be evidenced by their execution of the Supplemental Declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

10.3 Effect of Filing Supplemental Declarations. Any Supplemental Declaration filed pursuant to this Article shall be effective upon recording in the Public Records unless otherwise specified in such Supplemental Declaration. On the effective date of the Supplemental Declaration, any additional property subjected to this Declaration shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Declaration

10.4 Budget Considerations. As additional properties are annexed to the Properties pursuant to this Article IX, the budget of the Association may be affected, as well as assessment obligations of the Owners as a result thereof.

10.5 Right to Add Five Townhome Lots and one Common Area Lot to this Declaration. Declarant hereby reserves the right to add 5 Townhome Lots and one common area lot to be located on Lot 3 as shown on the Condominium Plat by filing a Supplemental Declaration in the Public Records. Such Supplemental Declaration shall amend the definitions, the provisions and the exhibits of this Declaration as necessary for the orderly development of the Properties. The Association and each and every Owner, by accepting a deed to a Condominium Unit, agrees to cooperate with Declarant in the vacation and replat of Lot 3 as shown on the Condominium Plat into 5 Townhome Lots and one common area lot.

10.6 Right to Approve Additional Covenants. So long as Declarant owns any property subject to this Declaration, no Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Public Records.

10.7 Right to Approve Changes in Community Standards. No amendment to or modification of any Master Rules and Regulations shall be effective without prior notice to and the written approval of Declarant so long as the Declarant owns property subject to this Declaration.

10.8 Right to Appoint Members of Board. The Declarant shall have the right to appoint the initial members of the Board of Directors of the Association and the initial members of any committee of the Board except as otherwise provided in the Bylaws.

10.9 Right to Delay Commencement of Association, Meetings or Assessments The Declarant hereby reserves the right to delay the filing of the Articles for the Association, creation of Bylaws and Master Rules and Regulations, or to delay the commencement of Association meetings or to delay implementation of Association assessments as required hereunder and in the Bylaws. In the event that the Declarant elects to delay the creation of the association, the rights, but not the obligations, of the Association created by this Declaration are hereby assigned to the Declarant until such time as the Association is created.

10.10 Termination of Rights. The rights contained in this Article shall not terminate

until the Declarant, or any individual Declarant, is no longer a record owner of any real property subject to this Declaration unless Declarant elects to terminate such reservations at an earlier date. Declarant may from time to time relinquish and surrender one or more but less than all of the reserved rights, in which event the unrelinquished reserved rights shall remain fully valid and effective for the remainder of the term thereof.

PART FIVE: PROPERTY RIGHTS WITHIN THE COMMUNITY

The nature of living in a planned community requires the creation of special property rights and provisions to address the needs and responsibilities of the Owners, the developer, the Association, and others within or adjacent to the community.

ARTICLE XI - EASEMENTS

11.1 Easements in Common Elements.

(a) The Declarant grants to each Owner of a Condominium Unit a non-exclusive right and easement of use (subject to the rights of other Owners, Members and the Association), access and enjoyment in and to the Condominium General Common Elements. The Declarant grants to each Owner (subject to the rules, regulations, and restrictions contained in the Governing Documents) an exclusive right and easement of use, access, and enjoyment in and to the Condominium Limited Common Elements that are appurtenant to the Condominium Unit(s) owned by such Owner, which shall include without limitation the storage, yard, decking and parking areas. Such exclusive right and easement of use, access, and enjoyment in the Condominium Limited Common Elements shall not be severable from the Condominium Unit to which it is appurtenant.

The foregoing grants shall be subject to:

- (a) The restrictions, rules and regulations set forth in the Governing Documents and any other applicable covenants;
- (b) Any restrictions or limitation contained in any deed and/or easement agreement conveying such property and/or easement over such property to an Owner Association; and
- (c) The right of the Board to adopt rules regulating the use and enjoyment of the area of the Condominium General Common Elements.

Any Owner may extend his or her right of use and enjoyment of the Condominium General Common Elements to the members of his or her family, and social invitees, as applicable, subject to reasonable regulation by the Board.

