

1993-4
12/2/93

DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
ELK RUN TOWNHOUSES
IN
JACKSON HOLE, WYOMING

RELEASED	
INDEXED	<input checked="" type="checkbox"/>
ABSTRACTED	<input checked="" type="checkbox"/>

Grantor: ELK RUN TOWNHOUSE LIMITED*

Grantee: THE PUBLIC

Doc 365549 bk 281 pg 0971-0991 Filed at 11:45 on 12/16/93

V Jolynn Coonce, Teton County Clerk fees: 46.00

By CLAIRE K ABRAMS

Deputy

INDEX

<u>Paragraph</u>		<u>Page</u>
1	Definitions	3
2	Scope of Project	4
3	Map	4
4	Division of Property into Lots	4
5	Party Walls	4
6	Parking Spaces	4
7	Separate Assessment and Taxation	4
8	Ownership -- Title	4
9	Non-Partitionability	4
10	Use of Lots and Common Elements	4
11	Use and Occupancy by Declarant	5
12	Certain Additional Restrictions	5
13	Easements for Encroachments	7
14	The Association	7
15	Management Committee	9
16	Powers and Duties of Management Committee	10
17	Manager	12
18	No Waiver	12
19	Compensation	12
20	Accounts	12
21	Indemnification	13
22	Exculpation	13
23	Examination of Books	13
24	Mechanic's Lien	13
25	Reservation for Access	13
26	Owner's Maintenance Responsibility	13
27	Compliance	14
28	Restrictions Relating to Insurance Coverage	14
29	Revised 3/9/04 Amendment to Declaration	14
30	Additional Alterations and Improvements	14
31	Assessments	14
32	Insurance	15
33	Owner's Personal Obligations	16
34	Foreclosure of Lien	16
35	Mortgages	17
36	Reconstruction	17
37	General Reservations	20
38	Covenants to Run With Land	20
39	Assignment of Declarant's Rights	20

DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
ELK RUN TOWNHOUSES

THIS DECLARATION is made by the undersigned Declarant for the purpose of defining the rights and obligations of ownership for the Elk Run Townhouse project in Teton County, Wyoming.

Recitals:

a. The Declarant is the owner of the real property located in Teton County, Wyoming which is described in Exhibit A attached hereto and made a part hereof.

b. The name by which this property is to be identified is the "Elk Run Townhouses".

c. The individual townhouses and related common areas will be managed and maintained by an association of owners as provided herein.

d. The property is hereby made subject to the covenants, conditions, restrictions, reservations, assessments, charges and liens contained in this Declaration, all of which shall be enforceable equitable servitudes and shall run with the land.

NOW, THEREFORE, the Declarant does hereby publish and declare that the following covenants, conditions, and restrictions shall be deemed to run with the land, shall be a burden and a benefit to the declarant, and its successors and assigns.

1. Definitions. Unless the context shall expressly provide otherwise,

"Lot" means an individual lot as shown on the recorded plat or plats for this Project filed or to be filed by Declarant, together with all fixtures and improvements thereon. References herein to "units" means the townhouse units built or to be built on the Lots by Declarant.

"Owner" shall mean the record owner, whether one or more persons and/or entities, of a fee simple title to each lot, including contract buyers of record but excluding mortgagees, contract sellers or others having such interest merely as security for the performance of an obligation. An "Owner" shall mean all of the owners of a particular lot collectively and shall be jointly regarded as a single Owner for purposes of this Declaration. Any owner of an equity interest of record in a lot, and any partner, officer or shareholder of an entity which is an owner of record, may be treated by the Association as the representative of all the ownership of such lot for purposes of giving notices, voting and other matters.

"Common elements" and "common areas" shall be designed as such on the applicable plat(s) for the project.

"Common expense" means expenses for project maintenance, repair, operation, management and administration determined in accordance with Section 31 of this Declaration.

"Association" means Elk Run Townhouses Owners Association, a Wyoming nonprofit corporation, and its successors.

"Management Committee" means the board of directors of the Association.

2. **Scope of Project.** The project may be undertaken by Declarant in several phases. The total project shall consist of the construction of up to 62 townhouse units on the lots, together with on-site parking facilities for such units.

3. **Map.** The project may consist of more than one phase, as shown on the applicable plat maps for the project filed or to be filed by Declarant with the Clerk of Teton County, Wyoming. Declarant reserves the right to amend the maps, from time to time, to conform the same according to the actual location of any of the constructed improvements and to establish, vacate, and relocate utility easements, access road easements, and on-site parking areas.

4. **Division of Property into Lots.** The real property described in Exhibit A, and the improvements located or to be located thereon, will be platted for division into fee simple estates, each such estate consisting of a separately designated lot.

