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**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
THE COTTONWOOD FLATS ADDITION TO THE TOWN OF  
JACKSON**

**AFTER RECORDING RETURN TO**

**HAWKS & ASSOCIATES, L C  
P O BOX 4430  
JACKSON, WYOMING, 83001**

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GRANTOR. COTTONWOOD FLATS LLC  
GRANTEE. THE PUBLIC  
Doc 0750088 bk 726 pg 274-332 Filed At 16.55 ON 04/20/09  
Sherry L. Daigle Teton County Clerk fees. 241.00  
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**EXHIBIT A — LEGAL DESCRIPTION OF THE PROPERTY**

**EXHIBIT B — LANDSCAPING EXHIBIT**

**EXHIBIT C — RULES OF ARBITRATION**

**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
THE COTTONWOOD FLATS ADDITION TO THE TOWN OF JACKSON**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE COTTONWOOD FLATS ADDITION TO THE TOWN OF JACKSON, is made as of April 03, 2009, by COTTONWOOD FLATS, LLC, a Wyoming limited liability company ("COTTONWOOD").

**RECITALS:**

This Declaration is made with respect to the following facts:

A. COTTONWOOD is the owner of the real property legally described on the attached Exhibit A (the "Property").

B. COTTONWOOD, as Founder, desires to establish the Property as a planned community consisting of sixty-nine townhouse lots designated for separate ownership and three common area lots designated for ownership by the "Association" (as defined in Article I)

**ARTICLE I  
DEFINITIONS**

The following initially-capitalized, defined terms have the respective meanings set forth below:

1.1 **Access Drive**. Those areas shown as Drives on the Plat for the use of the Association and the Members for the purpose of access to and egress from the Lots and for parking of not more than one vehicle, except that for three-bedroom and duplex units two vehicles can be parked.

1.2 **Arbitrator**. Defined in the attached Exhibit C.

1.3 **Assessment**. An assessment, which may be a Common Assessment, a Special Assessment or a Specific Assessment, that is levied by the Association on one or more Townhomes pursuant to the terms of this Declaration.

1.4 **Association**. The "COTTONWOOD FLATS OWNERS ASSOCIATION", a nonprofit Wyoming corporation, formed or to be formed pursuant to Section 71, and its successors.

1.5 **Award**. Defined in Section 8.5(c).

1.6 **Board**. The Board of Directors of the Association.

1.7 **Bound Party**. Defined in Section 8.3.

1.8 **Bylaws**. The Articles of Incorporation and the Bylaws of the Association, as amended from time to time.

1.9 CAS. Construction Arbitration Services, Inc.

1.10 Claimant. Defined in Section 8.5(a).

1.11 Claims. Defined in Section 8.4.

1.12 Common Allocation. With respect to each Townhome, the percentage allocated to the Townhome. The Common Allocation for each Townhome has been determined by dividing the number 1 by the total number of Townhomes within the Community. If Townhomes are created within, added to or withdrawn from the Community pursuant to this Declaration, the Common Allocation for each Townhome will be determined pursuant to the formula set forth in this Section 1.12.

1.13 Common Area Lot. A Lot or Lots to be owned by the Association and designated on the Plat as a "Common Area Lot".

1.14 Common Assessment. An Assessment levied on all Townhomes subject to assessment under Article X to fund the Common Expenses as more particularly described in Section 10.3.

1.15 Common Elements. All real property, including the Common Area Lots, Limited Common Elements, easements, possessory interests in property and improvements owned or to be owned by the Association pursuant to this Declaration for the benefit, use or enjoyment of the Owners. A portion of the Common Elements may be referred to as a "Common Element."

1.16 Common Expenses. Except for those costs and expenses expressly excluded below, all costs, expenses and financial liabilities incurred by the Association pursuant to this Declaration or the Bylaws, including, without limitation: all costs of operating, administering, securing, protecting, insuring, ventilating, lighting, decorating, cleaning, managing, maintaining, repairing, renewing, replacing or restoring (to the extent not covered by insurance or condemnation proceeds), the Common Elements, Limited Common Elements, including the Association's personal property; taxes on the Common Elements to the extent payable by the Association; general administrative costs incurred by the Association; all costs of providing water, sewer, waste disposal, telecommunications, electricity, natural gas and other services, energy and utilities to, the Common Elements, Limited Common Elements and the Association's personal property and equipment located in, or used in connection with the operation or maintenance of, the Common Elements; Limited Common Elements and funding of working capital and reasonable reserves for Common Expenses. Except to the extent otherwise provided in this Declaration, Common Expenses will not include Limited Benefit Expenses or any other cost or expense which, pursuant to this Declaration, may be separately assessed (i.e., in addition to General Assessments for Common Expenses) against any Townhome(s). Common Expenses shall not include costs or expenses to be funded by or payable through the levying of Specific Assessments.

1.17 Community. The planned residential community created by this Declaration and consisting of the Property.

1.18 Construction Activities. Defined in Section 14.1(a).

1.19 County. The County of Teton, State of Wyoming.

1.20 Founder. Cottonwood Flats, LLC, a Wyoming limited liability company, or any Person designated as a successor to Founder's rights and obligations under this Declaration in a written instrument signed by Founder recorded in the Records.

1.21 Founder Control Period. The period beginning on the date the Association is formed and ending on the first to occur of (i) 60 days after 75% of the maximum number of Townhomes that may be created pursuant to Section 2.3 have been conveyed to Owners other than Founder; (ii) two years after the last conveyance of a Townhome by Founder in the ordinary course of business; (iii) two years after any right to add new Townhomes is last exercised by Founder; or (iv) the date on which Founder, in its sole discretion, voluntarily terminates the Founder Control Period pursuant to a Recorded statement of termination, *provided, however, that in this last event, Founder may require that, for the balance of what would have been the Founder Control Period had Founder not terminated the same, certain actions of the Association or the Board, as described in a Recorded instrument executed by Founder, be approved by Founder before they become effective.* During the Founder Control Period, Founder shall have the right to appoint and remove the Directors and the officers of the Association.

1.22 Declaration. This Declaration of Covenants, Conditions and Restrictions for The Townhomes at Cottonwood Flats, including the Plat, as either or both of them is amended or supplemented from time to time by a Supplemental Declaration or otherwise.

1.23 Design Review Board. The Townhomes at Cottonwood Flats Design Review Board, formed pursuant to Section 12.2.

1.24 Design Standards and Guidelines. The Townhomes at Cottonwood Flats Design Standards and Guidelines that may be adopted by the Design Review Board pursuant to Section 12.3.

1.25 Development Period. The period beginning on the date this Declaration is Recorded and ending on the tenth anniversary of the date on which this Declaration was Recorded.

1.26 Development Rights. The rights reserved by Founder pursuant to Section 4.1.

1.27 Director. A member of the Board.

1.28 Easements. All easements that burdens or benefits the Community or a portion of it, including (i) easements established or granted under this Declaration, (ii) easements which first burdened or benefited the Property before the Recording of this Declaration; and (iii) easements which first burden or benefit the Property after this Declaration is recorded.

1.29 Final Development Plan. The Cottonwood Flats Final Development Plan, on file with the Town of Jackson, Wyoming Planning Department, as amended from time to time.

1.30 First Mortgage. A Mortgage that is Recorded and has priority of record over all other Recorded liens except those liens made superior by statute (e.g., general ad valorem tax liens and special assessments and mechanics' liens).

1.31 General Benefit Expenses. Defined in Section 10.4(a).

1.32 Limited Benefit Expenses. Defined in Section 10.4(b).

1.33 Limited Common Elements. Those portions of property designated on the Final Plat as Yard Area as graphically depicted on the Plat, and where are reserved for the exclusive use and benefit of the owners to whose Residential Improvements such Limited Common Area is appurtenant to. The Founder and the Association may establish additional Limited Common Elements.

1.34 Lot. A physical portion of the Property as described on the plat and designated on the Plat as a "Lot" upon which certain Residential Improvements will be constructed except that Residential Improvements may not be constructed on the Common Area Lots or Limited Common Area Lots. Each Lot is designated for separate ownership pursuant to this Declaration and may be conveyed in fee in compliance with all applicable subdivision regulations. The Common Area Lots will be conveyed by the Founder to the Association at the expiration of the Founder Control Period, or sooner, as determined by Founder in Founder's discretion. Each Lot is shown on the Plat and is designated by a Lot number. Notwithstanding the foregoing, a parcel of land owned, held or used in its entirety by the Association, or by any governmental entity or quasi-governmental entity, including, without limitation, special districts formed pursuant to Wyoming law, or for or in connection with the distribution of electricity, gas, water, sewer, internet, telephone, television or other utility service or for access to any property within or without the Community shall not be considered a Lot except that the Common Area Lots designated shall be Lots. Subject to Section 4.1, the initial Lots are legally described and identified on the Plat as Lots 1 through 35, 37 through 43, 54 through 69, and Common Area Lots 36, 44, and 53, inclusive.

1.35 Member. A Person who is a member of the Association pursuant to Section 7.1.

1.36 Mold. Defined in Article IX.

1.37 Mortgage. An unpaid or outstanding mortgage, deed of trust, deed to secure debt or any other form of security instrument encumbering a Townhome or a portion thereof.

1.38 Mortgagee. A beneficiary or holder of a Mortgage.

1.39 Notice. Defined in Section 8.5(a).

1.40 Owner. A Person or Persons, including Founder, owning fee simple title of record to any Townhome or Lot from time to time. The term "Owner" includes a contract vendee under an installment land contract, but does not include the vendor under such a contract.

1.41 Party. Defined in Section 8.5(a).

1.42 Parties. Defined in Section 8.5(a).

1.43 Permittee. A Person, other than an Owner, rightfully present on or in rightful possession of a Townhome or Common Element, or a portion of a Townhome or

Common Element; including, without limitation, (i) a tenant of an Owner or the Association or (ii) an agent, employee, customer, contractor, licensee, guest or invitee of an Owner, the Association, or a tenant of either of them.

1.44 Person. A natural person, corporation, partnership, limited liability company, trustee or other entity, or any combination of them.

1.45 Plat. The Recorded Final Plat for The Townhomes at Cottonwood Flats, First Filing, Teton County, Wyoming, as amended or supplemented from time to time pursuant to this Declaration.

1.46 Post Mediation Costs. Defined in Section 8.5(d).

1.47 Private Path. The system of soft surface or paved recreation trails to be constructed by Founder as and where Founder determines.

1.48 Property. Defined in Recital A.

1.49 Quorum. With respect to a meeting of the Members or the Board, that percentage or number of the Members or Directors that constitutes a quorum pursuant to the applicable provisions of the Bylaws.

1.50 Records. The real property records maintained by the Clerk and Recorder of Teton County, Wyoming; to "Record" or "Recording" means to file or filing for recording in the Records; and "of Record" or "Recorded" means recorded in the Records.

1.51 Residential Improvements. All structures, improvements and appurtenances on or to any Lot, including, without limitation, residential buildings, fixtures, utilities, patios, garages, facilities associated with regular or cable or satellite television, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, grading, drainage facilities, plantings, planted trees and shrubs, poles, signs, exterior air conditioning units, pipes, lines, meters, other facilities used in connection with water, sewer, gas, electricity, telephone or other utilities, as well as those construction activities necessary to build such items. There shall be an easement in the Common Area Lots for certain landscaping, storm water detention areas, driveways and sidewalks, as described on Exhibit B hereto. Any landscaping, driveway or sidewalk that encroaches into a Common Area Lot as shown on Exhibit B hereto shall be a Limited Common Element appurtenant to the Residential Improvements which such Limited Common Element serves.

1.52 Respondent. Defined in Section 8.5(a).

1.53 Roadway Access. Access to the Property shall be via Whitehouse Drive as shown on the Plat.

1.54 Rules. The rules and regulations, if any, that the Association adopts from time to time. The Rules shall be binding upon all Owners and their Permittees.

1.55 Settlement Demand. Defined in Section 8.5(b).

1.56 Special Assessment. An Assessment levied in accordance with Section 10.4.

1.57 Special Founder Rights. The rights of Founder set forth in Article VI.

1.58 Specific Assessment. An Assessment levied in accordance with Section 10.5.

1.59 Supplemental Declaration. An amendment to this Declaration filed in the Records pursuant to this Declaration.

1.60 Taking. A taking by eminent domain or conveyance in lieu thereof.

1.61 Termination of Negotiations. Defined in Section 8.5(b).

1.62 Termination of Mediation. Defined in Section 8.5(b).

1.63 Townhome. A Lot, together with Residential Improvements constructed thereon.

## **ARTICLE II** **CREATION OF THE COMMUNITY**

2.1 Creation. Upon the Recording of this Declaration and the Plat, the Property shall be a planned residential community, and the name of the planned residential community shall be "The Townhomes at Cottonwood Flats." The Community is situated in the Town of Jackson, Teton County, Wyoming.

2.2 Division of Property. Subject to Sections 4.1 and 4.2, Founder hereby divides the Property into the Townhome and Common Area Lots (as identified and legally described on the Plat) and the Common Elements, and designates the Lots for separate ownership and the Common Elements for ownership by the Association.

2.3 Number of Lots. Initially, there are sixty-nine Lots in the Community consisting of sixty-five single family townhome lots and three common lots and one Town lot.

## **ARTICLE III** **USE RESTRICTIONS**

### **3.1 Use Restrictions.**

(a) Permitted Use. Except as set forth in this Section 3.1, the Property shall be used only for uses set forth in the Final Development Plan and on the Plat, subject to the restrictions set forth in this Declaration.