(b) The Declarant grants to each Owner of a Townhome Lot a non-exclusive right and easement of use (subject to the rights of other Owners, Members and the Association), access and enjoyment in and to the Townhome General Common Elements. The Declarant grants to each Owner (subject to the rules, regulations, and restrictions contained in the Governing Documents) an exclusive right and easement of use, access, and enjoyment in and to the Townhome Limited Common Elements that are appurtenant to the Townhome Lot(s) owned by such Owner, which shall include without limitation the storage, yard, decking and parking areas. Such exclusive right and easement of use, access, and enjoyment in the Townhome

Limited Common Elements shall not be severable from the Townhome Lot to which it is appurtenant.

The foregoing grants shall be subject to:

- (a) The restrictions, rules and regulations set forth in the Governing Documents and any other applicable covenants;
- (b) Any restrictions or limitation contained in any deed and/or easement agreement conveying such property and/or easement over such property to an Owner Association; and
- (c) The right of the Board to adopt rules regulating the use and enjoyment of the area of the Townhome General Common Elements.

Any Owner may extend his or her right of use and enjoyment of the Townhome General Common Elements to the members of his or her family, and social invitees, as applicable, subject to reasonable regulation by the Board.

11.2 Easements for Drainage and Utilities.

(a) All dedications, limitations, restrictions and reservations of easements, including those for storm water collection and drainage, shown on the Condominium Plat, the Townhome Plat and any final map of the Properties are incorporated herein by reference and made a part of this Declaration for all purposes as if fully set forth in this Declaration.

(b) The Declarant reserves for itself, so long as the Declarant owns any property described on Exhibit "A" of this Declaration or any property made subject to this Declaration pursuant to Article IX, and grants to the Association and all utility providers, perpetual non-exclusive easements throughout all of the Properties to the extent reasonably necessary for the purpose of:

(i) Installing utilities and infrastructure, including without limitation, cable and other systems for sending and receiving data and/or other electronic signals, security and similar systems; walkways, pathways and trails; drainage systems and signage to serve the Properties;

(ii) Inspecting, maintaining, repairing and replacing such utilities, landscaping and infrastructure to serve the Properties; and

(iii) Access to read utility meters.

(c) Declarant also reserves for itself the non-exclusive right and power to grant and record in the Public Records such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of the Properties, or any portion thereof.

(d) All work associated with the exercise of the easements described in subsections (b) and (c) of this Section shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of any work within the easement area, the Person exercising the easement shall

restore the property, to the extent reasonably possible, to its condition prior to the commencement of such work. The exercise of these easements shall not extend to permitting entry into any Condominium Unit or infrastructure on a Townhome Lot, nor shall it unreasonably interfere with the use of any Condominium Unit or Townhome Lot. Notwithstanding the foregoing, in an emergency, entry onto any Condominium Unit or infrastructure on a Townhome Lot shall be permitted only after reasonable notice to the Owner or occupant.

11.3 Easements for Maintenance, Emergency and Enforcement. The Declarant hereby grants to the Association an easement over the Townhome Common Elements and Condominium Common Elements to enable the Association to fulfill its maintenance responsibilities under Section 7.2. The Association shall also have the right, but not the obligation, to enter any Condominium Unit or infrastructure located on a Townhome Lot, for emergency, security, and safety reasons and to enforce the Governing Documents. Such right may be exercised by any member of the Board and its duly authorized agents and assignees, and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

11.4 Easements for Cross-Drainage. The Properties shall be burdened with easements for natural drainage of storm water runoff from other portions of the Properties, provided, no Person shall alter the natural drainage on any Lot to increase materially the drainage of storm water onto adjacent portions of the Properties without the consent of the Owner(s) of the affected property and the Board.

11.5 Easement for Emergency Vehicles. The Properties are hereby burdened with an easement allowing all policemen, firemen, ambulance personnel, and similar emergency personnel entry to perform their duties, including the enforcement of traffic regulations.

11.6 Easement for Encroachments. If any part of the Condominium Common Elements encroaches or shall hereinafter encroach upon a Condominium Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Condominium Unit encroaches or shall hereafter encroach upon the Condominium Common Elements, or upon an adjoining Condominium Unit or Condominiums, 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 Condominium Common Elements or the Condominiums. Encroachments referred to herein are limited to encroachments caused by engineering errors, settling, rising, or shifting of the earth, or by changes in position caused by construction, repair or reconstruction of the Condominium Common Elements and Condominium Units or any part thereof in accordance with the original plans for the Project and any encroachment due to building overhang or projection.