5. **Party Walls.** Each wall which is built as a part of the original construction of the homes/units upon the properties and placed on the dividing lines between the lots shall constitute party walls, and, to the extent not inconsistent with the provisions of this Declaration, the general rules of Wyoming law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

6. **Parking Spaces.** On-site parking areas and related facilities shall be under the control of the Declarant until the project has been completed. Thereafter, the parking areas shall be under the control of the Management Committee.

7. **Separate Assessment and Taxation.** Each lot and the undivided interest in the common elements appurtenant thereto shall be deemed a separate tax parcel and subject to separate assessment and taxation.

8. **Ownership -- Title.** A lot may be held and owned in any real property tenancy relationship recognized under the laws of the State of Wyoming.

9. **Non-Partitionability.** The common elements shall be owned in common by all of the owners of the lots and shall remain undivided, and no owner shall bring action for partition or division of the common elements. Nothing contained herein shall be construed as a limitation of the rights of partition of a lot between the owners thereof, but such partition shall not affect any other lot.

10. **Use of Lots and Common Elements.** Each owner shall be entitled to exclusive ownership and possession of his or her lot, subject to the rights of the Management Committee set forth herein. Backyard areas shall be limited common elements under the control of the Management Committee, for the use and enjoyment of the applicable owners, but maintenance activities (such as lawnmowing) may be carried out by the Association as a common expense. Each owner may use the common elements in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the owners. The exclusive right to repair, maintain and replace the building units located on the lots is

reserved to the Management Committee as provided herein, and the express written approval of the Management Committee is required for any painting, fencing, repair or alteration carried out by an owner.

A lot may be used and occupied by the applicable owner, his or her family and their guests and invitees; provided, however, that such use and occupancy shall be limited to private, single family residential purposes only. The Management Committee may regulate and limit the use of a unit for more than 30 days at a time by four or more unrelated individuals. Any time-sharing or any other similar arrangement, where by the use of a lot is in effect allocated between different persons for separate repeating time intervals, is expressly prohibited.

11. Use and Occupancy by Declarant. The Declarant and Declarant's employees, representatives, agents, and contractors may maintain a business and sales office, construction facilities and yards, model units, and other developer's facilities necessary or desirable to Declarant during the construction and sales period.

12. Certain Additional Restrictions. The following additional restrictions are applicable to the lots and common areas. Each reference to "owners" includes their tenants and invitees.

a. Keeping Outside Areas Clean and Sightly. The Owners shall not place or store anything within the common areas without the prior written consent of the Management Committee or its designee except in a facility specifically designated or approved for their storage. All owners shall keep their residences and their lots in a reasonably clean, safe, sightly and tidy condition. No clotheslines will be permitted. Any tires, lawnmowers, garden equipment, childrens' toys and other similar items must be stored and appropriately screened from the public view when not in use. No antennas or television "dishes" or other items may be placed in public view or upon any of the common areas or lots without the express written consent of the Management Committee. Refuse, garbage and trash shall be kept at all times in a covered container, and such covered container shall be screened from view at all times other than a specified regular time period for garbage pick-up. The parking of recreational vehicles, boats, trailers and inoperative vehicles is prohibited in parking areas, garages and other common areas. The Management Committee shall have full power and authority to regulate the parking and storage of cars and any and all bicycles, motorbikes, motorcycles and other similar vehicles and equipment, and to regulate the use of roadways by imposing and enforcing speed limits and other restrictions, all with full power and authority to impose and enforce (by special assessments hereunder or otherwise) fines and other penalties for violations of such regulations.

b. Obstructing Common Areas. Owners shall not obstruct common areas. Owners shall not place or store anything within the common areas without the prior written consent of the Management Committee or its designee except in a facility specifically designated or approved for such storage. The storage of snow on the property shall not be allowed to occupy required parking spaces within the 50 foot streambank setback shown on the plat, or impact vehicle safety, or obstruct emergency vehicle access to the property.

c. No Fireworks. The discharge of firearms, firecrackers or fireworks is forbidden.

d. Signs. Without prior written consent of the Management Committee, owners shall not permit any sign of any kind to be displayed to the public view from the lot or from the appurtenant common areas. Said restrictions shall not apply to the Declarant during the construction or sales period or to traffic signs, lot designations, project designations or similar signs displayed by the Management Committee or the Declarant.

e. Animals. Owners shall not permit animals of any kind to be raised, bred or kept in their lot, except that up to 2 dogs and 2 cats are permitted for each unit, and other small pets kept inside are permitted on a reasonable basis, all subject to rules and regulations adopted by the Management Committee from time to time. Any animals permitted to be kept on the property at any time shall be restrained and controlled at all times so that they do not cause a nuisance to other owners and do not harass or endanger wildlife.

