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GRANTOR: KELLY EAST LLC
 GRANTEE: THE PUBLIC
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 By Michele Fairhurst Deputy

**FIRST SUPPLEMENTAL
 DECLARATION
 to the
 DECLARATION OF CONDOMINIUM
 for
 KELLY EAST CONDOMINIUMS
 ADDITION TO THE
 TOWN OF JACKSON
 to
 include the
 KELLY EAST TOWNHOMES
 ADDITION TO THE
 TOWN OF JACKSON**

First Supplemental Declaration to the Declaration of Condominium for the Kelly East Condominiums Addition to the Town of Jackson

**FIRST SUPPLEMENTAL
DECLARATION**

TO THE

**DECLARATION OF CONDOMINIUM FOR THE
KELLY EAST CONDOMINIUMS ADDITION
TO THE TOWN OF JACKSON**

THIS FIRST SUPPLEMENTAL DECLARATION TO THE DECLARATION OF CONDOMINIUMS FOR THE KELLY EAST CONDOMINIUMS ADDITION TO THE TOWN OF JACKSON (the "Supplemental Declaration") is made this 1st day of February, 2000, by Kelly East, LLC, a Wyoming limited liability company (hereinafter, with its successors and assigns, referred to as "Declarant").

WITNESSETH

WHEREAS, on July 27, 2007, Declarant filed that certain Declaration of Condominiums for the Kelly East Condominiums Addition to the Town of Jackson (the "Declaration") in the Office of the Clerk in Teton County, Wyoming in Book 722 of Photo, Pages 828 to 867; and

WHEREAS Declarant owns that real property shown on the Final Plat for Kelly East Condominiums Addition to the Town of Jackson as recorded in the Office of the Clerk in Teton County, Wyoming as Plat No. 1261(the "Properties"); and

WHEREAS, Declarant has vacated Lot 3 and has replatted such real property as shown on the Final Plat for Kelly East Townhomes Addition to the Town of Jackson as recorded in the Office of the Clerk in Teton County, Wyoming the same date hereof, as Lots 1 – 6 (collectively, Lots 1 through 6 shall be referred to herein as the "Additional Property"); and

WHEREAS, pursuant to the terms of Section 10.1 and Section 10.5 of the Declaration, Declarant may submit certain additional property to the terms of the Declaration and may amend the Declaration for the orderly development of the Properties; and

WHEREAS, Declarant desires to submit the Additional Property to the terms of the Declaration by executing and recording this Supplemental Declaration and to amend the Declaration as set forth herein for the orderly development of the Properties.

NOW, THEREFORE, pursuant to the powers retained by Declarant under the Declaration, Declarant hereby declares that the Additional Property shall be subject to the terms of the Declaration and Declarant hereby amends the provisions of the Declaration to facilitate the addition of the Additional Property to the covenants, conditions and restrictions of the Declaration, as set forth below:

1. **Amendment to Section 2.31 of the Declaration.** Section 2.31 of the Declaration shall

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the Town of Jackson

be deleted in its entirety and the following shall be inserted in lieu thereof:

2.31 “Townhome Common Elements”. *“Townhome Common Elements” shall mean the General Common Elements and the Limited Common Elements as shown on the Townhome Plat, 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. Amendment to Section 2.33 of the Declaration. Section 2.33 of the Declaration shall be deleted in its entirety and the following shall be inserted in lieu thereof:

2.33 “Townhome General Common Elements”. *“Townhome General Common Elements” means the entire real property and improvements on the Lot 6 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”.*

3. Amendment to Section 2.35 of the Declaration. Section 2.35 of the Declaration shall be deleted in its entirety and the following shall be inserted in lieu thereof:

2.35 “Townhome Lot”. *A portion of the Properties designated on the Townhome Plat as as Lots 1 through 5.*

4. Additional Definitions. The following definitions shall be inserted at the End of Article II

2.36 “Limited Common Elements – Parking”. *“Limited Common Elements – Parking” means those Limited Common Elements for the exclusive use of one or more Lot(s) and/or Condominium Unit(s) as a parking area as designated by the Declarant herein, on the Condominium Plat, Townhome Plat and/or in one or more separately recorded instruments. 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 “LCE-P”.*

5. Addition to Article V of the Declaration. The following is hereby added to the end of Article V

5.4 General. *It is the intent of this Declaration that during the construction of all improvements within the Properties that care be exercised to keep all disturbance of the natural landscape to an absolute minimum. No structure shall be placed, erected, or installed upon any Lot, and no improvements (including staking, clearing, excavation, grading and other site work, exterior alterations of existing improvements, and planting or removal of landscaping materials) shall take place except in compliance with this Article, the Town of Jackson Land Development Regulations and the Final Development Permit approved by the Town of Jackson for development of the Properties (the “Final Development Permit”). Any Owner may remodel, paint or redecorate the interior of improvements located on a Lot without approval. All plans and specifications for each structure within the Properties shall be subject to review as provided herein. This Article shall not apply to the development activities of the Declarant in accordance with the Plat and this Declaration. This Article may not be amended*

without the Declarant's written consent so long as the Declarant owns any land subject to this Declaration or subject to annexation to this Declaration.