11.7 Owner's Right to Ingress and Egress and Support. Each Owner of a Condominium Unit shall have the right to ingress and egress over, upon, and across the Condominium Common Elements necessary for access to her/his Condominium Unit and to the Condominium Limited Common Elements designated for use in connection with his/her Condominium, and shall have the right to the horizontal and lateral support of her/his Condominium, and such rights shall be appurtenant to and pass with the title to each Condominium Unit. Each Owner of a Townhome Lot shall have the right to ingress and egress over, upon, and across the Townhome Common Elements necessary for access to her/his Townhome Lot and to the Townhome Limited Common Elements designated for use in connection with his/her Townhome Lot, and shall have the right to the horizontal and lateral support of her/his infrastructure to be located on a Townhome Lot, and such rights shall be

appurtenant to and pass with the title to each Townhome Lot.

PART SIX: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY

The growth and success of Kelly East Condominiums Addition to the Town of Jackson as a community in which people enjoy living, working, and playing requires good faith efforts to resolve disputes amicably, attention to and understanding of relationship within the community and with our neighbors, and protection of the rights of others who have an interest in the community.

ARTICLE XII – DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

12.1 Consents for Association Litigation. Except as provided in this Section, the Association shall not commence a judicial or administrative proceeding without the approval of a majority of a quorum of the Members. This Section shall not apply, however, to (a) actions brought by the Association to enforce the Governing Documents (including, without limitation, the foreclosure of liens); (b) the collection of assessments; or (c) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided in this section.

12.2 Alternative Method for Resolving Disputes. The Declarant, the Association, its officers, directors, and committee members, if any, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, “Bound Parties”) agree to encourage the amicable resolution of disputes involving the Properties, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that those claims, grievances or disputes described in Section 12.3 shall attempt to be resolved in good faith using the procedures set forth in Section 12.4 in lieu of filing suit in any court.

12.3 Claims. Unless specifically exempted below, all claims arising out of or relating to the interpretation, application or enforcement of the Governing Documents, or the rights, obligations and duties of any Bound Party under the Governing Documents or relating to the design or construction of improvements on the Properties (collectively, the “Claims”), shall be subject to the provisions of Section 12.4.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 12.4:

(a) Any suit by the Association against a Bound Party to obtain a temporary restraining order (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 Association’s ability to enforce the provisions of Article III, Article IV and Article V;

(b) Any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents, if the amount in controversy exceeds five thousand dollars (\$5,000);

(c) Any suit in which any indispensable party is not a Bound Party; and

(d) Any suit as to which the applicable statute of limitations would expire within one-hundred twenty (120) days of the Request for Resolution pursuant to Section 12.4, unless the party or parties against whom the Claim is made agree to toll the statute of limitations for such periods as may be reasonably be necessary to comply with this Article;

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 12.4.

12.4 Mandatory Procedures.

(a) **Request for Resolution.** Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (collectively, the "Parties") shall notify each Respondent in writing (the "Request for Resolution"), stating plainly and concisely:

1. The nature of the Claim, including the Persons involved and Respondent;
2. The legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
3. Claimant's proposed remedy;
4. That Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim; and
5. That Respondent must respond to the Request for Resolution within thirty (30) days of its receipt or it will be deemed to have been rejected.

(b) Negotiation and Mediation.

1. 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 Request for Resolution, the Board may appoint a representative to assist the Parties in negotiation.
2. If the Respondent rejects the Request for Resolution, or Parties do not resolve the Claim within ninety (90) days of the date of acceptance of the Request for Resolution (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have thirty (30) additional days to submit the Claim to mediation under the auspice of an independent mediation agency providing dispute resolution services in Wyoming.
3. 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, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.
4. 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 time as determined by the mediator, 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.

5. Within five (5) days of the Termination of Mediation, the Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent, and the Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Request for Resolution shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer. In this event, the Mediator shall issue a final written decision within ten (10) days of the last offer. This decision shall be non-binding on the parties and the parties legal remedies are preserved. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim as appropriate.

12.5 Allocation of Costs of Resolving Claims.

(a) Subject to Section 12.5(b), each Party shall bear its own costs, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator(s) ("Post Mediation Costs").