(b) Occupancy Limitations. All Townhomes may be used only for residential dwelling and typical activities incident thereto. Rental as permitted by the Land Development Regulations of the Town of Jackson, Wyoming and the Municipal Ordinances of the Town of Jackson, Wyoming shall be permitted.

(c) Commercial Use. No Townhome may be used for commercial purposes, provided that a gainful home occupation, profession, trade or other nonresidential use is a permissible use of the Townhome, so long as (i) such use is permitted by applicable zoning, (ii) such use is carried on entirely within a residence and is secondary and incidental to its use

as a residence, (iii) there is no external evidence of any such activity being conducted, (iv) the home occupation does not employ any nonresident of the Townhome nor does it attract any nonresident customers, and (v) the use is conducted in compliance with the Rules.

(d) Exceptions. This Section 3.1 shall not apply to any activity conducted by Founder with respect to the development, marketing or sale of the Property, or to any activity conducted by Founder or the Association that relates to the performance of their respective rights or obligations under this Declaration or otherwise benefits the Owners.

3.2 Leasing of Lots. All leases of Townhomes shall be in writing. All such leases shall be specifically subject to the Articles, the Bylaws, the Rules, the Final Development Plan and this Declaration, and any failure of a lessee to comply therewith shall be a default under the lease. The Owner shall be liable for any violation of the Articles, the Bylaws, the Rules, the Final Development Plan and this Declaration committed by such Owner's tenant, without prejudice to such Owner's right to collect any sums paid for the tenant.

3.3 Subdivision of Lots. Except as otherwise provided in this Section 3.3, no Lot shall be further subdivided. Notwithstanding the foregoing, Founder may subdivide Lots pursuant to the exercise of its Development Rights.

3.4 Time Sharing. Without the prior written consent of Founder, which may be granted in Founder's sole and absolute discretion, no portion of the Property shall be used (i) for the operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of a Townhome rotates among participants in the program on a fixed or floating time schedule over a period of years; (ii) for the operation of a reservation or time-use system among co-Owners of a Townhome managed by a party other than the co-Owners themselves, (iii) for the operation of a reservation or time-use system among co-Owners whereby co-Owners are required as a condition of purchase of a fractional interest in the Townhome to subject the fractional interest to a pre-determined reservation or time-use system among co-Owners, regardless of whether or not the co-Owner may later opt out of such system and regardless of whether the reservation or time-use system is recorded or unrecorded, fixed or floating; or (iv) for the operation of or use in any other type of vacation club or similar arrangement.

3.5 Prohibited Conditions. Except as otherwise provided in this Section 3.5, the following conditions, structures and activities are prohibited on the Property:

(a) Air-Conditioning Units. No window air-conditioning units or evaporative coolers shall be installed.

(b) Lighting. All exterior lighting and Lot lighting standards shall be approved by the Design Review Board for harmonious development and the prevention of lighting nuisances. Seasonal decorative lights may be used during the holiday season.

(c) Doors and Windows. No "burglar bars," steel or wrought iron bars or similar fixtures, whether designed for decorative, security or other purposes, shall be installed on the exterior of any windows or doors of any building.

3.6 Sight Distance at Intersections. Any landscaping installed by the Association that is located at or adjacent to the intersection of any driveway and the Roadway shall permit safe sight to and across such intersection, as determined by the Design Review Board.

3.7 Refuse Removal. All rubbish, garbage and debris will be regularly removed from and will not be allowed to accumulate around the exterior of the Townhomes. All trash, garbage and other debris generated on and awaiting removal from the Community will be kept in bear-proof containers in accordance with the Rules.

3.8 Sporting Equipment and Yard Maintenance Equipment Storage. All snowmobiles, bicycles, motorcycles and other sporting equipment, and all lawn mowers, snow blowers and other yard maintenance equipment, shall be stored within the Lot's garage or residence. Outdoor storage of such equipment is expressly prohibited

3.9 Yard Items. Woodpiles and similar items shall be screened from the view of neighboring Lots and Driveways by adequate planting or fencing. Clothes lines shall not be permitted on Lots.

3.10 Firearms. The discharge of firearms on the Property is prohibited. The term "firearms" includes "B-B" guns, pellet guns, airsoft guns, other firearms of all types, regardless of size, firecrackers and fireworks.

3.11 Drives and Parking. No motor vehicles may be driven, parked or operated upon any portion of the Property except for the Roadway, the Drives, in garages and within designated parking areas on the Common Area Lots. Only one vehicle may be parked on an Access Drive within or partially within a Lot upon which Residential Improvements are constructed, except that for three bedroom units and duplex units, two vehicles may be parked on the Access Drive. No recreational vehicles, boats, campers, trailers and similar recreational vehicles may be parked or stored, whether on a temporary or permanent basis, within any portion of the Property other than in a garage that is part of the Residential Improvements on a Lot. Notwithstanding the foregoing, Founder and other persons or entities who are the beneficiaries of any easements described on the Plat or in this Declaration shall have the right to drive, park and operate motor vehicles upon the Property to the extent necessary to exercise their rights under such easements.

3.12 Fencing. All types of fences are prohibited. A screened service area may be allowed if approved in advance by the Design Review Board.

3.13 Laws and Ordinances. Every Owner and Permittee shall comply with all laws, statutes, ordinances and rules of federal, state and municipal governments applicable to the Property. Any violation may be considered a violation of this Declaration. However, the Board shall have no obligation to take action to enforce such laws, statutes, ordinances and rules.

3.14 Occupants and Permittees Bound. All provisions of this Declaration, the Bylaws and the Rules shall also apply to all occupants of any Townhome and to Permittees. Every Owner shall cause all occupants of its Townhome and Permittees of such Owner or occupant to comply with this Declaration, the Bylaws, the Rules, and the Final Development Plan.

3.15 Hunting Prohibited. Hunting of any sort within the Property is prohibited

3.16 Wildlife Feeding. Feeding of wildlife shall be prohibited as provided by regulations adopted by Teton County, Wyoming.

## **ARTICLE IV** **DEVELOPMENT OF THE PROPERTY**

**4.1 Development Rights.** Founder hereby reserves the following Development Rights for the duration of the Development Period:

(a) **Withdrawal of Property.** Founder reserves the right to amend this Declaration to withdraw all or any portion of the Property from the coverage of this Declaration from time to time whether such Property was originally described in this Declaration. For this purpose each portion of or tract within the Property having its own discrete legal description at the time of its inclusion within the Property, whether as a separate subdivision lot or plot or by its own metes and bounds description, shall constitute a severable portion of the Property that may be withdrawn independently of all other portions of the Property. Any amendment shall not require the consent of any Person other than the Owner of the portion of the Property to be withdrawn, if other than Founder. If the portion of the Property to be withdrawn includes any of the Common Elements, the Association shall consent to such withdrawal upon the request of Founder.

(b) **Designation for Public Purposes.** Founder reserves the right to designate or dedicate sites within the Property for public or quasi-public facilities as provided in Section 4.3.

(c) **Creation and Conversion of Common Elements.** Founder reserves the right to establish, create and convert Common Elements and Limited Common Elements as provided in Section 4.4.

(d) **Subdivision and Replatting.** Founder reserves the unilateral right to subdivide any of the Lots into additional Lots, and to change the boundary line of or replat any Lots or other portions of the Property owned by Founder as deemed appropriate by Founder in its complete discretion.

**4.2 Exercise of Development Rights.** Founder shall exercise any Development Right by preparing, executing and Recording a Supplemental Declaration amending the Declaration as necessary to effectuate the exercise of such Development Right, which Supplemental Declaration shall be accompanied by any amendment or supplement to the Plat. If Founder, by exercising any Development Right, creates any new Common Elements, then the Supplemental Declaration shall describe such newly created Common Elements. Except as expressly provided to the contrary in this Declaration, Founder's exercise of any Development Right shall not require the consent of any other Owner.

**4.3 Governmental Interests.** For so long as Founder owns any of the Property, Founder may designate and dedicate sites within the Property for roads, utility facilities and other public or quasi-public facilities. Such a site may also include other property not owned by Founder *provided* the owner of such property consents.

### **4.4 Common Elements.**

(a) **Conversions.** For the duration of the Development Period, Founder reserves the unilateral right to convert any Lot or other portion of the Property into Common Elements or Limited Common Elements, so long as the pertinent Lot or portion of the Property is owned by Founder at the time of conversion.

(b) Association's Obligation. The Association shall unconditionally accept any grant or conveyance to it of any Common Elements made pursuant to this Declaration by Founder.

4.5 Plat Amendments. Founder reserves the right to amend the Plat as it applies specifically to any Lot or other portion of the Property owned by Founder, or owned by another Owner with such Owner's consent in order to create any easements necessary for the orderly development of the Property, a Driveway or establishment of a roadway, or in order to create any easements for the use and convenience of the Association and the Owners. By taking title, each Owner of any Lot covenants and agrees to furnish cooperation (including any consent or joinder as required by the Town of Jackson, Wyoming) in connection with and not object to such proposed amendment so long as the amendment is sought in a manner that complies with the procedures prescribed in the Town's subdivision ordinance. No Owner required to cooperate with a proposed amendment to the Plat pursuant to this Section shall be required to incur any costs or expenses in connection with such cooperation.

4.6 Succession to Founder's Interests.

(a) The rights and interests reserved to or otherwise allocated in favor of Founder under this Declaration may be assigned or transferred by Founder, at its election and in whole or in part, to another Owner or other transferee, but only by an instrument expressly assigning or transferring such rights and interests.

(b) Each transferee of any portion of the Property, by such transferee's acceptance of the transfer or conveyance (or any related consent or similar documentation), shall be bound by and subject to all of the Founder's rights and interests under this Declaration, including, without limitation, the provisions of Section 4.6(a) governing the transfer of those rights and interests. Each such transferee and each Owner, and their successors in interest, shall be bound to execute and deliver such documents as Founder may require from time to time in order to verify and confirm the Founder's rights and interests under this Declaration.

## ARTICLE V EASEMENTS

5.1 General. The easements granted pursuant to this Article V shall be subject to this Declaration and any other applicable covenants, and any other easements, rights-of-way or other title matters Recorded against the Property.

5.2 Easements Benefiting the Association.

(a) Founder hereby establishes and grants to the Association a nonexclusive easement over each Townhome and other portions of the Property (but excluding in any case the interior of any Residential Improvements) for the purpose of: (i) permitting the Association reasonable and necessary access to all Townhomes for the purpose of maintaining, repairing, replacing and improving the exterior of any of the Residential Improvements thereon and all landscaping and related improvements on any Lot; and (ii) permitting the Association reasonable and necessary access to any of the Common Elements for the purpose of maintaining, repairing, replacing and improving any such Common Elements and the Improvements thereon; and (ii) permitting the Association reasonable and necessary access to all Townhomes and Common Elements for the purpose of installing, maintaining, repairing,

replacing and improving landscaping, fencing, monumentation, signage, sidewalks, irrigation and water distribution systems, and utilities servicing any Townhome or Common Element.

(b) Founder hereby establishes and grants to the Association a nonexclusive easement over and across the Drives and any roads within Property for the use of the Association for the purpose of installing and maintaining landscaping and signage improvements within the Drives and along any roads.

(c) Founder hereby establishes and grants to the Association a nonexclusive easement over and across the Private Path, as and where it is constructed, for use by the Members for pedestrian recreational purposes, including, but not limited to walking, jogging, running and hiking. In no event shall the Private Path be used by the Members for bicycling, equestrian or motorized vehicle purposes. The exact location of the Private Path will be determined when and as constructed by Founder and an easement confirmation document will be recorded in the land records of Teton County, Wyoming once as-built plans for the Private Path have been completed.

(d) Lots 36 and 44 and a portion of Lot 53 shall be subject to easements for storm water detention.

**5.3 Easements Benefiting Owners.** Each Owner, and its Permittees, has a non-exclusive Easement over and through the Common Elements (including the Common Area Lots) for ingress and egress to such Owner's Townhome. Each Owner has a non-exclusive Easement to use the Common Elements, subject to the terms and conditions of this Declaration and the Rules.

(a) The Easement granted to Owners pursuant to Section 5.3 shall be subject to the right of the Board to suspend any Owner's or such Owner's Permittees' right to use and enjoyment of any Common Elements (except that the Board may not deny any Owner access to its Lot) (a) for any period during which any Assessment or charge against such Owner's Townhome remains delinquent, and (b) for a period not to exceed 30 days for a single violation (or, in case of a continuing violation, for the duration of such violation, plus a period not to exceed 30 days) of this Declaration, the Bylaws, the Rules, or the Final Development Plan after providing such notice and hearing as may be required by the Bylaws.

**5.4 Easements Benefiting Founder.** Founder hereby reserves such easements over and across the Common Elements, which easements will exist for the duration of the Development Period, as may be reasonably necessary for Founder's exercise of any Special Founder Right, performance of any of Founder's obligations hereunder, and the showing of the Property to prospective purchasers.

**5.5 Plat Easements.** The Property, or portions thereof, is subject to those easements created by the Plat, including, without limitation, the following easements, as each are defined in the General Notes of the Plat:

(a) **Utility Easement.** The Plat describes the Utility Easement which Founder has reserved and granted to the appropriate utility company or improvement district or has retained for the installation, maintenance, repair and replacement of utilities, including but not limited to storm drainage, sanitary sewage, water and underground electrical lines, gas lines, telephone lines, and cable installation. The Utility Easement will burden certain Lots within the Community.