STRICT DOG CONTROL WILL BE ENFORCED. Large dogs, dogs which are not kept strictly as house pets, and dogs owned by persons other than owners and their families, may be banned completely by the Management Committee at any time. Any dogs on the Property at any time may be impounded by the Management Committee, and their release may be conditioned upon the payment of a fine or penalty, no matter who owns the dog. The public is hereby put on notice of this rule and of the potential effect if a member of the public permits their dog to be on the property at any time, whether or not they are aware of the whereabouts of the dog. STRICT DOG CONTROL IS ESSENTIAL To the QUALITY OF THE PROJECT.

f. Limitations on Certain Activities. Owners shall not permit any obnoxious or offensive activity or nuisance to be carried on in or around their lot or in the common areas. No light shall be emitted or reflected from any lot which is unreasonably bright or causes unreasonable glare for any adjacent owner. No unreasonably loud or annoying noises, or noxious or offensive odors, shall be emitted from any lot. The Management Committee is expressly authorized to regulate and limit the use of woodburning stoves and fireplaces.

g. Architectural Control. Except as otherwise expressly provided herein, no building, fence, wall, driveway, excavation or improvement of any kind shall be commenced, erected or maintained upon the property, nor shall any exterior addition to or change or alteration therein be made (including without limitation any closing in of a porch or balcony) by any owner other than Declarant, until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the Management Committee, as to harmony of external design and location in relation to surrounding structures and topography, and in relationship to the quality and appearance of the project. Any alteration of or future encroachment into the 50 foot streambank setback shown on the plat for the project is prohibited.

h. Compliance with Rules and Regulations. Owners shall not violate any rules and regulations for the use of common areas adopted by the Management Committee and furnished in writing

to the owners. Fines and other penalties for violations thereof may be imposed and enforced (by special assessment or otherwise) by the Management Committee for violations of such rules and regulations, and it is expressly understood that owners may be held responsible for acts of their tenants and invitees.

13. **Easements for Encroachments.** If any portion of the common elements encroaches upon lots, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist.

14. **The Association.**

a. **Membership.** Each owner shall belong to the Association by virtue of owning a lot in the project covered by this Declaration. By the sale or other transfer of a lot, the transferring owner's membership in the Association shall be *ipso facto* transferred to the transferee of such lot. The Declarant may incorporate the Association at any time, as a Wyoming nonprofit corporation.

b. **Annual Meeting.** There shall be an annual meeting of the Association to be held in each calendar year, at the project site, or at such other place, date, or time as may be designated by written notice of the Management Committee to the owners not less than fifteen days prior to the actual date fixed for said meeting. At the annual meeting, the Management Committee shall present an audit or financial review of the common expenses, itemizing receipts and disbursements for the preceding calendar year, the allocation thereof to each owner, and the estimated common expenses for the coming calendar year.

c. **Special Meetings.** Special meetings of the Association may be held at any time, either upon the call of owners possessing a one-fourth interest in the lots, or upon the call of a majority of the Management Committee. Upon such call, or the receipt of such call, the Management Committee shall send out written notices of the meeting to all owners, provided that such notice is sent not less than fifteen days prior to the date fixed for said meeting, and shall specify the date, time, place, and purpose for said meeting.

d. **Notice of Meetings.** A written or printed notice of every meeting of the Association stating whether it is an annual meeting or special meeting, the authority for the call of the meeting, the place, day, and hour thereof and the purpose therefore shall be given by the Management Committee at least fifteen days before the date set for such meeting. Such notice shall be given to each owner in any of the following ways: (i) by leaving the same with him personally, or (ii) by leaving the same at his or her usual place of business, or (iii) by mailing it, postage prepaid, addressed to such owner at his address as it appears on the records of the Management Committee.

e. **Waiver of Notice.** The presence of all owners, either in person or by proxy, at any meeting, shall render the same a valid meeting. Any meeting so held, notwithstanding the fact that no notice of meeting was given, or that the notice given was improper, shall be valid for all purposes, and at such meeting any general business may be transacted and any action may be taken.

f. Quorum. At any meeting of the Association, those present in person or by proxy, whose aggregate interest in the lots constitutes a majority of the aggregate interests of all owners in the lots, shall constitute a quorum. Once such quorum is present, the concurring vote of a majority of those present on any matter shall be valid and binding upon the owners, unless otherwise expressly provided by this Declaration. The Association may also act without a meeting by written consent of a majority of the voting power of the owners entitled to vote. Whenever in this Declaration the consent or approval of owners is required, such approval or consent shall be given pursuant to this paragraph at a meeting of the Association or by a written, unless otherwise specifically provided herein.