(b) Any award which is equal to or more favorable to Claimant than Claimant's settlement demand shall add Claimant's Post Mediation Costs to the Award, such costs to be borne equally by all Respondents. Any Award which is equal to or less favorable to Claimant than any Respondent's Settlement Offer shall award to such Respondent its Post Mediation Costs.

12.6 Enforcement of Resolution. After resolution of any Claim, if any Party fails to abide by the terms of any agreement or Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 12.4. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) at all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys' fees and court costs.

12.7 Board Authorization. The Board may perform any act reasonably necessary to institute, defend, settle, or intervene on behalf of the Association in binding arbitration, non-binding arbitration, mediation, litigation, or administrative proceedings in matters pertaining to (a) enforcement of the Governing Documents, (b) damage to the Townhome Common Elements and/or Condominium Common Elements, (c) damage to the Condominium Units and/or Townhome Lots which arises out of, or is integrally related to, damage to the Townhome Common Elements and or Condominium Common Elements, or (d) any other civil claim or action.

ARTICLE XIII – AMENDMENT OF DECLARATION

13.1 By Declarant. In addition to specific amendment rights granted elsewhere in this Declaration, until conveyance of the last Condominium Unit and/or Lot to an Owner

unaffiliated with Declarant, Declarant may unilaterally amend or repeal this Declaration for any purpose. Thereafter, the Declarant may unilaterally amend this Declaration if such amendment is necessary to (i) bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) enable any reputable title insurance company to issue title insurance coverage on the Condominium Units and/or a Lot; (iii) enable any institutional or Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make purchase, insure or guarantee mortgage loans on the Condominium Units and/or Lots; or (iv) to satisfy the requirements of any local, state or federal governmental agency. However, any such amendment shall not adversely affect the title to any Condominium Unit unless the Owner thereof shall consent in writing. No provision of this Declaration pertaining to the deed restricted permanent affordability of any Condominium Unit may be amended without the prior written consent of Teton County.

13.2 By Members. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of at least fifty percent (50%) of the Members. This Declaration may be revoked only upon obtaining approval from Teton County and obtaining the affirmative vote or written consent, or any combination thereof, of at least fifty percent (50%) of the Members. Upon revocation, each Condominium Unit Owner shall own an undivided interest as tenants in common in and to the Properties as its interest is determined based upon the square footage size of its Condominium Unit compared to the total amount of square footage in the Properties. An affirmative vote of the Members to revoke this Declaration shall automatically authorize the Board to execute and record those documents deemed necessary, in the Board's sole discretion, to effectuate a revocation of the Declaration and the vacation of the Condominium Plat.

13.3 Validity and Effective Date. No amendment may remove, revoke, or modify any right or privilege of the Declarant without the written consent of the Declarant.

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

Any amendment shall become effective upon recording in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within thirty (30) days of its recordation, or such amendment shall be presumed to have been validly adopted.

13.4 Exhibits. The exhibits attached to this Declaration are incorporated by this reference and amendments of such exhibits shall be governed by this Article.

ARTICLE XIV - MECHANIC'S LIEN RIGHTS

No labor performed or services or materials furnished with the consent of or at the request of a Owner or his/her agent or her/his contractor or subcontractor shall be the basis for the filing of a lien against the Condominium Unit of any other Condominium owner, or against any part thereof, or against any other property of any other Condominium owner, unless such other Condominium owner has expressly consented to or requested the performance of such labor or furnishing of such materials or services. Such express consent shall be deemed to have

been given by the owner of any Condominium Unit in the case of emergency repairs thereto Labor performed or services of materials furnished for the Project or any portion thereof, if duly authorized by the Association, shall be deemed to be performed or furnished with the express consent of each Condominium owner of that portion of the Project. Any Owner may remove his/her Condominium Unit from a lien against two or more Condominium Units or any part thereof by payment to the holder of the lien of the fraction of the total sum secured by such lien which is attributable to her/his Condominium Unit.

ARTICLE XV - MISCELLANEOUS

15.1 Registration of Mailing Address. Each Owner shall register his/her mailing address with the Association and all notices or demands intended to be served upon any Owner shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices or demands intended to be served upon the Association shall be given by registered or certified mail, postage prepaid, to the address of the Association as designated in the Association Bylaws. Any notice referred to in this Section shall be deemed given when deposited in the United States mail in the form provided for in this Section.