(b) Utility and Private Path Easement. The Plat describes the "Utility and Private Path Easement" which Founder has reserved for utilities, drainage, operating, installing, construction, maintaining, repairing and replacing recreation trails for pedestrian use, where the Utility and Private Path Easement is adjacent to Access Drive, for installing, constructing, maintaining, repairing and replacing from time to time roads and related improvements and for snow storage, together with a perpetual right of ingress and egress to and from such easement. The Utility and Private Path Easement will be located as depicted on the Plat.

5.6 Right of Entry. Founder reserves for the Association and other Persons described below an easement for the right, but not the obligation, to enter upon any Lot: (i) for emergency, security and safety reasons; (ii) to inspect any Lot for the purpose of ensuring compliance with this Declaration, the Bylaws and the Rules; and (iii) to remove nonconforming Improvements as provided in Section 12.7. Such right may be exercised by any member of the Board and the Association's officers, agents, employees and managers, the members of the Design Review Board pursuant to Article XII, and for emergency, security and safety purposes, all police, fire and ambulance personnel and other similar emergency personnel in the performance of their duties. This right of entry shall include the right of the Association to enter upon any Lot to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure such condition within a reasonable time after requested by the Board, but shall not authorize entry into any residence without permission of the occupant, except by emergency personnel acting in their official capacities.

5.7 Additional Easements.

(a) Founder's Right to Grant Easements. Founder hereby reserves the non-exclusive right and power to grant, during the Development Period, such additional easements as may be necessary, in the sole discretion of Founder, in connection with the orderly development of any of the Property; *provided, however,* that no such easement shall significantly and adversely affect an Owner's use of the Townhome.

(b) Association's Right to Grant Easements. Notwithstanding anything to the contrary in this Declaration and following termination of the Founder's rights reserved herein to grant additional easements, the Board may grant easements over the Common Elements owned in fee simple by the Association, if any, for installation and maintenance of utilities, drainage, facilities and roads and for other purposes not inconsistent with the intended use of the Common Elements.

5.8 Easements Run with Land. Except as otherwise provided in this Article V, all easements established and granted pursuant to this Article V are appurtenant to and run with the Property and will be perpetually in full force and effect so long as this Declaration is in force and will inure to the benefit of and be binding upon Founder, the Association, Owners, Permittees and any other Persons having any interest in the Property or any part thereof. The Townhomes and the Common Elements will be conveyed and encumbered subject to all easements set forth in this Article V, whether or not specifically mentioned in such conveyance or encumbrance.

## **ARTICLE VI** **SPECIAL FOUNDER RIGHTS**

6.1 **Special Founder Rights.** In addition to and without limiting any other right reserved by or for the benefit of Founder in this Declaration (all of which shall also be Special Founder Rights), Founder reserves the following Special Founder Rights, which, except as expressly provided below, may be exercised by Founder for the duration of the Development Period, with no limitations on the extent to, or the order in which, such rights are exercised:

- (a) To complete any Common Elements described on or in the Plat or this Declaration;
- (b) To exercise any of the Development Rights;
- (c) To maintain sales, construction and management offices and advertising signs on the Property as set forth in Section 6.3;
- (d) To merge or consolidate the Association with another common interest community of the same form of ownership;
- (e) To use easements through the Common Areas for the purpose of making improvements within the Property or the Additional Lands; and
- (f) To appoint and remove any officer of the Association or any Director during the Founder Control Period.

6.2 **Transfer of Special Founder Rights.** Founder may transfer any or all of the Special Founder Rights.

6.3 **Models and Offices.** During the Development Period, Founder may maintain and carry on upon any Lot owned by Founder (or any other Lot with consent of its Owner) or any portion of the Common Elements, such facilities and activities as, in the reasonable opinion of Founder, may be required, convenient or incidental to the development, construction or sale of Townhomes, including, without limitation, business offices, construction offices, management offices, signs, model units and sales offices. Such facilities may be of a number, size and location which Founder determines shall adequately accommodate Founder's development, sale and marketing of the Townhomes and the Property.

6.4 **Other Covenants.** During the Development Period, no Person shall Record any declaration of covenants, conditions and restrictions, condominium declaration or similar instrument affecting any portion of the Property without the prior written consent of Founder.

## **ARTICLE VII** **THE ASSOCIATION**

7.1 **Formation; Membership.** The Association will be formed no later than the date the first Townhome is conveyed to an Owner other than Founder. Every Owner, including Founder, shall be a Member of the Association. Following a termination of this Declaration, the Association will consist of all Owners entitled to share in the distribution of proceeds of a sale of the Common Elements. Membership in the Association will automatically terminate when a

Person ceases to be an Owner, whether through sale, intestate succession, testamentary disposition, foreclosure or otherwise. The Association will recognize a new Owner as a Member upon presentation of satisfactory evidence of the sale, transfer, succession, disposition, foreclosure or other transfer of a Townhome to such Owner. Membership in the Association may not be transferred, pledged or alienated in any way, except to a new Owner upon conveyance of a Townhome. Any attempted prohibited transfer of a membership in the Association will be void and will not be recognized by the Association.

**7.2 Voting Rights.** One vote in the Association is allocated to each Townhome and the Member or Members comprising the Owner of such Townhome. When more than one person holds an interest in any Townhome, all such persons shall be Members. If there is more than one Member in a Townhome, the vote for such Townhome shall be exercised as the Members owning such Townhome among them determine, and the Secretary of the Association shall be notified of such designation prior to any meeting. In the absence of such advice, the Townhome's vote shall be suspended in the event more than one person or entity seeks to exercise it. Any Owner of a Townhome which is leased may assign the voting right appurtenant to such Townhome to the tenant, *provided that a copy of the instrument of assignment is furnished to the Secretary of the Association prior to any meeting.*

**7.3 The Board.** The affairs of the Association shall be governed by the Board. Except as otherwise specifically provided by law or in this Declaration, the Articles or the Bylaws, the Board may exercise all rights and powers of the Association (including, without limitation, those powers itemized in Section 7.4) without a vote of the Members. Subject to the provisions of this Section, the qualifications and number of Directors, the term of office of Directors, the manner in which Directors shall be appointed or elected and the manner in which Directors shall be replaced upon removal or resignation shall be as set forth in the Bylaws. In the performance of their duties, the Directors will act according to their ordinary business judgment.

**7.4 Association Powers.** Subject to the rights, powers and authority reserved by and conferred upon Founder pursuant to this Declaration, the Association will serve as the governing body of the Community and shall have the powers and duties set forth in this Declaration and the Bylaws. The Association may, but shall not be obligated to:

(a) adopt Bylaws for the regulation and management of the Association, *provided that the provisions of the Bylaws will not be inconsistent with the provisions of this Declaration or Wyoming law.* The Bylaws may include, without limitation, provisions regarding the voting rights of the Owners, the appointment or election of the Board, and the appointment or election of officers of the Association;

(b) make and enforce the Rules, consistent with the rights, duties, terms and conditions established by this Declaration and the Bylaws;

(c) subject to Section 10.1(d), adopt and amend budgets for revenues, expenditures and reserves and assess and collect any Assessments and any other amounts due from Owners or others to the Association;

(d) borrow funds necessary to finance capital improvements to be utilized by the Association in the performance of any of its powers or duties set forth in this Declaration, including, without limitation the powers and duties set forth in Section 7.4 and Section 11.1.

(e) hire and terminate managing agents and other employees, agents and independent contractors;

(f) perform trash removal, security and other services for the Members either directly or through the use of an independent contractor and including without limitation the construction, maintenance and operation of a controlled access entry to the Property;

(g) make landscaping and related improvements or maintain landscaping on land not included in the Property;

(h) manage extraterritorial activities or improvements pursuant to a contract;

(i) perform keyholder services and related services for Owners upon request, including without limitation, maintenance of keys to Improvements and "house-sitting" type services;

(j) exercise any of the enforcement powers set forth in this Section 7.4 or elsewhere in this Declaration;

(k) institute, defend or intervene in litigation or administrative proceedings in its own name only;

(l) make contracts and incur liabilities in accordance with the properly adopted and ratified budget;

(m) borrow funds to cover Association expenditures and pledge Association assets as security therefor, *provided* that Common Elements may be subjected to a security interest only pursuant to Section 15.3;

(n) regulate the use, maintenance, repair, replacement and modification of the Common Elements in accordance with the properly adopted and ratified budget or otherwise in accordance with this Declaration;

(o) acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property (including, without limitation, one or more Townhomes), *provided* that Common Elements may be conveyed or encumbered only pursuant to Section 15.3;

(p) grant easements, leases, licenses and concessions through or over the Common Elements;

(q) impose and receive any payments, fees or charges for the use, rental or operation of the Common Elements and for any services provided to Owners;

(r) impose charges and interest for late payment of Assessments, recover reasonable attorneys' fees and other legal costs for collection of Assessments and other actions to enforce the powers of the Association, regardless of whether or not suit was initiated, and, after providing notice and an opportunity to be heard, as provided in the Bylaws,

levy reasonable fines for violations of this Declaration, the Bylaws, the Final Development Plan, or the Rules;

(s) impose reasonable charges for the preparation and recordation of amendments to this Declaration or statements of unpaid Assessments;

(t) provide for the indemnification of its officers and Directors as provided in the Bylaws or the Articles and maintain directors' and officers' liability insurance;

(u) assign its right to future income, including the right to receive Assessments;

(v) make cash or other contributions to community organizations for the purpose of promoting and marketing the Teton County, Wyoming area;

(w) exercise any other powers expressly conferred by this Declaration, the Bylaws or reasonably implied from or necessary to effectuate such powers;

(x) exercise all other powers that may be exercised in the State of Wyoming by a nonprofit corporation; and

(y) exercise any other powers necessary or appropriate for the governance and operation of the Association.

This Declaration may not and is not intended to impose any limitations on the powers of the Association to deal with the Founder that are more restrictive than the limitations imposed on the power of the Association to deal with any other Person.

## **ARTICLE VIII** **CONSTRUCTION DEFECTS, DISPUTES,** **DISPUTE RESOLUTION AND LITIGATION**

### **8.1 Testing for Construction Defects.**

(a) The Association shall not undertake or authorize any testing, including, without limitation, investigative testing, destructive testing or invasive testing of any kind for defects in construction of any Residential Improvements or Common Element without first determining, based upon the presence of some readily observable evidence or condition, that a defect may exist. In making such a determination the Board shall rely on the opinions and/or the conclusions of a qualified expert (e.g., a structural engineer); even in the event such evidence or conditions exist, the Association shall not be obligated to authorize or undertake such testing.

(b) In determining whether to authorize such testing, the Board shall be governed by the following considerations:

(i) whether the Association's position is strong enough to justify taking any other or further action;

(ii) whether, although a technical violation may exist or may have occurred, it is of such a material nature as to be objectionable to a reasonable Person or to justify expending the Association's resources; and

(iii) whether it is in the Association's best interests, based upon hardship, expense, inconvenience or other reasonable criteria, to pursue the matter further.

(c) Notwithstanding the foregoing, under no circumstances shall the Association authorize such testing as is contemplated under this Section 8.1 unless the nature of the suspected defect is such that:

(i) it poses a significant risk to life, health, safety or personal property; and

(ii) it threatens or affects the structural integrity, functionality, or performance of the Property (or a portion thereof) for its intended use.

(d) In the event the Board undertakes or authorizes testing for construction defects, then prior to any testing taking place, Founder and others responsible for the construction shall be entitled to notice of the alleged defect, access to the area of the alleged defect, and an opportunity to inspect the area and repair any defect that is found to exist. Founder and others responsible for construction shall also be entitled to be present during any testing and may record (via videotape, audio tape, still photographs, or any other recording method) all testing conducted and all alleged defects found.

(e) In the event that testing discloses any defects, Founder and others responsible for construction shall be given a reasonable amount of time, based on the nature and extent of the defect, to repair or correct the condition. If Founder or others responsible for construction fail to repair or correct the condition, the Board shall have the right, but not the obligation, to proceed with a Claim pursuant to this Article VIII of this Declaration. In determining whether to proceed with such a Claim, the Board shall be governed by the same standards as set forth in Section 8.6 below.

**8.2 Consensus for Association Litigation.** Except as provided in this Section 8.2, the Association shall not commence a judicial or administrative proceeding, including without limitation any proceeding required under Section 8.5 below, without: (a) the approval of at least 80% of the Owners; and (b) the affirmative vote of Founder so long as Founder owns any Lot. This Section 8.2 shall not apply, however, to: (i) actions brought by the Association to enforce the terms of this Declaration, the Bylaws or the Rules (including, without limitation, the foreclosure of liens); (ii) the imposition and collection of assessments, (iii) proceedings involving challenges to ad valorem taxation; or (iv) counterclaims brought by the Association in proceedings instituted against it. This Section 8.2 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 for herein.

Prior to the Association or any Owner's commencing any judicial or administrative proceeding which arises out of an alleged defect of any Common Element or Townhome, Founder and others responsible for the construction shall have the right to be heard by the Owners and to access, inspect, correct the condition of, or redesign any portion of the Common Elements or the Townhomes, including any improvement as to which a defect is

alleged. In addition, the Association or the Owner shall notify the builder who constructed the subject improvement prior to retaining any other expert as an expert witness or for other litigation purposes.

**8.3 Alternative Method for Resolving Disputes.** Founder; the Association, its officers, directors, and committee members; any Owner; all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Section 8.3 (each such entity being referred to as a "Bound Party") agree to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances or disputes described in Section 8.4 of this Declaration (collectively, "Claims"), to the procedures set forth in Section 8.5 of this Declaration.