g. Voting. Any person or entity or combination thereof, owning any lot in this project duly recorded in his, her or its name, as determined by the records of the Management Committee shall be entitled, either in person or by proxy, to cast one vote per lot. Any provision to the contrary notwithstanding, co-owners or joint owners shall be deemed as one owner. The authority given by an owner to another to represent such owner at meetings shall be in writing, signed by such member, or if a lot is jointly owned then by all joint owners, or if such owner is a corporation, by the property officers thereof, and shall be filed with the Management Committee, and unless limited by its terms, such authority shall be deemed good until revoked in writing. An executor, administrator, guardian, or trustee may vote in person or by proxy with respect to any unit owned or held by him in such capacity, whether or not the same shall have been transferred to his name by a duly recorded conveyance; provided, however, that reasonable evidence of such capacity first be offered to the Management Committee. Whenever any lot is owned by two or more jointly, as determined by the records of the Management Committee, the vote therefor may be exercised by any one of the owners present in the absence of protest by the other or others.

h. Adjournment. Any meeting of the Association may be adjourned from time to time to such place and time as may be determined by a majority vote of the members present, whether a quorum be present or not, in accordance with the notice provision of this Paragraph.

i. Fiscal Year. The fiscal year of the Association shall end on December 31 of each year, or as otherwise determined by the Management Committee.

15. Management Committee.

a. Creation and Purpose. There is hereby created the Management Committee, consisting of three (3) members. Subject to (b) below, each member of the Management Committee should be an owner (or a duly authorized representative of an owner which is an entity) of a lot in this project at all times during this tenure. The purposes of the Management Committee shall be to govern the affairs of the project on behalf of the Association as its board of directors.

b. Interim Committee. Appointees of the Declarant need not be owners. As noted in (k) below, until a date which is four years from the date of recordation of this Declaration, the Declarant shall have the option to appoint and remove all the

members of the Management Committee.

c. **Term.** The Management Committee members shall serve "staggered" terms of three years each, with the initial three terms being for one, two and three years. Each member of the Management Committee shall hold office until the next applicable annual meeting of the owners and until his or her successor shall have been elected and qualified, or until death, resignation, or removal, if one of the latter events occurs sooner; provided however, that if any member ceases to be an owner or a duly authorized representative of an owner which is an entity, then, his or her membership on the Management Committee shall thereupon automatically terminate.

d. **Cumulative Voting.** At any election of Committee members, the vote attributable to each lot may not be accumulated by the owner thereof.

e. **Resignation and Removal.** At any regular meeting or special meeting duly called, any one or more of the members of the Management Committee may be removed with or without cause by a majority vote of the owners and a successor may then and there by elected to fill the vacancy thus created. Any member whose removal has been proposed shall be given an opportunity to be heard at the meeting. Any member may resign at any time by giving written notice to the Manager.

f. **Vacancy.** Any vacancy in the Management Committee occurring during a member's term shall be filled for the balance of that member's term by appointment made by the Management Committee.

g. **Proceedings.** If all members of the Management Committee are present, a majority vote shall be the act of the Management Committee; however, two members of the Management Committee shall constitute a quorum, and, if a quorum is present, the unanimous decision of those present shall be the act of the Management Committee. The Management Committee shall elect a chairman to preside over its meetings and those of the Association. Minutes of the meetings of the Management Committee shall be maintained and available for inspection by any owner. Meetings of the Management Committee may be called, held, and conducted in accordance with such regulations as the Management Committee may adopt. The Management Committee may also act without a meeting by unanimous written consent of its members.

h. **Regular Meetings.** Regular meetings of the Management Committee may be held at such time and place as shall be determined, from time to time, by a majority of the Management Committee. Notice of regular meetings of the Management Committee shall be given to each member, personally or by mail, or by telephone, at least two days prior to the day named for such meeting.

i. **Special Meetings.** Special meetings of the Management Committee may be called by its chairman on five day's notice to each member, given personally, or by mail, or by telephone, which notice shall state the time, place, and purpose of the meeting.

j. **Waiver of Notice.** Before or at any meeting of the Management Committee, any member may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to

the giving of such notice. Attendance of a member at any meeting of the Management Committee shall be a waiver of notice by him or her of the time and place thereof. If all the members are present at any meeting of the Management Committee, no notice shall be required and any business may be transacted at such meeting.

k. **Initial Control Period.** Until a date which is four years from the date of recordation of this Declaration, the Declarant shall have the option to appoint and remove all members of the Management Committee, to appoint and remove all officers of the Association, and to exercise the powers and responsibilities otherwise assigned by the Declaration to the Association. Declarant shall have the option at any time, by an express written declaration, to turn over to the Association the total responsibility for electing and removing members of the Management Committee and the officers.