15.2 Owner's Obligations Continue. An Owner shall have no obligation for expenses or other obligations accruing after he/she sells his/her entire interest in its Condominium Unit or Townhome Lot.

15.3 Number and Gender. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

15.4 Severability. If any of the provisions of this Declaration or any clause, paragraph, sentence, phrase, or word or the application thereof in any circumstances be invalidated, such invalidity shall not affect the validity of the remainder of the Declaration, and the application of any such provision, paragraph, sentence, clause, phrase, or word in any other circumstance shall not be affected thereby.

15.5 Construction by Declarant. Nothing in this Declaration, or any action taken by the Association, shall limit the right of Declarant to complete construction of improvements to the Properties. Such right shall include, but shall not be limited to, erecting, constructing, and maintaining on the Properties such structures and displays as may be reasonably necessary for the conduct of its business of completing the work and disposing of the same by sale, lease, or otherwise. This Declaration shall not limit, nor shall any action of the Association limit, the right of Declarant at any time prior to the sale of all Properties by Declarant to establish on the Properties additional easements, reservations and rights of way to itself, to utility companies, or to others as may from time to time be necessary to the proper development and disposal of the Properties.

15.6 Statute. The provisions of this Declaration shall be in addition and supplemental to the Act and to all other provisions of law.

15.7 Obsolescence.

(a) Adoption of a Plan. Owners representing an aggregate of three-fourths or more of the voting rights of the Association may agree that the Project is obsolete and adopt a written

plan for the renewal and reconstruction. Written notice of adoption of such a plan shall be given to all Owners. Such plan shall be recorded in the records of the Clerk of Teton County, Wyoming.

(b) **Payment for Renewal and Reconstruction.** The expense of renewal or reconstruction shall be payable by all of the Owners as assessments against their respective Condominium Units. These assessments shall be levied in advance pursuant to this Declaration and shall be allocated and collected as provided for the allocation of expenses of Condominium Common Elements in Article VIII. Further levies may be made in like manner if the amounts collected prove insufficient to complete the renewal and reconstruction.

(c) **Sale of Obsolete Condominium Units.** The Owners representing an aggregate of three-fourths or more of the total voting rights of the Association may agree that the Condominiums are obsolete and that the Project should be sold. Such an agreement must have the additional approval of two-thirds of all first Mortgagees of record at the time such agreement is made. In such instance, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association the Project shall be sold by the Association as attorney-in-fact for all of the Owners free and clear of the provisions contained in this Declaration, the Condominium Plat and the Association Bylaws. The sale proceeds shall be apportioned among the Owners as their interests are determined based upon the square footage size of each Owner's Condominium Unit compared to the total amount of square footage in the Properties, and such apportioned proceeds shall be paid into separate accounts, each such account representing one Condominium Unit. Each such account shall remain in the name of the Association, and shall be further identified by the Condominium Unit designation and the name of the Owner. From each separate account the Association, as attorney-in-fact, shall use and disburse the total amount of such accounts without contribution from one account to the other, first to Mortgagees and other lienors in the order of priority of their mortgages and other liens and the balance remaining to each respective Owner.

(d) **Distribution of Excess.** In the event amounts collected are in excess of the amounts required for renewal and reconstruction, the excess shall be returned to the Owners by the Association by a distribution to each Owner in an amount proportionate to the respective amount collected from each such Owner.

15.8 Condemnation.

(a) **Consequences of Condemnation.** If, at any time or times during the continuance of the condominium ownership pursuant to this Declaration, all or any part of the Project shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions shall apply.

(b) **Proceeds.** All compensation, damages, or other proceeds therefrom, the sum of which is hereinafter called the "Condemnation Award," shall be payable to the Association.

(c) **Complete Taking.** In the event that the entire Project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership pursuant hereto shall terminate. The Condemnation Award shall be apportioned among the Owners as their interests are determined based upon the square footage size of each Owner's Condominium Unit compared to the total amount of square footage in the Properties, provided that if a standard different from the value of the Project as a whole is employed to measure the Condemnation Award in the negotiation, judicial decree, or otherwise, then in determining such

shares the same standard shall be employed to the extent it is relevant and applicable.