**8.4 Claims.** Unless specifically exempted below, all Claims arising out of or relating to the interpretation, application or enforcement of this Declaration, or the rights, obligations and duties of any Bound Party under this Declaration, or relating to the design or construction of the Townhomes or the Common Elements shall be subject to the provisions of Section 8.5 of this Declaration.

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 8.5 of this Declaration:

- (a) any suit by the Association against any Bound Party to enforce the provisions of Article X of this Declaration (Assessments);
- (b) any suit by the Association or Founder to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to act under and enforce the provisions of Article III (Use Restrictions);
- (c) any suit between or among Owners, to the extent such suit asserts a Claim which would constitute a cause of action independent of this Declaration;
- (d) any suit in which any indispensable party is not a Bound Party, and
- (e) any suit as to which any applicable statute of limitations, has expired or would expire within 180 days of giving the Notice required by subsection 8.5(a) of this Declaration.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 8.5.

#### **8.5 Mandatory Procedures.**

(a) **Notice.** Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (the Claimant and the Respondent are hereinafter referred to individually, as a "Party," or, collectively, as the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely (i) the nature of the Claim, including the Persons involved and Respondent's role in the Claim; (ii) the legal basis of the Claim (*i.e.*, the specific

authority out of which the Claim arises); (iii) the proposed remedy; and (iv) the fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation and Mediation.

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

(ii) If the Parties do not resolve the Claim within 30 days after the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have 30 additional days to submit the Claim to mediation under the auspices of an independent mediation service designated by the Association or, if the Parties otherwise agree, to an independent agency providing dispute resolution services in the Teton County, Wyoming, area.

(iii) 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.

(iv) 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 30 days after submission of the matter to the mediation, or within such other time as determined by the mediator or agreed to by the Parties, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

(v) Within five 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 Notice 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.

(c) Final and Binding Arbitration.

(i) If the Parties do not agree in writing to a settlement of the Claim within 15 days of the Termination of Mediation, the Claimant shall have 15 additional days to submit the Claim to arbitration in accordance with the Rules of Arbitration contained in Exhibit C or such rules as may be required by the agency providing the arbitrator. If not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all

liability to Claimant arising out of such Claim; *provided*, nothing herein shall release or discharge Respondent from any liability to Persons other than Claimant.

(ii) This subsection 8.5(c) is an agreement to arbitrate and is specifically enforceable under the applicable arbitration laws of the State of Wyoming. The arbitration award (the "Award") shall be final and binding with no right to appeal, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Wyoming

(d) Allocation of Costs of Resolving Claims.

(i) Each Party, including, without limitation, any Owner and the Association, shall share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the arbitration proceeding ("Post Mediation Costs"). Under no circumstances shall either Party be entitled to recover its Post Mediation Costs, including any attorneys' fees, from the other party. BY TAKING TITLE TO A TOWNHOME AND AS A MEMBER OF THE ASSOCIATION, EACH OWNER ACKNOWLEDGES AND AGREES THAT SUCH OWNER AND THE ASSOCIATION HAVE WAIVED AND SHALL BE DEEMED TO HAVE WAIVED THE RIGHT TO ANY AWARD OF ATTORNEYS' FEES IN CONNECTION WITH THE ARBITRATION OF A DISPUTE UNDER THIS SECTION 8.5(d).

(ii) 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. With respect to any Award which is less favorable to Claimant than Claimant's Settlement Demand yet more favorable to Claimant than Respondent's Settlement Offer, each party shall bear its own Post Mediation Costs.

(e) Limitation on Damages. No party, including, without limitation, any Owner and the Association, shall be entitled to receive any award of damages in connection with the arbitration of a Dispute other than such party's actual damages, and Founder, the Association and any Owner shall be deemed to have waived their right to receive any damages in a Dispute other than actual damages, including, without limitation, attorneys' fees, special damages, consequential damages, and punitive or exemplary damages. BY TAKING TITLE TO A TOWNHOME AND AS A MEMBER OF THE ASSOCIATION, EACH OWNER KNOWINGLY AND WILLINGLY ACKNOWLEDGES AND AGREES THAT SUCH OWNER AND THE ASSOCIATION HAVE WAIVED AND SHALL BE DEEMED TO HAVE WAIVED, IN CONNECTION WITH THE ARBITRATION OF ANY DISPUTE UNDER SECTION 8.5(c), THE RIGHT TO ANY AWARD OF CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, OR OTHER NON-COMPENSATORY DAMAGES OR SIMILAR DAMAGES, INCLUDING ALL DAMAGES FOR EMOTIONAL DISTRESS, WHETHER FORESEEABLE OR UNFORESEEABLE AND REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED ON (BUT NOT LIMITED TO) CLAIMS ARISING OUT OF BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY OR CONDITION, BREACH OF CONTRACT, VIOLATION OF BUILDING CODES (LOCAL, STATE OR FEDERAL), CONSTRUCTION DEFECTS, MISREPRESENTATION OR NEGLIGENCE OR OTHERWISE.

(f) Multiple Party Disputes. Multiple party disputes or claims not consolidated or administered as a class action pursuant to the following sentence will be subject to, and will be arbitrated individually. Only with the written request of all parties involved, but not otherwise, the "Arbitrator" (as defined in Exhibit C attached hereto) may: (i) consolidate in a single arbitration proceeding any multiple party claims that are substantially identical, and (ii) arbitrate multiple claims as a class action in accordance with the rules and procedures adopted by Construction Arbitration Services, Inc. ("CAS").

(g) Enforcement of Resolution. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 8.5(b) above and any Party thereafter fails to abide by the terms of such agreement, or if any Party fails to comply with an 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 this Section 8.5. 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) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys' fees and court costs.

8.6 Legal Proceedings. Subject to the provisions of Sections 8.1 through 8.5 of this Declaration, the Association shall have the right, but not the obligation, to institute legal proceedings to enforce all rights under this Declaration, the Bylaws and the Rules. The decision to institute legal proceedings by seeking the approval of at least 80% of the Owners pursuant to Section 8.1 of this Declaration, shall be in the sole discretion of the Board and shall be governed by the considerations detailed in Sections 8.1, if applicable. Failure to commence such legal proceedings shall not constitute a waiver of any such rights. ANY LIMITATIONS ON DAMAGES AND ALL WAIVERS OF LIABILITY AND RIGHTS TO AWARDS OF DAMAGES SET FORTH IN ANY SECTION OF THIS DECLARATION WITH RESPECT TO OWNERS, INCLUDING, WITHOUT LIMITATION, SECTIONS 8.5(c), 8.5(e) AND 8.5(f), SHALL APPLY WITH EQUAL FORCE AND EFFECT WITH RESPECT TO THE ASSOCIATION IN ANY LEGAL PROCEEDINGS INSTITUTED BY THE ASSOCIATION UNDER THIS SECTION 8.6.

8.7 Enforcement of Declaration, Bylaws, and Rules.

(a) Sanctions and Self-Help. After notice and an opportunity to be heard as provided in the Bylaws, the Association, acting through the Board or any authorized agent, may: (i) impose sanctions (including, without limitation, reasonable monetary fines) for violations of this Declaration, the Bylaws, or the Rules; (ii) exercise self-help to cure any violations of this Declaration, the Bylaws or the Rules that an Owner or Permittee fails or refuses to cure; and (iii) suspend any services it provides to any Owner who is more than 15 days delinquent in paying any Assessment or other charge due to the Association. All of the remedies set forth in this Declaration and the Bylaws shall be cumulative of each other and any other remedies available at law or in equity. If the Association prevails in any action to enforce the provisions of this Declaration, the Bylaws, or the Rules, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs reasonably incurred by it in such action.

(b) No Waiver. In no event shall the Association's failure to enforce any covenant, restriction or rule provided for in this Declaration, the Bylaws, or the Rules constitute a waiver of the Association's right to later enforce such provision or any other covenant, restriction or rule.

## **ARTICLE IX** **MOLD DISCLOSURE & WAIVER**

Mold, mildew, fungi, bacteria and microbiologic organisms (collectively, "Mold") are present in soil, air and elsewhere in the environment. Mold can proliferate in various environments, including, among others, damp areas such as bathrooms and within walls and partitions. Certain parties have expressed concerns about the possible adverse effects on human health from exposure to Mold. Due to various reasons, including the varying sensitivities of different individuals to various types of Mold and other contaminants, as of the date of this Declaration, no state or federal standards regarding acceptable levels of exposure to Mold exist. According to the Consumer Product Safety Commission and the American Lung Association, some diseases or illnesses have been linked with biological pollutants in the indoor environment, including some forms of Mold. However, it is believed that many of these conditions may also have causes unrelated to the indoor environment. Therefore, as of the date of this Declaration, it is unknown how many potential health problems relate primarily or exclusively to indoor air quality or Mold. Each Owner, by taking title to a Townhome, is advised that Founder and the Association are not qualified and have not undertaken to evaluate all aspects of this very complex issue. Each Owner, by taking title to a Townhome, acknowledges that Founder and/or the Association have not performed any testing or evaluation of, and make no representations or warranties, express or implied, concerning, the past, current or future presence or absence of Mold in the Townhome, in any Common Element, or within the vicinity of the Property. Founder and the Association recommend that each Owner, at the Owner's expense, conduct its own investigation and consult with such experts as the Owner deems appropriate regarding the occurrence and effects of Mold, the potential sensitivity or special risk the Owner, his or her family members, and others individuals who will occupy or use the Townhome or any Common Elements allocated to the Townhome, may have with respect to Mold, and methods to reduce or limit Mold within the Townhome or any Common Elements allocated to the Townhome.

When excessive moisture or water accumulates indoors, Mold growth can and will occur, particularly if the moisture problem remains unaddressed. There is no practical way to eliminate all Mold in an indoor environment. The key to controlling indoor Mold growth is to control moisture. Each Owner, by taking title to a Townhome, agrees to maintain the Townhome and any Common Elements allocated to the Townhome in such a manner as to reduce the potential for increased Mold formation or growth, including, without limitation, keeping dryer and other vents and/or fans clear and functioning, and preventing and repairing plumbing, window and other leaks and sources of moisture. Each Owner, by taking title to a Townhome, agrees to make periodic inspections of the Townhome and any Common Elements allocated to the Townhome for the presence of Mold or conditions which may increase the ability of Mold to propagate within the Townhome or any Common Elements allocated to the Townhome, and to monitor the Townhome and any Common Elements allocated to the Townhome on a continual basis for excessive moisture, water or Mold accumulation. If water or moisture is discovered in or around the Townhome or any Common Elements allocated to the Townhome, the Owner, by taking title to a Unit, agrees to immediately seek to eliminate the source of the water or moisture. Failure to eliminate the source of moisture can result in additional damage and the growth of Mold. Founder will not be responsible for damages, and each Owner, by taking title to a Townhome, hereby waives all rights to damages and subrogation of damages. Each Owner, by taking title to a Townhome, agrees to indemnify Founder and the Association and hold Founder and the Association harmless from damages, including in all cases personal injury or property damage, caused by the presence of Mold and/or water or moisture in the Townhome or other portions of the Property to the extent that

the damages are caused by: (i) the Owner's negligence or failure to properly maintain and monitor the Townhome or any Common Element allocated to the Townhome; or (ii) the Owner's failure to promptly take appropriate corrective measures and minimize any damage caused by water or moisture (including, without limitation, failure to promptly notify and engage the help of appropriate professionals or experts).

## **ARTICLE X** **FINANCIAL MATTERS AND ASSESSMENTS**

10.1 **Financial Matters.** The Board, on behalf of the Association, will discharge the following obligations with respect to financial matters:

(a) **Books and Records.** The Board will cause to be maintained full and complete books and records of the Association's business and operations, including, without limitation, current copies of this Declaration, the Bylaws, the Articles, the Rules, the approved budget for the current fiscal year, financial statements, books and records reflecting all assets, liabilities, capital, income and expenses of the Association, and supporting materials, such as bank statements and invoices, for at least the shorter of (i) the prior three fiscal years or (ii) all of the fiscal years in which the Association has been in existence. All of such books and records will be made available for inspection by any Owner or Owner's authorized representatives during normal business hours upon reasonable prior written request.

(b) **Returns.** The Board will cause to be prepared and filed before delinquency any and all tax, corporate or similar returns or reports that the Association is required by law to prepare and file.

(c) **Preparation of Budget.** The Board may, and if levying Assessments shall, cause to be prepared and adopt annually, a proposed budget for the Association. The proposed budget will include the estimated revenue and expenses (including, without limitation, Common Expenses) of the Association for such fiscal year, in reasonable detail as to the various categories of revenue and expense.

(d) **Ratification of Budget.** Within 30 days after adoption by the Board of any proposed budget for the Association, the Board will send by ordinary first-class mail or otherwise deliver to all Owners a summary of the proposed budget and will set a date for a meeting of the Owners to consider ratification of the proposed budget not less than 14 nor more than 60 days after mailing or other delivery of the summary. Unless at that meeting Owners to whom are allocated a majority of the votes in the Association vote to reject the proposed budget, the proposed budget will be ratified, whether or not a Quorum is present. In the event that the proposed budget is rejected, the budget or applicable portion last ratified by the applicable Owners will continue in effect until such time as the necessary Owners ratify a subsequent budget proposed by the Board. For the first fiscal year of the Association, the Board may adopt the Founder's estimated budget for the Association and assess Common Assessments, *provided* that the Board submits such budget to the Owners for ratification in accordance with the foregoing provisions within 30 days after adopting the same.

10.2 **Creation of Assessments.** There are hereby created assessments for such Association expenses as may be authorized from time to time pursuant to this Declaration. There shall be three types of Assessments: (a) Common Assessments; (b) Special Assessments; and (c) Specific Assessments. Each Owner, by accepting a deed for any

Townhome, is deemed to covenant and agree to pay these Assessments pursuant to the terms and conditions of this Declaration.