16. **Powers and Duties of Management Committee.** Subject to the rights of Declarant the Management Committee shall have the powers and duties necessary for the administration, operation, and maintenance of the project. Such powers and duties of the Management Committee shall include, but shall not be limited to, the following, all of which shall be done for and on behalf of the owners of the units:

a. To administer and enforce the covenants, restrictions, easement, conditions, uses, limitations, obligations, and all other provisions set forth in this Declaration.

b. To establish, make, and enforce compliance with such rules and regulations (including without limitation enforcement provisions such as fines) as may be necessary for the operation, occupancy, and peaceful and orderly use and enjoyment of the lots and common elements of this project, with the right to amend said rules and regulations from time to time.

c. To incur such costs and expenses as may be necessary to keep in good order, condition and repair all of the common elements and all items of common personal property.

d. To insure and keep insured all of the units on the lots and all insurable common elements of the property and all of the common fixtures, equipment, and personal property against loss due to fire, extended coverage perils, vandalism and malicious mischief, in an amount equal to the full insurable replacement costs. Further, to obtain and maintain comprehensive public liability insurance covering the entire premises and insuring the Management Committee and the Manager, if any.

e. To prepare a budget for the project, at least annually, in order to determine the amount of the assessments payable by the owners to meet the common expenses of the project, and allocate and assess such common charges among the owners on a lot by lot basis, and by majority vote of the Management Committee to adjust, decrease, or increase the amount of the quarterly or monthly assessments, and remit or return any excess of assessments over expenses, working capital, sinking funds, reserve for deferred maintenance and for replacement, to the owners at the end of each operating year.

f. To levy one or more special assessments upon all owners

in the same manner as general assessments whenever the general assessments shall appear to the Management Committee to be insufficient to enable it to carry out its obligations in connection with the operation of the project, or whenever the Management Committee is required to make an expenditure under or in connection with the Declaration for which there are not sufficient funds available in the maintenance fund. One or more special assessments may be levied by the Management Committee upon less than all owners when permitted by this Declaration. Unless the Management Committee otherwise notifies the owner or owners against whom a special assessment has been levied, the special assessment is payable in full on the date specified in the notice of the levy.

g. To collect delinquent assessments by suit or otherwise and to enjoin or seek damages from an owner as is provided in this Declaration. To enforce a late charge of up to 5% of an amount in default and to collect interest at the rate of 16% per annum in connection with assessments in default, together with all expenses, including reasonable attorney's fees incurred.

h. To protect and defend on behalf of the project any part or all of the project from loss and damage by suit or otherwise.

i. To borrow funds in order to pay for any expenditure or outlay required pursuant to the authority granted by the provisions of this Declaration, and to execute all such instruments evidencing such indebtedness as the Management Committee may deem necessary and give security therefor; provided, however, that his provision shall not be deemed to give the Management Committee the power or right to place any liens on any lots. Such indebtedness shall be the several obligations of all of the owners.

j. To enter into contracts to carry out their duties and powers.

k. To establish a bank account or accounts for the common treasury and for all separate funds which are required or may be deemed advisable.

l. To make all repairs and do all maintenance to the common elements and the units located on the lots.

m. To keep and maintain full and accurate books and records showing all of the receipts, expenses, and disbursements, and to permit examination thereof at any reasonable time by any owner.

n. To prepare and deliver annually to each owner a statement showing receipts, expenses, and disbursements since the last such statement.

o. To meet at least once each year.

p. To designate the personnel necessary for the maintenance and operation of the general and limited common elements.

q. In general, to carry on the administration of the project and to do all things necessary and reasonable in order to carry out the governing and the operation of the project.

r. To control and manage the use of all parking areas.

17. **Manager.** Any Manager shall have and exercise such powers as are granted to the Management Committee hereunder (and any power herein delegated to the Management Committee shall be exercisable by the Manager), but said Manager shall be directly responsible to, and under the control of, the Management Committee.

18. **No Waiver.** The omission or failure of the Management Committee, the Manager, or any owner to enforce the covenants, conditions, restrictions, easements, uses, limitations, obligations, or other provision of this Declaration, or the house rules and regulations adopted pursuant thereto, shall not constitute or be deemed a waiver, modification, or release thereof, and the Management Committee, the Manager, or any owner shall have the right to enforce the same thereafter.

19. **Compensation.** No member of the Management Committee shall receive any compensation for acting as such, provided that the Chairman will not be required to pay regular monthly assessments for his or her one lot if such waiver is approved by the remainder of the Management Committee members.

20. **Accounts.** The funds and expenditures of the unit owners shall be credited and charged to accounts under the following classifications as shall be appropriate, all of which expenditures shall be common expenses:

a. Current expense, which shall include all funds and expenditures within the year for which the funds are budgeted, including a reasonable allowance for contingencies and working funds, except expenditures chargeable to reserves or to additional improvements.

b. Reserve for deferred maintenance, which shall include funds for maintenance items which occur less frequently than annually.

c. Reserve for replacement, which shall include funds for repair or replacement required because of damage, wear, or obsolescence.