5.5 Architectural Review.

(a) Architectural Review Committee. Declarant shall appoint the three (3) original members of the ARC and all replacements as long as Declarant owns any of the Lots within the Properties or any of the lands subject to annexation to this Declaration. Thereafter, all of the members of the ARC shall be appointed by the Board. The members of the ARC shall each serve a three (3) year term.

(b) Fees; Assistance. The ARC may establish and charge reasonable fees to reimburse the ARC for review of applications hereunder and may require such fees to be paid in full prior to review of any application pursuant to this Article. The ARC may employ architects, engineers, or other persons as deemed necessary to perform the review. The ARC shall include the reasonable compensation of such persons, if any, in the fee charged by the ARC to the applying Owner.

5.6 Guidelines and Procedures.

(a) Design Guidelines. This Article is intended to provide guidance to Owners, Builders and/or Architects regarding matters of particular concern to the ARC in considering applications hereunder. Approval pursuant to this Article shall be in the sole and absolute discretion of the ARC. The Declarant shall have sole and full authority to amend this Article as long as it owns any portion of the Properties, notwithstanding the reviewing authority of the ARC, unless Declarant delegates the power to amend to the ARC. Upon termination or delegation of the Declarant's right to amend, the ARC shall have the authority to amend this Article with the consent of the Board. Any amendments to this Article shall not require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to this Article, and such amendments may remove requirements previously imposed or otherwise make this Article less restrictive.

(b) Procedures. Prior to commencing any work within the scope of this Article ("Work"), an Owner shall submit to the ARC an application for approval of the proposed Work in such form as this Article or the ARC may specify, along with any fees required for review. Such application shall include plans and specifications in compliance with this Article showing square footage, building heights, site layout, grading, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction, as applicable ("Plans"). The ARC may require the submission of such additional information as may be reasonably necessary to consider any application. The Plans shall be in such form and shall contain such information as may be reasonably required pursuant to this Article. In reviewing each submission, the ARC may consider any factors it deems relevant, including without limitation, the use of green and sustainable materials and design, minimizing impervious surface and harmony of external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements.

The ARC shall, within thirty (30) days after receipt of a completed application and all required information, respond in writing to the applicant at the address specified in the application. The response may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application. The ARC may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections. If the ARC fails to respond in writing within thirty (30) days of submission, approval shall be deemed to have been given, with the exception of any development proposed that is not in compliance with the Final Development Permit, which will be deemed automatically disapproved and denied. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with this Article unless a variance has been granted pursuant to Section 4.5. Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the U.S. Postal Service. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the applicant.

Until expiration of the Declarant's rights under this Article, the ARC shall notify the Declarant in writing within three (3) business days after the ARC has approved any applications relating to proposed Work within the scope of matters delegated to the ARC by the Declarant. The notice shall be accompanied by a copy of the application and any additional information which the Declarant may require. The Declarant shall have ten (10) days after receipt of such notice to veto any such actions, in its sole discretion, by written notice to the ARC and the applicant.

(c) **Obligation to Complete Construction.** If construction does not commence within two (2) years after the date of approval of Plans, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to reapply for approval before commencing the proposed Work. Once construction has commenced (which commencement shall be measured from the breaking of ground on the Lot), it must be completed within twenty-four (24) months from the date construction commenced unless otherwise specified in the notice of approval or unless the ARC grants an extension in writing. The ARC shall not be obligated to grant any extension but shall not unreasonably withhold such extension if construction of the improvement(s) is diligently pursued. Completion of improvements shall mean that a certificate of occupancy has been issued by the local governing body empowered to do so and that they are in a condition suitable for immediate occupancy by the Owner or its occupant. In the event construction is not complete within the time provided for herein, including any extensions approved by the ARC, the Owner shall be subject to a late completion penalty of One Hundred Dollars (\$100.00) per day until construction is complete. Such penalty shall be assessed to such violating Owner as a Specific Assessment.

5.7 **No Waiver of Future Approvals.** Each Owner acknowledges that the persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of this Article, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features of proposed Work until the Work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the ARC may refuse to approve similar proposals in the future. Approval of applications or Plans for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, Plans, or other matters subsequently or additionally submitted for approval.