**10.3 Common Assessments.** Each Townhome is subject to Common Assessments, which shall be levied equally against all Townhomes. Common Assessments will be calculated, paid, adjusted and reconciled in accordance with the following provisions:

(a) **Budget and Payment.** The Association shall set the Common Assessments for each fiscal year at a level which is reasonably expected to produce total income for the Association for such fiscal year equal to the total Common Expenses set forth in the budget adopted by the Board and ratified by the Owners. In determining the total funds to be generated through the levy of Common Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years and any Assessment income expected to be generated from any additional Townhomes reasonably anticipated to become subject to Common Assessments during the fiscal year.

(b) **Reconciliation.** As soon as reasonably possible after the end of each fiscal year, the Board will cause the actual Common Expenses incurred by the Association during such fiscal year to be reconciled against the Common Assessments received by the Association from the Owners. To the extent that any Owner has paid more than its Common Allocation of such actual Common Expenses, the Board may either refund the overpayment to the Owner or credit such overpayment against such Owner's obligation for Common Assessments for the next ensuing fiscal year. To the extent any Owner has underpaid its Common Allocation of such actual Common Expenses, the Board may either demand in writing that such Owner pay the amount of such underpayment of Common Assessments to the Association within a specified period of time, as determined by the Board, after the Board notifies such Owner of such underpayment (which period of time may not be less than 30 days), or the Board may include such underpayment in such Owner's obligations for Common Assessments for the next ensuing fiscal year.

**10.4 Special Assessments.** In addition to other authorized Assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted, including, without limitation, the costs of any construction, restoration, or unbudgeted repairs or replacements of capital improvements. Subject to Section 10.1, each Townhome is subject to Special Assessments as follows: (a) in the case of Special Assessments for the Common Elements or that otherwise benefit all the Owners, each Townhome is subject to the Townhome's Common Allocation of the Special Assessments levied by the Association; and (b) in the case of Special Assessments not covered by clause (a) above, the Special Assessments shall be levied against the benefited Townhomes in equal shares. No Special Assessment proposed by the Association shall be levied until it is ratified by the Owners of the Townhomes that will be subject to such Special Assessment. A proposed Special Assessment will be ratified unless Owners representing a majority of the votes allocated to the Townhomes that will be subject to the Special Assessment vote, either in person or by proxy, to reject the Special Assessment at a meeting called for such purpose. During the Development Period, any proposed Special Assessment shall also require Founder's consent. Special Assessments may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. The Board shall have the right to require that Special Assessments be paid in advance of the provision of the subject services or materials. Without limiting the generality of the foregoing, the Board may levy Special Assessments to cover certain costs of restoration or replacement of Common Elements in the event of damage, destruction or Taking of such Common Elements.

(a) General Benefit Expenses. If the Association incurs any costs or expenses that benefit all Townhomes ("General Benefit Expenses"), then the Board, in its discretion, will assess the General Benefit Expenses as a Special Assessment against each Townhome in amount equal to the General Benefit Expense times such Townhome's Common Allocation. The Board may assess Special Assessments for General Benefit Expenses without the approval of the Owners.

(b) Limited Benefit Expenses. If the Association incurs any costs or expenses that solely benefit one or more Townhomes but less than all Townhomes (such as, for example, the costs of repairing a utility line or Limited Common Element that serves only one or two Townhomes but no others) ("Limited Benefit Expenses"), then the Board, in its reasonable discretion, will assess the Limited Benefit Expenses as a Special Assessment against the Townhome or Townhomes benefited by such Limited Benefit Expenses as follows: any Limited Benefit Expenses incurred for the benefit of only one Townhome will be assessed solely to that Townhome; and any Limited Benefit Expenses incurred for the benefit of two or more Townhomes will, unless the Owners of all benefited Townhomes otherwise agree to a different proportion, be assessed against each benefited Townhome in proportion to the ratio of the Townhome's Common Allocation to the sum of the Common Allocations of all benefited Townhomes. The Board may assess Special Assessments for Limited Benefit Expenses without the approval of the Owners.

10.5 Specific Assessments. The Association shall have the power to levy Specific Assessments against one or more particular Townhomes as follows:

(a) to cover the costs, including overhead and administrative costs, of providing benefits, items or services to such Townhome or occupants thereof, upon request of the Owner of such Townhome pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners and occupants (which may include, without limitation, landscape maintenance and snow removal), which Specific Assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Association;

(b) to cover liabilities and costs (including, without limitation, attorneys' fees) incurred in bringing the Townhome into compliance with the terms of this Declaration, the Bylaws, the Final Development Plan or the Rules, or costs incurred as a consequence of the conduct of the Owner or such Owner's Permittees (including, without limitation, any costs incurred at the election of Founder or the Association to cure a breach or violation of any provision of this Declaration, the Bylaws, the Final Development Plan or the Rules by such Owner or Permittees); *provided, however,* the Board shall give the Owner of such Townhome notice and an opportunity to be heard as provided in the Bylaws before levying any Specific Assessment under this Section 10.5(b);

(c) to cover costs and expenses incurred by the Association that may be levied as Specific Assessments pursuant to the express terms of this Declaration.

#### 10.6 Owners' Obligations for Assessments.

(a) Personal Obligation. Each Assessment, together with interest computed from the due date of such Assessment at 21% per annum or such lower rate set by the Board, late charges in such amount as the Board may establish by resolution, costs and reasonable attorneys' fees, shall be a charge and continuing lien upon the Townhome against

which the Assessment is made until paid, as more particularly provided in Section 10.8. Without limiting Section 15.2, each such Assessment, together with such interest, late charges, costs and reasonable attorneys' fees, and any other obligations or liabilities imposed by or pursuant to this Declaration, also shall be the personal obligation of the Person who was the Owner of such Townhome at the time the Assessment, obligation or liability arose.

(b) Terms of Payment. Except for Specific Assessments, which shall be paid in the manner determined by the Board, Assessments shall be paid in equal monthly, quarterly or annual installments on or before the first day of each month, quarter or fiscal year, as applicable, or in such other reasonable manner as the Board may establish. The Board may require advance payment of Assessments at closing of the transfer of title to a Townhome, and impose special requirements upon Owners with a history of delinquent payment.

(c) No Set-Off or Abatement. No Owner may exempt himself or herself from liability for Assessments by non-use of Common Elements, abandonment of his Townhome 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 the 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 by the Association or the Board.

(d) Estoppel Certificate. Within 14 calendar days after receipt of a written request from any Owner or Mortgagee, or the designee of either of them, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the Association's registered agent, the Association shall furnish to such Owner or Mortgagee, by personal delivery or certified mail, first-class postage prepaid, return receipt requested, an estoppel certificate in writing signed by an Association officer and addressed to such Owner or Mortgagee or designee, stating any then unpaid Assessments due from, or other known defaults by, the requesting Owner or the Owner of the Townhome encumbered by such Mortgagee's Mortgage, or stating that there are no unpaid Assessments due from, or other known defaults by, such Owner, as the case may be. Such an estoppel certificate executed in favor of an Owner, Mortgagee, or the designee of either of them, who rely thereon in good faith will be conclusive upon the Association as to the matters set forth therein and such Owner's Townhome will not be subject to a lien for any unpaid Assessments against such Townhome arising before the date of such certificate and in excess of any unpaid amounts stated in such certificate. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

**10.7 Founder's Obligation for Assessments.** Until the Association levies Assessments, Founder shall pay the Association's costs and expenses. Once assessments are levied, the Founder shall be obligated to pay assessments on unsold Townhomes.

#### **10.8 Lien for Assessments.**

(a) Perfection and Priority of Lien. The Association shall have a lien against each Townhome to secure payment of delinquent Assessments, as well as interest (computed from the due date of such Assessment at a rate of 21% per annum or such lower rate set by the Board), late charges in such amount as the Board may establish by resolution, costs and reasonable attorneys' fees. Such lien shall be perfected upon the Recording of this Declaration and no further claim of lien shall be required. Notwithstanding the foregoing and

without limitation on the effectiveness or perfection of the lien against each Townhome, the Association shall have the right, but not the obligation, to prepare and Record a "Notice of Lien" in a form satisfactory to the Board which may set forth (i) the amount of any Assessment, charge, fine or other amount due and owing to the Association; (ii) the date such amount was due and payable and the date from which interest accrues; (iii) a recitation of the costs and expenses (including reasonable attorneys' fees) incurred in attempting to collect the unpaid amount as of the date of recording of such Notice of Lien; (iv) the Townhome encumbered by the lien; and (v) the name or names, last known to the Association, of the Owner of the Townhome. Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments and other levies which by law are superior, and (b) the lien or charge of any First Mortgage made in good faith and for value. Notwithstanding the foregoing, the Association's lien for delinquent Assessments shall be prior to a First Mortgage.

(b) Enforcement of Lien. Such lien, when delinquent, may be enforced in the same manner as provided for the foreclosure of mortgages under the laws of the State of Wyoming. The Association may bid for a Townhome at any foreclosure sale and acquire, hold, lease, mortgage and convey such Townhome. While a Townhome is owned by the Association following foreclosure: (a) no right to vote shall be exercised on behalf of the Association as Owner of such Townhome; (b) no Assessments shall be levied against such Townhome; and (c) each other Townhome shall be charged, in addition to its usual Assessments, its pro rata share of the Assessments that would have been charged the Townhome acquired by foreclosure had such Townhome not been acquired by the Association. The Association may sue for unpaid Assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

(c) Transfer of Townhome. The sale or transfer of any Townhome shall not affect an existing lien for previous Assessments or relieve such Townhome from any lien for subsequent Assessments. Upon sale or transfer of a Townhome pursuant to foreclosure of a First Mortgage, the amount of Assessments included in any lien extinguished by foreclosure of a First Mortgage shall become Common Expenses collectible as Common Assessments levied against the Townhomes subject to Common Assessments, excluding, however, the Townhome acquired through the foreclosed First Mortgage.

10.9 Commencement of Assessments. The obligation to pay Common Assessments and Special Assessments shall commence as to each Townhome on the first day of the month following the later of: (a) the month in which the Townhome is made subject to this Declaration or (b) the month in which the Association first establishes and ratifies a budget and levies Assessments pursuant to this Article XI. The obligation to pay Specific Assessments shall commence as to any Townhome when the Association levies the Specific Assessments against the Townhome pursuant to this Declaration. The first annual Common Assessments and Special Assessments levied on each Townhome shall be prorated according to the number of months remaining in the fiscal year at the time Assessments commence on the Townhome.

10.10 Failure to Assess. Failure of the Board to fix Assessment amounts or rates or to deliver or mail to each Owner an Assessment notice shall not be deemed a waiver, modification or release of any Owner's obligation to pay Assessments. In such event, each Owner shall continue to pay Common 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.

10.11 Exempt Property. The following property shall be exempt from payment of Assessments: (i) all Common Elements owned in fee simple by the Association and (ii) any property dedicated to and accepted by any governmental authority or public utility.

## **ARTICLE XI** **MAINTENANCE**

### **11.1 Association's Responsibilities.**

(a) Maintenance of Townhome Exteriors and Lot Landscaping. The Association shall be responsible to repair, maintain and keep in good condition, repair and working order the exterior of Residential Improvements constructed on each Lot, including, without limitation, all decks, patios, roofs, and doors. Each Owner shall additionally install and maintain all landscaping and other related improvements on within the Limited Common Area appurtenant to each Owner's Lot and perform all yard maintenance on Lots. Any portion of the Residential Improvements not maintained by the Association shall be maintained by the Owner of the Residential Improvements. The Association may adopt rules and set standards for landscaping and maintenance.

(b) Maintenance of Common Elements. The Association shall repair, maintain and keep in good condition, repair and working order the Common Elements, which repair and maintenance may pertain, without limitation, to:

- (i) all landscaping and other improvements, including recreational pathways/trails, situated with the Limited Common Elements identified as yard areas on the Plat and upon the Common Elements (maintenance activities may include, without limitation, snow removal and application of sand and/or salt);
- (ii) all landscaping within public rights-of-way that abut or provide access to the Property (unless maintained by any governmental or quasi-governmental entity); and
- (iii) snow removal, maintenance, repair and replacement of all improvements within the Drives.

(c) Maintenance of Other Property. The Association may maintain property which it does not own, if the Board determines that such maintenance is necessary or desirable.

(d) Operation of Facilities. The Association shall maintain the facilities and equipment within the Common Elements in continuous operation, subject to seasonal closures and closures related to wildlife migration patterns, and except for any periods necessary, as determined in the sole discretion of the Board, to perform required maintenance or repairs, or unless Members representing 67% of the total vote in the Association agree in writing to discontinue such operation.

(e) Election to Perform Owners' Interior Maintenance Duties. The Association may elect to maintain or repair the interior of a Townhome or portion thereof, the maintenance or repair of which is the responsibility of an Owner pursuant to Section 11.2, if (i) such Owner has failed, for more than 30 days after notice from the Association, to perform its responsibilities under this Declaration with respect to the maintenance or repair of its

Townhome, and (ii) such failure has a material effect on the appearance of such Townhome when viewed from any area outside such Townhome or has a material adverse effect on the use of another Townhome or any Common Element for its permitted and intended use, *provided, however,* that if such failure is not susceptible of being cured within such 30-day period, the Association will not be entitled to perform any repairs or maintenance if such Owner commences performance of its obligations within such 30-day period and thereafter diligently completes such performance. Such Owner will pay all costs (including, without limitation, reasonable attorneys' fees) incurred by the Association in exercising its rights under this Section 11.1(e), and such costs shall be levied against such Owner as a Specific Assessment. Such payment will be made upon receipt of a demand from the Association therefor. If an Owner fails to make such payment within 30 days of receipt of a demand therefor, the Association will be entitled to take whatever lawful action it deems necessary to collect such payment including, without limitation, foreclosing its lien or instituting an action at law or in equity.