21. **Indemnification.** Contracts or other commitments made by the Management Committee or the Manager shall be made as agent for the Association, and the owners shall have no personal responsibility on any such contract or commitment (except as owners under Section 31 hereof). Every member of the Management Committee shall be indemnified by the Association, against all reasonable costs, expenses and liabilities (including reasonable legal fees) actually and necessarily incurred by or imposed upon him or her in connection with any claims, action, suit, proceeding, investigation, or inquiry of whatever nature in which he or she may be involved as a party or otherwise by reason of having been a member of the Management Committee whether or not such individual continues to be a member of the Management Committee at the time of incurring or imposition of such costs, expenses, or liabilities, except willful misconduct, or gross negligence or malfeasance toward the owners in the performance of duties. The foregoing right of indemnification shall be in addition to and not in limitation of all rights to which such persons may be entitled as a matter of law and shall inure to the benefit of the legal representatives of such person.

22. **Exculpation.** No member of the Management Committee shall

be liable for the acts or defaults of any other member, or for any loss sustained by the owners as a result thereof, unless the same has resulted from his or her own willful misconduct.

23. **Examination of Books.** Each owner and each mortgagee of a lot shall be permitted to examine the books of account of the Association at reasonable times.

24. **Mechanic's Lien.** Every owner agrees to indemnify and to hold each of the other owners harmless from any and all claims of mechanic's liens and all costs and expenses, including attorney's fees, due to such liens filed against other lots and the general and limited common elements for labor, materials, services, or other products incorporated in the owner's unit.

25. **Reservation for Access.** The Association shall have the irrevocable right, to be exercised by the Management Committee or the Manager, to have access to each lot from time to time during reasonable hours as may be necessary for the maintenance, repair, or replacement, or for making emergency repairs therein necessary to prevent damage to the common elements or to another unit. Damage to the interior or any part of a lot resulting from the maintenance, repair, emergency repair, or replacement of any of the general or limited common elements or as a result of emergency repairs within another lot, at the instance of the Management Committee or the Manager, shall be a common expense of all the owners unless such damage is the result of the misuse or negligence of an owner or such owner's invitees, guests or representatives, in which case such expense shall be charged to such owner).

26. **Maintenance Responsibilities.** As noted in Sections 10 and 31 and other provisions of this Declaration, the maintenance and repair of buildings will be the responsibility of the Association, not the individual owners. An owner shall maintain and keep in good repair the interior of his or her own unit on the applicable lot, including the fixtures, window glass, doors, appliances and interior paint. All fixtures and equipment installed within the unit commencing at a point where the utilities enter the unit shall be maintained and kept in repair by the owner thereof. The owner must repair items such as paint and sheetrock which are damaged by unit occupants unless the damage is caused by casualty (such as fire) and the repair cost is covered by insurance of the Association. An owner shall do no act nor any work that will impair the structural soundness or integrity of the unit or impair any easement of hereditament. An owner shall also keep any common area appurtenant to his or her unit in a clean and sanitary condition. An owner shall be responsible for the cost of repairs for damage caused by the negligence of the owner or any occupant of the unit, to the extent uninsured by the Association (such as the deductible amount). All other costs of maintenance or repairs to the common elements and buildings shall be carried out by the Management Committee and shall be a common expense of all of the owners. As noted in Section 32 below, owners are encouraged to maintain their own insurance against certain risks and to require renter's insurance as appropriate. Declarant shall not be liable for the costs of maintenance, repair or replacement of any units on the lots or other improvements.

27. **Compliance.** Each owner shall comply strictly with the provisions of this Declaration and the decisions and resolutions of the Management Committee adopted pursuant thereto as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief or both, and for reimbursement of all

attorney's fees incurred in connection therewith, which action shall be maintainable by the Management Committee or the Manager in the name of the Association on behalf of the owners or, in a proper case, by an aggrieved owner.

28. **Restrictions Relating to Insurance Coverage.** Without the prior written consent of the Management Committee, nothing shall be done, kept or permitted to exist in any unit or in the common area, which will result in an increase in the rate of insurance therein. No owner shall permit anything to be done or kept in his or her unit which will result in the cancellation of insurance covering the project or any part thereof, or which would be in violation of any law.