On the basis of the principle set forth in the preceding paragraph, the Association shall as soon as practicable determine the share of the Condemnation Award to which each Owner is entitled. Such shares shall be paid into separate accounts and disbursed as soon as practicable

(d) **Partial Taking.** In the event that less than the entire Project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership hereunder shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award to be determined in the following manner: As soon as practicable the Association shall, reasonably and in good faith, allocate the Condemnation Award between compensation, damages, or other proceeds, and shall apportion the amounts so allocated among the Owners as follows: (a) the total amount allocated to taking of or injury to the Common Elements shall be apportioned among Owners as their interests are determined based upon the square footage size of each Owner's Condominium Unit compared to the total amount of square footage in the Properties, (b) the total amount allocated to severance damages shall be apportioned to those Condominium Units which were not taken or condemned, (c) the respective amounts allocated to the taking of or injury to a particular Condominium Unit and/or improvements an Owner has made within her/his own Condominium Unit shall be apportioned to the particular Condominium Unit involved, and (d) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances. If an allocation of the Condemnation Award is already established in negotiation, judicial decree, or otherwise, then in allocating the Condemnation Award the Association shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be made in the same manner provided in this Declaration.

(e) **Reorganization.** In the event a partial taking results in the taking of a complete Condominium Unit, if appropriate in the determination of the Board, the Owner thereof automatically shall cease to be a member of the Association. Thereafter, the Board shall reallocate the Ownership, voting rights, and assessment ratio determined in accordance with this Declaration according to the same principles employed in this Declaration at its inception and shall submit such reallocation to the Owners of remaining Condominium Units for amendment of this Declaration as provided in this Declaration.

(f) **Reconstruction and Repair.** Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified above.

(g) **Limitations in Action of Owners Association.** Notwithstanding any other provisions in this Article and except as provided by statute, in case of condemnation or substantial loss to the Condominium Units and/or Condominium Common Elements of the Project, unless at least three-fourths of Owners of the individual Condominium Units have given their prior written approval, the Association may not:

- (1) By act or omission seek to abandon or terminate the Project;
- (2) Change the pro rata interest or obligations of any Condominium Unit in order to levy assessments or charges, allocate distribution of hazard insurance proceeds or condemnation awards or determine the pro rata share of ownership of each Condominium Unit in the Condominium Common Elements;

- (3) Partition or subdivide any Condominium Unit,
- (4) Seek to abandon, partition, subdivide, encumber, sell or transfer the Condominium Common Elements by act or omission, or
- (5) Use hazard insurance proceeds for losses to any Project property (whether Condominium Units or Condominium Common Elements) for other than the repair, replacement or reconstruction of the Project property.

[Signature and acknowledgement on following page]

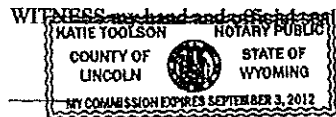
IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration the date and year first written above.

Kelly East, LLC,
a Wyoming Limited Liability Company

By *Sean Scarlett*
Sean Scarlett, Manager

STATE OF WYOMING)
 ss.)
COUNTY OF TETON)

On MARCH 2, 2009, before me, KATIE TOOLSON, Notary Public,
personally appeared SEAN SCARLETT personally known to me or proved to me on the basis of
satisfactory evidence to be the person whose name is subscribed to the within instrument and
acknowledged to me that he or she executed the same in his or her authorized capacity, and that
by his or her signature on the instrument, the person or entity upon behalf of which the person
acted, executed the instrument.



My commission expires: 9/3/2012

Katie Toolson

Notary Public

Exhibit "A"

Unit 1-1, Unit 2-1, Unit 2-2, Lot 1, Lot 2 and Lot 3 of the Kelly East Condominiums Addition to the Town of Jackson according to that plat to be recorded in the Office of the Clerk of Teton County, Wyoming the same date hereof.

(Formerly known as Lot 4, Lot 5 and Lot 6 of Block 6 of the Second John D Hall Plat, Town of Jackson, according to that plat recorded in the Office of the Clerk of Teton County, Wyoming on July 8, 1948 as Plat No. 135.)

EXHIBIT "B"
TO DECLARATION

Kelly East Condominium Units
Common Elements Ownership

Unit	Ownership Percentage of Condominium Common Elements
1-1	35%
2-1	31%
2-2	34%