**11.2 Owners' Maintenance Responsibility.** All exterior maintenance and repairs of any Residential Improvements and all landscaping on any Lot will be performed by the individual Owners. Owners are prohibited from (i) installing, repairing or maintaining landscaping for their Townhomes, and (ii) performing exterior maintenance or repairs to any Residential Improvements. Owners shall perform all interior maintenance and interior repairs of the Residential Improvements, unless such maintenance responsibility is otherwise assumed by the Association pursuant to this Declaration.

## **ARTICLE XII** **ARCHITECTURAL STANDARDS**

**12.1 General Requirements.** Each Owner shall comply with the terms and provisions of this Article XII.

(a) **Compliance and Approval.** Subject to Section 12.1(b) and Section 12.8, no Residential Improvements shall be constructed, installed, modified, renovated on any Lot, nor shall any Improvements on any Lot be demolished or removed except with the prior approval of the Design Review Board pursuant to this Article XII.

(b) **Interior Modifications; Modifications in Accordance with Original Plans.** Any Owner may remodel, paint or redecorate the interior of Residential Improvements without approval of the Design Review Board pursuant to this Article XII. However, modifications to the interior of screened porches, patios and similar portions of Residential Improvements visible from outside such Residential Improvements shall be subject to such approval. Owners are prohibited from repairing the exterior of Residential Improvements pursuant to Sections 11.1(a) and 11.2. Nothing in this Declaration shall be construed to allow uses or improvements inconsistent with applicable zoning.

(c) **Founder and Common Elements Exempt.** Notwithstanding any provisions to the contrary contained in this Declaration, this Article XII shall not apply to the activities of Founder or to the construction, modification or removal of any improvements on the Common Elements by or on behalf of the Association.

(d) **No Amendment without Founder's Consent.** This Article XII may be amended only with Founder's written consent.

12.2 Design Review Board. The Design Review Board shall consist of either one, three or five members, who shall be natural persons. Founder shall have the exclusive right, in its full discretion, to appoint and remove all members of the Design Review Board. The Design Review Board may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred by the Design Review Board in having any application reviewed by architects, engineers or other professionals, and may vary between Townhomes and types of Townhomes.

12.3 Design Standards and Guidelines.

(a) Adoption. The Design Review Board shall adopt Design Standards and Guidelines.

(b) Generally. The Design Standards and Guidelines shall provide guidance to Owners regarding matters of particular concern to the Design Review Board in considering applications hereunder. The Design Standards and Guidelines is not the exclusive basis for decisions of the Design Review Board and compliance with the Design Standards and Guidelines does not guarantee approval of any application.

(c) Availability. The Design Review Board shall make the Design Standards and Guidelines available to Owners who seek to make changes to Residential Improvements on a Lot.

12.4 Procedures.

(a) Submission of Plans. Plans and specifications showing the nature, kind, shape, color, size, materials and location, as applicable, of all proposed changes, alterations or removals of Residential Improvements (the "Design Review Board Submittal") shall be submitted to the Design Review Board for review and approval or disapproval prior to the commencement of construction, alteration or removal. In addition, information concerning irrigation systems, drainage, lighting, landscaping and other features of proposed construction shall be submitted as applicable. The Design Review Board may condition its approval on such changes in the plans and specifications as it deems appropriate, and may require submission of additional plans and specifications or other information prior to approving or disapproving the Design Review Board Submittal. In reviewing each Design Review Board Submittal, the Design Review Board shall consider the Design Standards and Guidelines, and may consider the quality of materials and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography and finish grade elevation, among other things. Decisions of the Design Review Board may be based on purely aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary as the Design Review Board members change over time.

(b) Decisions. The Design Review Board shall meet from time to time as necessary to perform its duties hereunder. The vote of the majority of all of the members of the Design Review Board, or the written consent of a majority of all of such members, shall constitute an act of the Design Review Board. In the event that the Design Review Board fails to approve or disapprove any application within 30 days after submission of all information and materials reasonably requested, the application shall be deemed rejected.

**12.5 No Waiver of Future Approvals.** Approval of proposals, plans and specifications, or drawings 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 proposals, plans and specifications, drawings or other matters subsequently or additionally submitted for approval.

**12.6 Limitation of Liability.** Review and approval of any application pursuant to this Article XII are made on the basis of aesthetic considerations only and the Design Review Board 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. Neither Founder, the Design Review Board, nor any member of the Design Review Board shall be held liable for the approval or rejection of any submittal, nor any injury, damages or loss arising out of the manner or quality of approved construction on or modifications to any Lot. In all matters during the Development Period, the Design Review Board and its members shall be defended and indemnified by the Association as provided in the Articles.

**12.7 Enforcement.**

(a) **Removal of Improvements.** Any Residential Improvement constructed, installed, modified or renovated on or to any Lot in violation of this Article XII shall be deemed to be nonconforming. Upon written request from the Design Review Board, the Owner of the Lot on which such Residential Improvement is located shall, at such Owner's own cost and expense, remove such Residential Improvement and restore the Lot to substantially the same condition as existed prior to the nonconforming work or, if applicable, cure such nonconformance by bringing the Residential Improvement into compliance with the requirements of the Design Review Board. Should an Owner fail to remove and restore or cure as required, then the Design Review Board, in accordance with Section 7.4, shall have the right, to enter the Lot, remove the nonconforming Residential Improvement, and restore the Lot to substantially the same condition as previously existed. All costs of any such entry, removal and restoration, together with interest at the maximum rate then allowed by law, may be assessed against the subject Lot by the Association, collected as a Specific Assessment, and paid to the Design Review Board.

(b) **Completion of Work.** Unless otherwise specified in writing by the Design Review Board, any approval granted under this Article XII 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 Design Review Board, upon approval by the Association, shall be authorized 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.

(c) **Exclusion from Property.** Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Article XII (Architectural Standards) may be excluded from the Property. Neither Founder nor the Design Review Board shall be held liable to any Person for exercising the rights granted by this Section 12.7.

(d) **Legal and Equitable Remedies.** In addition to the foregoing, Founder shall have the authority and standing to pursue all legal and equitable remedies

available to enforce the provisions of this Article XII and the decisions of the Design Review Board.

12.8 Exemptions. The Design Review Board, in its sole discretion, may exempt any Lot from the requirements of the Design Standards and Guidelines.

## **ARTICLE XIII** **INSURANCE, DAMAGE AND TAKINGS**

13.1 Association's Insurance. The Association has the following responsibilities with respect to insurance and, except as otherwise expressly provided in this Declaration, the cost of all insurance maintained by the Association under this Section 13.1 will be included in Common Expenses.

(a) Property Insurance. The Association will obtain and maintain property insurance in amounts, against risks, and containing provisions as the Board reasonably determines from time to time. At a minimum, the Association's insurance will insure against all risks of direct physical loss for 100% of the full replacement cost (at the time the insurance is purchased and at the renewal date) of (1) all Lots and Residential Improvements, (2) the Common Elements and all fixtures, improvements and alterations situated on or constituting a part of the Common Elements; and (3) any personal property of the Association situated in the Common Elements or used in the operation or maintenance of the Common Elements. The Association's insurance may exclude land, excavations, foundations and other items normally excluded from property policies and may provide for a deductible in an amount not to exceed a reasonable and prudent amount as determined by the Board. The Association's property insurance will be maintained in the name of the Association, for the use and benefit of all Owners, who shall be named as additional insureds. To the extent available such property insurance also will (i) contain no provisions by which the insurer may impose a so-called "co-insurance" penalty; (ii) permit a waiver of claims by the Association, and provide for a waiver of subrogation rights by the insurer as to claims, against each Owner and the members of the Owner's household; (iii) be written as a primary policy, not contributing with and not supplemental to any coverage that any Owner carries; (iv) provide that, notwithstanding any provision that gives the insurer an option to restore damage in lieu of making a cash settlement, the option may not be exercised if the proper party(ies) elect(s) not to restore the damage in accordance with the provisions of this Declaration; (v) provide that no act or omission by any Owner, unless acting within the scope of the Owner's authority on behalf of the Association, voids the policy or is a condition to recovery under the policy; (vi) provide that it may not be canceled, nor may coverage be reduced, without 30 days' prior notice to the Association and all additional insureds named in the policy; and (vii) include so-called "inflation guard," "building ordinance or law" "steam boiler and machinery coverage" endorsements.

(b) Liability Insurance. The Association will obtain and maintain Comprehensive Liability Insurance for bodily injury and property damage for the benefit of the Association and its officers, directors, agents and employees in amounts and with coverage as determined from time to time by the Board. All Owners shall be named as additional insureds for claims and liabilities arising in connection with the ownership, use or management of the Common Elements. Such liability insurance will have a combined single occurrence limit of not less than \$1,000,000 and, to the extent available on reasonable terms, will (i) be on a commercial general liability form; (ii) contain a "severability of interest" or "cross-liability" endorsement which precludes the insurer from denying the claim of any named or additional insured due to the negligent acts, errors or omissions of any other named or additional insured,

(iii) contain a waiver of subrogation by the insurer as to claims against the Association, its directors, officers, employees and agents, Owners and members of their households, and Founder; (iv) be written as a primary policy, not contributing with and not supplemental to any coverage that any Owner may carry; (v) provide that no act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, voids the policy or is a condition to recovery under the policy; (vi) insure all of the named and additional insured parties against liability for negligence resulting in death, bodily injury or property damage arising out of or in connection with the operation, use, ownership or maintenance of the Common Elements; and (vii) provide that it may not be canceled, nor may coverage be reduced, without 45 days' prior notice to the Association and all additional insureds named in the policy. The liability insurance required to be maintained under this Section 13.1(b) will not include coverage for any liability arising out of the operation, use, ownership or maintenance of any Townhome

(c) Worker's Compensation and Employer's Liability. The Association will obtain and maintain worker's compensation and employer's liability insurance as determined from time to time by the Board. At a minimum, the Association will maintain such insurance in amounts and with coverages required by applicable law.

(d) Automobile Insurance. If the Association operates owned, hired or non-owned vehicles, the Association will obtain and maintain comprehensive automobile liability insurance at a limit of liability of not less than \$500,000 for combined bodily injury and property damage.

(e) Directors' and Officers' Insurance. The Association will obtain and maintain directors' and officers' liability coverage in the amount it determines from time to time

(f) Fidelity Insurance. The Association will obtain and maintain fidelity insurance covering losses resulting from dishonest or fraudulent acts committed by the Association's directors, officers, managing agents, trustees, employees or volunteers who manage the funds collected and held for the benefit of the Association. The policy will name the Association as the insured, (or obligee) include a provision requiring at least 30 days' written notice to the Association before any cancellation of, or material modification in, the policy, and provide coverage in an amount equal to at least three months' General Assessments against all Units, based on the General Assessments most recently approved by the Board. If the Association engages a managing agent that handles funds of the Association, the managing agent will also maintain fidelity insurance satisfying the foregoing requirements of this Section 13.1(f) and the Act and provide evidence of the coverage to the Board.

(g) Other Insurance. The Association may obtain and maintain other insurance as the Board, from time to time, deems appropriate to protect the Association or the Owners.

(h) Licensed Insurers. All policies of insurance required to be maintained by the Association will be placed with insurers licensed in the State of Wyoming. The carrier shall be required to provide to the Board at the inception of the policies and on each anniversary date, a summary that includes a description of the type of policy, the coverage and limits of coverage, the amount of annual premium and the policy renewal dates. If obtainable without additional expense, the licensed insurance broker or agent shall certify that the policy complies with and satisfies the requirements of the section.

13.2 Owner's Insurance. Each Owner has the following responsibilities with respect to insurance:

(a) Property Insurance. Each Owner will maintain at its expense (or will cause its Permittee to maintain at its expense) property insurance upon all personal property and fixtures within the Owner's Residential Improvements or in any Common Element allocated to the Owner's Lot, in such amounts, against such risks, and containing such provisions as the Owner may reasonably determine from time to time. Such property insurance will (i) permit a waiver of claims by the Owner, and provide for a waiver of subrogation rights by the insurer as to claims, against the Association, its directors, officers, employees and agents, the other Owners and the members of such Owners' household; (ii) be written as a primary policy, not contributing with and not supplemental to any coverage that the Association carries; and (iii) provide that, notwithstanding any provision that gives the insurer an option to restore damage in lieu of making a cash settlement, the option may not be exercised if the proper party(ies) elect not to restore the damage in accordance with the provisions of this Declaration. All insurance carried under this Section 13.2(a) will provide that it may not be canceled, nor may coverage be reduced, without 30 days' prior notice to the Association and, notwithstanding that each Owner may select the amount and type of such insurance, for purposes of the waiver of claims, each Owner is deemed to have elected to obtain such insurance on a 100% replacement cost basis.

(b) Liability Insurance. Each Owner will maintain at its expense bodily injury and property damage liability insurance for the benefit of the Owner and any additional insured it names, in amounts and with coverage as are from time to time customarily maintained by prudent owners of similar property; *provided* that such liability insurance will (i) have a combined single occurrence limit of not less than \$500,000; (ii) be written as a primary policy, not contributing with and supplemental to any coverage that the Association or another Owner carries; (iii) insure all of the named and additional insured parties against liability for negligence resulting in death, bodily injury or property damage arising out of or in connection with the operation, use, ownership or maintenance of the Owner's Townhome; and (iv) contain a waiver of subrogation by the insurer as to claims against the Association, its directors, officers, employees and agents, owners and members of their households, and Founder.