29. **Revocation or Amendment to Declaration.** This Declaration shall not be revoked unless all of the owners and all of the holders of any recorded first mortgage or first deed of trust covering or affecting any or all of the lots unanimously consent and agree to such revocation by instrument duly recorded. This Declaration shall not be amended unless the Declarant and the owners representing an aggregate ownership interest of a majority of the lots consent and agree to such amendment by instrument duly recorded and attested by the president and secretary of the Association, provided that revocation of this Declaration shall always require the consent of all of the owners and all holders of any recorded first mortgages. In view of the fact, however, that the project is an on-going one and shall be undertaken in several phases, with new lands, buildings and facilities being added to the project as it nears completion, Declarant reserves the right to amend Exhibit A hereto without the consent of the owners, or any of them, to reflect such changes.

30. **Additions, Alterations and Improvements.** The Declarant retains full authority to further develop the property and add to and utilize the common elements.

31. **Assessments.** The making and collection of assessments of any nature from owners for their share of common expenses (determined pursuant to this Article and the other applicable provisions of this Declaration) shall be carried out by the Management Committee in accordance with the following provisions:

a. **When Assessment Commence.** Assessments for any lot shall commence on the applicable date specified by the Declarant, but not later than (a) the date of closing of a sale of a completed unit by Declarant, or (b) the date of occupancy of a completed unit.

b. **Shares of Common Expenses.** Each owner of a unit shall be responsible for an equal proportionate share of all General Common Expenses. Such "General Common Expenses" include the following services obtained by the Association: road maintenance and snow removal services, trash collection, utility line maintenance, cable television services for all owners, landscaping, installation and maintenance of walkways, security systems and security personnel and equipment, common area facilities installation and maintenance, and a portion of the cost of administration, landscaping and improvement of the property (including accounting, legal, equipment, personnel and overhead); and all expenses of the Association for insurance, maintenance, repair, operation, landscaping, improvement management and administration. Such General Common Expenses shall be the responsibility of all owners and shall be shared by all owners on a basis whereby a three

bedroom unit bears a 12% greater share than a two bedroom unit. The Management Committee in its discretion may bill specific owners for specific services (such as cable television services, or repairs for damage caused by the negligence of an owner or invitees to the extent uninsured), as a special assessment against the applicable owner and their lot. It is expressly understood that the provision of certain services, such as cable television, may or may not be provided by the Association and is subject to the discretion of the Management Committee, and that certain services such as water and sewer services may be provided by other entities such as the Town of Jackson.

c. **Rights to Collect From Tenant.** If an owner shall, at any time, lease his or her lot and shall be in default for a period of one month or more in the payment of assessments or other charges, the Management Committee may, at its option, so long as such default shall continue, demand and receive from any tenant or subtenant of the owner the rent due or becoming due, and the payment of such rent to the Management Committee shall discharge such tenant or subtenant from the obligation for rent to the owner and the owner from his obligation to the Association, to the extent of the amount so paid. The Management Committee shall be fully entitled to demand and receive a copy of the applicable lease agreement.

32. **Insurance.** The Management Committee, or Manager, shall obtain and maintain at all times insurance of the type and kind stated in this Declaration, and including, at the discretion of the Management Committee, risks of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other projects similar in use, issued by responsible insurance companies authorized to do business in Wyoming. The fire and extended coverage insurance, including vandalism and malicious mischief, to be maintained as to the units shall also cover all fixtures, interior walls and partitions, decorated and finished surfaces of perimeter walls, floors, and ceilings, doors, windows and other elements or materials comprising a part of the units. The insurance shall be carried in blanket policy form naming the Management Committee the insured, as attorney-in-fact for all of the unit owners, at their common expense, which policy or policies shall contain a standard non-contributory mortgage clause in favor of each first mortgagee, and a noncancellation clause (whether or not requested by the owners of units) providing that such policy or policies may not be canceled except upon thirty (30) days' prior written notice thereof to the Management Committee, each first mortgagee, and every other person in interest who shall have requested such notice of the insurer. The Management Committee, or the Manager, shall also obtain and maintain public liability insurance insuring each member of the Management Committee, the Manager, if any, the Association, and the owners against any liability to the owners or any other person incident to the ownership of or use of the project or any part thereof. Limits of liability under such insurance shall not be less than Three Hundred Thousand Dollars (\$300,000.00) for any one person injured, Five Hundred Thousand Dollars (\$500,000.00) for each occurrence, and Three Hundred Thousand Dollars (\$300,000.00) for property damage for each occurrence. This is just the minimum amount, and it is expressly contemplated that the Management Committee may, in its discretion, obtain insurance with higher limits and insurance against risks (such as earthquake damage) which are not specifically referred to herein. The Management Committee may also obtain insurance with relatively high deductibles. Owners are encouraged to carry their own insurance (and to require renters

insurance for rental units) to cover their possible liability for payment of damages, such as the deductible amount, which is not insured by the Association itself. All insurance policies obtained by the Association itself should be reviewed at least annually by the Management Committee.