5.8 Variances. *The ARC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless approved in writing by the ARC; (b) be contrary to this Declaration; or (c) estop the ARC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.*

5.9 Limitation of Liability. *The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Properties but shall not create any duty to any Person. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only, and the ARC shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements or compliance with plans and specifications, nor for ensuring that all dwellings are of comparable quality, value or size or of similar design. Neither the Declarant, the Association, the Board, any committee, nor member of any of the foregoing shall be held liable for soil conditions, drainage or other general site work, or for any defects in plans revised or approved hereunder, or for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Lot. In all matters, the ARC and all persons comprising the ARC shall be defended and indemnified by the Association as provided in Section 7.6.*

5.10 Certificate of Compliance. *Any Owner may request that the ARC issue a certificate of architectural compliance certifying that there are no known violations of this Article. The Association shall either grant or deny such request within thirty (30) days after receipt of a written request and may charge a reasonable administrative fee for issuing such certificate. Issuance of such a certificate shall estop the Association from taking enforcement action with respect to any condition as to which the Association had notice as of the date of such certificate.*

5.11 Standard of Construction. *All improvements to the Properties made by the Declarant have been or will be constructed in accordance with all applicable city, county, state and federal building codes. Declarant does not warrant that its improvements to the Properties exceed, in any manner, the minimum building standards required by applicable county, state and federal laws.*

5.12 Enforcement. *Any structure, improvement or landscaping placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Declarant, the ARC or the Board, Owners shall, at their own cost and expense, remove such structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming Work. Should an Owner fail to remove and restore as required, the Declarant, the Association or its designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with interest at the maximum rate then allowed by law, may be assessed against the benefited Lot and collected as a Specific Assessment. All approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved Work and all Work previously approved with respect to the same Lot, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved Work, the Declarant or the Association shall be authorized, after notice to the*

Owner of the Lot and an opportunity to be heard in accordance with the Bylaws, to enter upon the Lot and remove or complete any incomplete Work and to assess all costs incurred against the Lot and the Owner thereof as a Specific Assessment. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article may be excluded from the Properties, subject to the notice and hearing procedures contained in the Bylaws. In such event, neither the Declarant, the Association its officers, or directors shall be held liable to any Person for exercising the rights granted by this Section. In addition to the foregoing, the Association and the Declarant shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the ARC.

5.13 Development and Use Restrictions. All development of the Properties shall conform to the following requirements:

(a) **Provisions in Addition to Town Land Use Regulations.** Conformity with any and all applicable land use regulations of the Town of Jackson, Wyoming shall be required, in addition to the requirements of this Declaration.

(b) **Authorized Use.** Only single-family residential use shall be permitted, together with the keeping of Household Pets subject to the limitations set forth in this Declaration.

(c) **Authorized Structures.** No building or structure shall be constructed on the Properties except one single family residence and attached garage on each Townhome Lots 1 through 5

6. Amendment to Section 6.2(b) of the Declaration. The following is hereby added to the end of Section 6.2(b):

Only Owners of Condominium Units may vote on matters regarding Condominium Units and/or the Condominium Common Expenses. Only Owners of Townhome Lots may vote on matters regarding Townhome Lots and/or the Townhome Common Expenses.

7. The definitions set forth in Article II of the Declaration are incorporated herein by reference.

8. Except as expressly amended by this Supplemental Declaration, the Declaration is and remains in full force and effect, unchanged. Capitalized terms not defined herein shall be construed in accordance with their definitions set forth in the Declaration. References to section numbers refer to section numbers contained in the Declaration, unless otherwise expressly delineated to the contrary. This Supplemental Declaration may be executed in counterparts and facsimile signatures shall be sufficient to bind all parties.

9. The Additional Property shall be sold, transferred, used, conveyed, occupied, and mortgaged or otherwise encumbered pursuant to the provisions of this Supplemental Declaration and the Declaration, both of which shall run with the title to such property and shall be binding upon all persons having any right, title, or any interest in such property, their respective heirs, legal representatives, successors, successors-in-title, and assigns. The provisions of this Supplemental Declaration shall be binding upon the Association in accordance with the terms of the Declaration.

First Supplemental Declaration to the Declaration of Condominium for Kelly East Condominiums Addition to the
Town of Jackson

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

DECLARANT

Kelly East, LLC,
a Wyoming limited liability company

By: [Signature]
Name: Sean Scarlett
Title: Managing Member

STATE OF WYOMING)
 ss.)
COUNTY OF TETON)

The foregoing instrument was acknowledged before me on this 1 day of FEB, 2009, by SEAN SCARLETT, as _____ of Kelly East, LLC, a Wyoming limited liability company

WITNESS my hand and official seal.

[Signature]
Notary Public

My commission expires: 9.2.13