13.3 Waiver of Claims. The Association will make no claim against any Owner or the members of the Owner's household, for any loss, damage, injury or liability, no Owner will make any claim against the Association, its directors, officers, employees or agents, or any other Owner or member of such Owner's household for any property loss or damage to property, and all such claims are hereby waived, to the extent that the loss, damage, injury or liability is or would be covered by any insurance policy that is required under this Declaration (a) to be maintained by or for the benefit of the waiving Person (assuming in the case of property insurance policies that such insurance policy is maintained on a 100% replacement cost basis), and (b) to provide for a waiver of subrogation rights by the insurer. For purposes of this 13.3, the deductible or self-insured retention amount under any property insurance policy required to be, or in fact, maintained by a waiving Person is deemed to be covered by the policy so that, in addition to waiving claims for amounts in excess of the deductible or self-insured retention (up to the covered limits, or deemed covered limits, of the policy), the waiving Person waives all claims for amounts within the deductible or self-insured retention.

#### 13.4 Damage and Destruction.

##### (a) Property Insured by Association.

(i) Immediately after damage or destruction to all or any part of the Property covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means the repair or restoration of the damaged property to substantially the condition in which it existed prior to the damage, allowing for changes necessitated by changes in applicable building codes.

(ii) Any damage to or destruction of the Common Elements shall be repaired or reconstructed unless, within 60 days after the loss, a decision not to repair or reconstruct is made by Members representing at least 67% of the votes in the Association, and, if the damage or destruction occurs during the Development Period, the vote of Founder. If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such 60-day period, then such period shall be extended until such funds and information are available. However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction to the Common Elements shall be repaired or reconstructed.

(iii) If a decision not to repair or reconstruct the damage or destruction to the Common Elements is made pursuant to Section 13.4(a)(ii) and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive landscaped condition.

(iv) Any insurance proceeds attributable to damage to Common Elements shall be applied to the costs of repair or reconstruction and then, if any insurance proceeds remain, distributed among the Owners in proportion to the Owner's share of Common Assessments.

(v) If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may levy Assessments to cover the shortfall pursuant to Section 10.4.

(vi) Each Townhome will continue to be subject to Assessments following any damage to any portion of the Common Elements, without abatement as a result of such damage.

(b) Property Insured by Owners. Each Owner covenants and agrees that in the event of damage or destruction to structures on or comprising his Townhome, the Owner shall proceed promptly to either: (i) repair or reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article XII, or (ii) clear the Lot of all debris and ruins and maintain the Lot in a neat and attractive landscaped condition. The Owner shall pay any costs of such repair and reconstruction or clearing and maintenance which are not covered by insurance proceeds.

### 13.5 Takings.

(a) Taking of Lots. In the event of a Taking of all or any part of any Townhome, the Owner thereof will be solely responsible for negotiating with the condemning authority concerning the award for such Taking and will be entitled to receive such award after the liens of all Mortgagees on the affected Townhome or portion thereof have been satisfied or otherwise discharged. If only part of a Townhome is acquired by a Taking, the Owner of such Townhome will be responsible for the restoration of its Townhome as necessary to return the Townhome to a safe and lawful condition that does not adversely affect the use or enjoyment of the other Townhomes or Common Elements or detract from the general character or appearance of the Property. Any such restoration must be completed in accordance with the provisions of Article XII. If a Taking occurs by which the condemning authority acquires all or any part of one or more Townhome(s) in such a manner that such Townhome(s) is or are no longer subject to this Declaration, then the Association will consider and pass an amendment to this Declaration revising the allocations made among the various Townhomes hereunder.

(b) Taking of Common Elements.

(i) The Board will be solely responsible for negotiating, and is hereby authorized to negotiate with the condemning authority on behalf of the Owners concerning, the amount of the award for any Taking by which a condemning authority acquires 100% of the interests in and to any Common Elements owned in fee simple by the Association without also acquiring 100% of the Townhomes, and the acceptance of such award by the Board will be binding on all Owners. Any award made for such a Taking shall be payable to the Association as trustee for the Owners and shall be disbursed as set forth in Sections 13.5(b)(ii) and 13.5(b)(iii). Notwithstanding the foregoing, no Common Elements shall be conveyed in lieu of and under threat of condemnation except in accordance with Section 15.3 and, during the Development Period, with the consent of Founder.

(ii) If a Taking involves a portion of the Common Elements on which Improvements have been constructed, the Association shall restore or replace such Improvements on the remaining land included in the Common Elements to the extent feasible and economically cost-efficient, unless within 60 days after such Taking Members representing at least 67% of the total votes of the Association and, if the Taking occurs during the Development Period, Founder shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. If the award made for such Taking is insufficient to cover the costs of restoration or replacement, the Board may levy Special Assessments to cover the shortfall pursuant to Section 10.4.

(iii) If the Taking involves property owned by the Association but not any Improvements on the Common Elements, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

**ARTICLE XIV**  
**OWNER'S ACKNOWLEDGMENTS AND WAIVERS**

**14.1 Construction Activities.**

(a) **Construction Activities.** The Community is located in an area that may be subject to or near ongoing construction activities relating to the development of the Community, and adjacent properties (the "Construction Activities"). The Construction Activities are expected to generate an unpredictable amount of visible, audible and odorous impacts and disturbances. The Construction Activities may include, without limitation: (i) construction traffic (including, without limitation, construction vehicles, equipment and vehicles used or owned by Founder, adjacent landowners, and the employees, agents and contractors of either of them, and (ii) construction activities (including, without limitation, grading, excavation, clearing, site work and construction of improvements) relating to the Community, and nearby properties.

(b) **Waiver and Release.** Each Owner, by taking title to a Townhome, acknowledges that the Construction Activities, the impacts and disturbances generated by them, may occur in and around the Townhomes and the Community and each Owner, by taking title to a Townhome, acknowledges the risks of such activities. No Owner may assert or claim a violation of this Declaration based on the existence or occurrence of the the Construction Activities, the impacts and disturbances generated by them, by taking title to a Townhome, forever waives and releases any claims the Owner and its successors and assigns may have against Founder and their successors and assigns, which in any way arise out of the impacts and disturbances generated from the Construction Activities, each Owner forever waives and releases any claims the Owner, its successors and assigns may have against Founder, and their respective successors and assigns which in any way arise out of the impacts and disturbances generated from the Construction Activities.

**14.2 No View Easement.** Notwithstanding anything contained in this Declaration to the contrary, each Owner, by taking title to a Townhome, acknowledges and agrees that there is no easement or other right, express or implied, for the benefit of any Owner or its Townhome for light, view or air included in or created by this Declaration or as a result of ownership of the Townhome.

**14.3 Security.** NEITHER THE ASSOCIATION, FOUNDER, OR ITS AFFILIATES SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE COMMUNITY, AND NEITHER THE ASSOCIATION, NOR FOUNDER OR ITS AFFILIATES, SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY, INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN, OR ACTS OF THIRD PARTIES. ALL OWNERS, TENANTS, GUESTS, AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, FOUNDER, ITS AFFILIATES, AND COMMITTEES ESTABLISHED BY ANY OF THE FOREGOING ENTITIES, ARE NOT INSURERS AND THAT EACH OWNER, TENANT, GUEST, AND INVITEE ASSUMES ALL RISK OF LOSS OR DAMAGE TO PERSONS, TO TOWNHOMES, AND TO THE CONTENTS OF TOWNHOMES, AND FURTHER ACKNOWLEDGE THAT FOUNDER, ITS AFFILIATES, BOARD OF DIRECTORS, AND COMMITTEES HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, TENANT, GUEST, OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY SECURITY MEASURES RECOMMENDED OR UNDERTAKEN.

**14.4 Inspection by Others; Waiver of Post Inspection Liability.** It is hereby expressly understood and agreed by Founder and by any Owner upon taking title to a Townhome that Founder relies upon governmental inspectors and other qualified subcontractors and tradesmen to inspect the construction of the Townhomes and the Common Elements in order to verify compliance with construction plans and with any and all building code requirements applicable to residential construction. Founder and each Owner further expressly understand and agree that, with respect to the Townhomes and the Common Elements, upon compliance with the inspections required by the local building department and the issuance of a certificate of occupancy by the responsible governmental agency, Founder shall be deemed to have used its best efforts to construct such Townhomes and Common Elements in compliance with the construction plans and all applicable building code requirements. EACH OWNER, BY TAKING TITLE TO A TOWNHOME, HEREBY KNOWINGLY AND WILLINGLY WAIVES AS AGAINST FOUNDER AND ITS AFFILIATES ANY AND ALL DEMANDS, CLAIMS, ACTIONS AND CAUSES OF ACTION, AND ALL LIABILITY, LOSSES, DAMAGES, COSTS OR EXPENSES THAT HAVE BEEN OR MAY BE INCURRED IN ASSOCIATION THEREWITH, INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND EXEMPLARY DAMAGES, WHICH ARISE FROM OR ARE RELATED TO ANY NONCOMPLIANCE OF THE UNITS OR THE COMMON ELEMENTS WITH CONSTRUCTION PLANS OR BUILDING CODE REQUIREMENTS, WHICH NONCOMPLIANCE IS DISCOVERED AFTER THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY FOR, RESPECTIVELY, SUCH TOWNHOMES OR COMMON ELEMENTS; AND ANY SUCH NONCOMPLIANCE SHALL BE DEEMED UNINTENTIONAL WITH RESPECT TO FOUNDER EACH OWNER HEREBY ACCEPTS, AND ASSUMES THE RISK OF ANY AND ALL DAMAGE OR DEFECTS OF OR TO EACH OF THE TOWNHOMES AND THE COMMON ELEMENTS, THE DISCOVERY OF WHICH IS MADE AFTER THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY FOR, RESPECTIVELY, SUCH TOWNHOMES OR SUCH COMMON ELEMENTS, EXCEPT TO THE EXTENT THAT SUCH OWNER MAY HAVE A CLAIM THEREFOR AGAINST ANY PARTY OTHER THAN FOUNDER OR ITS AFFILIATES.

**14.5 Drainage and Soils Condition.**

(a) **Acknowledgment.** THE SOILS WITHIN WYOMING CONSIST OF BOTH EXPANSIVE SOILS AND LOW-DENSITY SOILS WHICH MAY ADVERSELY AFFECT THE INTEGRITY OF A TOWNHOME OR A COMMON ELEMENT IF SUCH TOWNHOME OR COMMON ELEMENT IS NOT PROPERLY MAINTAINED. EXPANSIVE SOILS CONTAIN CLAY MINERALS WHICH HAVE THE CHARACTERISTIC OF CHANGING VOLUME WITH THE ADDITION OR SUBTRACTION OF MOISTURE, THEREBY RESULTING IN SWELLING AND/OR SHRINKING SOILS. THE ADDITION OF MOISTURE TO LOW-DENSITY SOILS CAUSES A RE-ALIGNMENT OF SOIL GRAINS, THEREBY RESULTING IN CONSOLIDATION AND/OR COLLAPSE OF THE SOILS.

(b) **Waiver of Liability of Founder.** BY TAKING TITLE TO A TOWNHOME, EACH OWNER ACKNOWLEDGES AND AGREES THAT SUCH OWNER HAS WAIVED AND SHALL BE DEEMED TO HAVE WAIVED THE RIGHT TO ANY AWARD OF DAMAGES AGAINST FOUNDER, ITS MANAGERS, MEMBERS, EMPLOYEES OR AGENTS FOR ANY LOSS OR DAMAGE TO ANY PORTION OF THE TOWNHOME OR THE COMMON ELEMENTS CAUSED BY, RESULTING FROM OR IN ANY WAY CONNECTED WITH SOIL CONDITIONS ON OR UNDER ANY COMMON ELEMENTS, INCLUDING SPECIFICALLY THE PRESENCE OF EXPANSIVE SOILS AND RADON GAS.

## **ARTICLE XV** **CONVEYANCING AND ENCUMBRANCING**

15.1 **Townhomes.** A description of any Townhome in accordance with the requirements of Wyoming law for the conveyance of real property will, if included in an otherwise proper instrument, be sufficient for all purposes to sell, convey, transfer, encumber or otherwise affect not only such Townhomes but also all Easements, rights and other benefits appurtenant thereto as provided in this Declaration. A Person who becomes an Owner will promptly notify the Association of his or her ownership of a Townhome. An Owner may encumber his or her Townhome as he or she sees fit, subject to the provisions of this Declaration.

15.2 **Transferee Liability.** In the event of any voluntary or involuntary transfer of a Townhome to any Person, the transferee will be jointly and severally liable with the transferor of such Townhome for all unpaid Assessments against such Townhome up to the time of transfer, without prejudice to such transferee's right to recover from the transferor any amounts paid by such transferee hereunder.

15.3 **Common Elements.** The Common Elements or portions thereof may be conveyed or subjected to a security interest by the Association. Any net proceeds from the sale of any portion of the Common Elements may be distributed to the Owners as if such amounts were an award paid as a result of the Taking of such portion of the Common Elements.

## **ARTICLE XVI** **GENERAL PROVISIONS**

16.1 **Amendment.** Except as otherwise specifically provided in this Declaration, this Declaration may be amended only as follows:

(a) **Amendment by Founder.** Founder may unilaterally amend this Declaration during the Development Period in the exercise of its Development Rights. Additionally, notwithstanding any contrary provision contained in this Declaration, Founder may unilaterally amend this Declaration and/or the Plat to correct any clerical, typographical or technical errors, and may amend this Declaration to comply with the requirements, standards or guidelines of recognized secondary mortgage markets, the Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association or the Federal National Mortgage Association.

(b) **Amendment by Members.** This Declaration may be amended by the affirmative vote or written consent, or any combination thereof, of Members representing more than 67% of the total votes in the Association and, if such amendment occurs during the Development Period, with the consent of Founder; *provided, however,* that any amendment which may change the uses to which any Townhome is restricted, create or increase Special Founder Rights, increase the number of Townhomes, or change the boundaries of any Lot or the voting rights or Assessment allocation of any Townhome in the absence of a vote or agreement of Members representing at least 67% of the total votes in the Association and, if such amendment occurs during the Development Period, with the consent of Founder. Notwithstanding the above, the percentage of votes necessary to amend a specific clause of this Declaration shall not be less than the prescribed percentage of affirmative votes required for action to be taken under such clause. Amendments to this Declaration shall be prepared,

executed, Recorded and certified by the President or Vice President of the Association. Notwithstanding the provisions of this Section 16.3(b), no amendment to this Declaration shall allow uses or improvements not permitted by the applicable zoning.

(c) Consent of Founder. During the Development Period, no amendment may remove, revoke or modify any right or privilege of Founder without the written consent of Founder.

(d) Consent of Owner. Any amendment of this Declaration made in conformity with this Declaration shall be conclusively presumed to have received the consent of each Owner. No contract between the Owner and a third party will affect the validity of such amendment.

(e) Effective Date; Change in Conditions. Any amendment shall become effective upon Recording, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within one year of its Recording or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

#### 16.2 Duration and Termination.

(a) Perpetual Duration. Unless terminated as provided in Section 16.2(b), this Declaration shall have perpetual duration.

(b) Termination. This Declaration may not be terminated within 30 years of the date of Recording without the consent of all the Owners and, during the Founder Control Period, the consent of Founder. Thereafter, it may be terminated only by an instrument signed by Owners who represent at least 67% of the votes in the Association. Any termination instrument shall be Recorded. Nothing in this Section 16.2(b) shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

16.3 Indemnity. No Owner will hold or attempt to hold the Association or its officers, directors, employees or agents liable for, and each Owner shall indemnify and hold harmless the Association, its directors, officers, employees and agents from and against, any and all demands, claims, liens (including, without limitation, mechanics' and materialmen's liens and claims), causes of action, fines, penalties, damages, liabilities, judgments, costs and expenses (including, without limitation, attorneys' fees and costs of litigation) incurred in connection with or arising from:

(a) the use or occupancy or manner of use or occupancy of the Common Elements (or any other property owned by the Association) by such Owner or such Owner's Permittees;

(b) any activity, work or thing done, permitted or suffered by such Owner in or about the Common Elements or any other property owned by the Association; or

(c) any acts, omissions or negligence of such Owner or such Owner's Permittees;

(d) any acts, omissions or negligence of the Association, its officers, directors, employees, and agents;

except to the extent that any injury or damage to persons or property on the Common Elements or any other property owned by the Association is proximately caused by or results proximately from the gross negligence or deliberate act of the Association or its agents or employees.

Nothing contained in this Section 16.3 will be construed to provide for any indemnification which would violate applicable laws, void any or all of the provisions of this Section 16.3, or negate, abridge, eliminate or otherwise reduce any other indemnification or right which the Association or the Owners have by law.

**16.4 Use of the Name "The Townhomes at Cottonwood Flats".** No Person shall use the name "The Townhomes at Cottonwood Flats" or any derivative in any printed or promotional material without Founder's prior written consent. However, the Association shall be entitled to use the name "The Townhomes at Cottonwood Flats" in its name.

**16.5 Owner Enforcement.** Except as necessary to prevent a violation or attempted violation that results or would result in direct and immediate physical damage to an Owner's Townhome or the Improvements thereon, no Owner may prosecute any proceeding at law or in equity to enforce the provisions of this Declaration. Except as provided above with respect to threatened immediate physical damage, the Association, acting through the Board, shall have the exclusive right, power and authority to enforce the provisions of this Declaration. In the event the preceding provisions of this Section 16.5 are adjudged to be unenforceable, an Owner may institute a proceeding to enforce a provision of this Declaration only if the Board does not, at its election, take action to enforce such provisions within 60 days after the Owner gives written notice to the Board specifying the violation or attempted violation of the provisions of this Declaration, the facts and circumstances surrounding the violation, and the name of the Person alleged to have violated or attempted to violate the provisions of this Declaration. Nothing in this Section 16.5 is intended or shall be construed to limit the Founder's exercise or enjoyment of any rights reserved or granted to Founder pursuant to this Declaration.

**16.6 Severability.** In the event any provision of this Declaration is deemed illegal or invalid by judgment or court order, a legally valid provision similar to the invalidated provision shall be substituted therefor. Invalidation of any provision of this Declaration, in whole or in part, or of any application of a provision of this Declaration, by judgment or court order shall in no way affect other provisions or applications of this Declaration.

**16.7 Governing Law.** This Declaration shall be governed by and construed under the laws of the State of Wyoming.

**16.8 Captions.** The captions and headings on this instrument are for convenience only and shall not be considered in construing any provisions of this Declaration.

**16.9 Notices.** Except for notices concerning meetings of the Association or the Board, which will be given in the manner provided in the Bylaws, any notices required or permitted hereunder or under the Bylaws to be given to any Owner, the Association, the Board will be sent by certified mail, first-class postage prepaid, return receipt requested, to the intended recipient at, in the case of notices to an Owner, the address of such Owner at its Townhome; in the case of notices to the Association or the Board, the address of the Association's registered agent. All notices will be deemed given and received three business

days after such mailing. Any Owner may change its address for purposes of notice by notice to the Association in accordance with this Section 16.9. The Association or the Board may change its address for purposes of notice by notice to all Owners in accordance with this Section 16.9. Any such change of address will be effective five days after giving of the required notice.

**16.10 Founder Liability.** No Person holding the status of, or exercising any rights or performing any obligations of, Founder under this Declaration shall be liable to any Owner or Mortgagee for any acts or omissions of another Person holding such status, or exercising any rights or performing any obligations associated with the status of Founder.

**16.11 No Merger.** Notwithstanding that the Founder currently holds title to all the Property, and notwithstanding that a subsequent Owner may own or hold title to more than one Townhome, any such commonality of interests shall not result in or cause any merger and extinguishment, in whole or in part, of any provisions of this Declaration, it being intended by Founder, for its benefit and the benefit of its successors in interest, that the terms of this Declaration not be merged by virtue of those common ownership interests to any extent, but instead that such terms be and remain in full force and effect upon and following the making and Recording of this Declaration.

**[Balance of page intentionally left blank]**

IN WITNESS WHEREOF, the undersigned Founder has executed this Declaration this 3<sup>rd</sup> day of April, 2008  
2009

FOUNDER:

COTTONWOOD FLATS, LLC, a Wyoming limited liability company

By: 

Erik P. Bedford, Managing Member of CF, LLC,  
a Wyoming limited liability company, its Manager

STATE OF WYOMING )  
                          ) ss.  
COUNTY OF TETON      )

The foregoing instrument was acknowledged before me this 3<sup>rd</sup> day of April, 2008, by Erik P. Bedford as Managing Member of CF, LLC, a Wyoming limited liability company, as Manager of Cottonwood Flats, LLC, a Wyoming limited liability company.

Witness my hand and official seal

My commission expires: 7/10/12



  
Notary Public

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PROPERTY**

Lots 1 through 69, inclusive, according to the Plat for The Townhomes at Cottonwood Flats to be recorded concurrently with this Declaration in the Office of the Teton County Clerk, Teton County, Wyoming.

**EXHIBIT B**  
**DESCRIPTION OF LANDSCAPING EXHIBIT**

## **EXHIBIT C**

### **RULES OF ARBITRATION**

Claimant shall submit a Claim to arbitration under these Arbitration Rules by giving written notice to all other Parties stating plainly and concisely the nature of the Claim, the remedy sought and Claimant's submission of the Claim to arbitration ("Arbitration Notice").

Any arbitration conducted under these Rules and in connection with any Claim arising out of or relating to the interpretation, application, or enforcement of the Declaration, or relating to the design or construction of the Common Elements, shall conform with and be subject to the rules and procedures adopted and routinely applied by Construction Arbitration Services, Inc. ("CAS").

The Parties shall select a panel of arbitrators (the "Panel") as follows ("Party Appointed Arbitrators"): all of the Claimants shall agree upon one Party Appointed Arbitrator, and all the Respondents shall agree upon one Party Appointed Arbitrator. The Party Appointed Arbitrators shall, by agreement, select one Additional arbitrator ("Additional").

If the Panel is not selected under Rule 1 within 45 days from the date of the Arbitration Notice, any party may notify the nearest chapter of The Community Associations Institute, for any dispute arising under the Declaration, the Bylaw, or the Rules, or CAS for any dispute relating to the design or construction of improvements on the Common Elements, which shall appoint one Additional ("Appointed Additional") and shall notify the Appointed Additional and all Parties in writing of such appointment. The Appointed Additional shall thereafter be the sole arbitrator and any Party Appointed Arbitrators or their designees shall have no further duties involving the arbitration proceedings.

No Person may serve as an Additional in any arbitration in which that Person has any financial or personal interest in the result of the arbitration. Any Person designated as a Additional or Appointed Additional shall immediately disclose in writing to all Parties any circumstance likely to affect impartiality, including any bias or financial or personal interest in the outcome of the arbitration ("Bias Disclosure"). If any Party objects to the service of any Additional or Appointed Additional after receipt of that Additional Bias Disclosure, such Additional or Appointed Additional shall be replaced in the same manner in which that Additional or Appointed Additional was selected.

The Appointed Additional or Additional, as the case may be ("Arbitrator") shall fix the date, time and place for the hearing. The place of the hearing shall be at a place mutually agreed to by the parties. In fixing the date of the hearing, or in continuing a hearing, the Arbitrator shall take into consideration the amount of time reasonably required to determine Claimant's damages accurately.

Any Party may be represented by an attorney or other authorized representative throughout the arbitration proceedings. In the event the Respondent fails to participate in the arbitration proceeding, the Arbitrator may not enter an Award by default, but shall hear Claimant's case and decide accordingly.

All Persons who, in the judgment of the Arbitrator, have a direct interest in the arbitration are entitled to attend hearings. The Arbitrator shall determine any relevant legal

issues, including whether all indispensable parties are Bound Parties or whether the claim is barred by the statute of limitations.

The hearing shall be conducted in whatever manner will, in the Arbitrator's judgment, most fairly and expeditiously permit the full presentation of the evidence and arguments of the Parties. The Arbitrator may issue such orders as it deems necessary to safeguard rights of the Parties in the dispute without prejudice to the rights of the Parties or the final determination of the dispute.

Notwithstanding the foregoing, multiple party disputes or claims not consolidated or administered as a class action pursuant to the following sentence will be subject to, and will be arbitrated individually. Only with the written request of all parties involved, but not otherwise, the Arbitrator may: (i) consolidate in a single arbitration proceeding any multiple party claims that are substantially identical, and (ii) arbitrate multiple claims as a class action in accordance with the rules and procedures adopted by CAS.

If the Arbitrator decides that it has insufficient expertise to determine a relevant issue raised during arbitration, the Arbitrator may retain the services of an independent expert who will assist the Arbitrator in making the necessary determination. The scope of such professional's assistance shall be determined by the Arbitrator in the Arbitrator's discretion. Such independent professional must not have any bias or financial or personal interest in the outcome of the arbitration, and shall immediately notify the Parties of any such bias or interest by delivering a Bias Disclosure to the Parties. If any Party objects to the service of any professional after receipt of a Bias Disclosure, such professional shall be replaced by another independent licensed professional selected by the Arbitrator.

No formal discovery shall be conducted in the absence of order of the Arbitrator or express written agreement among all the Parties. The only evidence to be presented at the hearing shall be that which is disclosed to all Parties at least 30 days prior to the hearing, *provided, however, no Party shall deliberately withhold or refuse to disclose any evidence which is relevant and material to the Claim, and is not otherwise privileged.* The Parties may offer such evidence as is relevant and material to the Claim, and shall produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the Claim. The Arbitrator shall be the sole judge of the relevance and materiality of any evidence offered, and conformity to the legal rules of evidence shall not be necessary. The Arbitrator shall be authorized, but not required, to administer oaths to witnesses.

The Arbitrator shall declare the hearings closed when satisfied the record is complete.

There will be no post hearing briefs.

The Award shall be rendered immediately following the close of the hearing, if possible, and no later than 14 days from the close of the hearing, unless otherwise agreed by the Parties. The Award shall be in writing, shall be signed by the Arbitrator and acknowledged before a notary public. If the Arbitrator believes an opinion is necessary, it shall be in summary form.

Except with respect to awards of attorneys' fee and expenses, no party shall be entitled to receive any award of damages in connection with the arbitration of a Dispute other than such party's actual damages. All parties to an arbitration conducted under these Rules

shall be deemed to have waived their right to receive any damages other than actual damages, including, without limitation, special damages, consequential damages, and punitive or exemplary damages.

Each Party agrees to accept as legal delivery of the Award the deposit of a true copy in the mail addressed to that Party or its attorney at the address communicated to the Arbitrator at the hearing.

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