Each owner, upon becoming an owner, shall be deemed to have constituted and appointed, and does hereby so constitute and appoint the Management Committee as his true and lawful attorney-in-fact to act in all matters concerning the purchase and maintenance of all types of property and liability insurance pertaining to the project. Each owner does further hereby agree, without limitation on the generality of the foregoing, and each mortgagee, upon becoming a mortgagee or holder (as trustee or as beneficiary) of a deed of trust of a unit does hereby agree, that the Management Committee, as attorney-in-fact, shall have full power and authority, in addition to the powers above given, to purchase and maintain such insurance, and remit premiums therefor, to collect proceeds and to use the same, and distribute the same to the Management Committee, owners and mortgagees, as their interests may appear, all pursuant to and subject to applicable statutes and the provisions of this Declaration, and to execute all documents and do all things on behalf of each owner and the Management Committee as shall be necessary or convenient to the accomplishment of the foregoing.

33. Owner's Personal Obligations. The amount of the common expenses assessed against each lot shall be the personal and individual debt of the owner(s) thereof. No owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of his lot. Both the Management Committee and the Manager shall have the responsibility to take prompt action to collect any unpaid assessment which remains unpaid more than twenty days from the due date for payment thereof. In the event of default in the payment of the assessments, the owner shall be obligated to pay interest on the amount of the assessment from the due date thereof, together with all expenses incurred, including attorney's fees, together with such late charges and interest as are provided in this Declaration. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same.

34. Foreclosure of Lien. In the event that a lien is created on a lot for unpaid common expenses, the Management Committee or the Manager shall prepare a written notice indicating the amount of such unpaid indebtedness, the name of the unit owner, and a description of the lot. Such notice shall be signed by a member of the Management Committee or by the Manager, and shall be recorded in the Office of the County Clerk of Teton County, Wyoming. Such lien shall attach from the due date of the assessment. In any suit to foreclose the lien against any owner of a lot, the Management Committee may represent itself in like manner as any mortgagee of real property. The Management Committee, acting on behalf of the owners, shall have the power to bid and acquire such lot at a foreclosure sale, and to lease, mortgage, vote the votes appurtenant to convey, or otherwise deal with the same. The delinquent owner shall be required to pay the costs and expenses, including attorneys' fees, for the filing of any lien, and any foreclosure proceedings related thereto, as well as to pay a reasonable rent for the subject unit until sale or foreclosure. Suit to recover a money judgment for unpaid common expenses shall be maintainable with all costs and reasonable attorney's fees without foreclosing or waiving the lien securing the same.

Any encumbrancer holding a lien on a lot may pay any unpaid common expenses payable with respect to such lot, and upon such payment such encumbrancer shall have a lien. The holder of any mortgage or first deed of trust which is prior to any assessment lien, upon becoming any owner of a lot, pursuant to foreclosure, conveyance in lieu of foreclosure, or otherwise, shall be subject to all assessments, and the lien thereof, made after such holder becomes such owner of a lot.

35. **Mortgages.** An owner shall have the right from time to time to mortgage or encumber his interest by deed of trust, mortgage, or other security instrument. A first mortgage shall be one which has first and paramount priority under applicable law. The owner of a lot may create junior mortgages, liens, or encumbrances on the following conditions: (1) that any such conditions, covenants, restrictions, uses, limitations, obligations shall be subject to the lien for common expenses and other obligations created by this Declaration; (2) that the mortgagee under any junior mortgage shall release, for the purpose of restoration of any improvements upon the mortgaged premises, all of his or her right, title, and interest in and to the proceeds under all insurance policies upon the lot and project. Such release shall be furnished forthwith by a junior mortgagee upon written request of one or more of the members of the Management Committee, and if such request is not granted, such release may be executed by the Management Committee as attorney-in-fact for such junior mortgagee.

36. **Reconstruction.** This Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact to deal with the property upon its destruction, for repair, reconstruction or obsolescence. Title to any lot is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed or other instrument of conveyance from the Declarant or from any owner or grantor shall constitute appointment of the attorney-in-fact herein provided. All of the owners irrevocably constitute and appoint the Management Committee their true and lawful attorney in their name, place, and stead for the purposes of dealing with the property upon its destruction or obsolescence as is hereinafter provided. As attorney-in-fact, the Management Committee shall have full and complete authorization, right and power to make, execute, and deliver any contract, deed, or any other instrument with respect to the interest of a condominium unit owner which is necessary and appropriate to exercise the powers herein granted. Repair and reconstruction of improvements as used in the succeeding subparagraphs means restoring improvements to substantially the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall be available to the Management Committee for the purpose of repair, restoration, reconstruction or replacements unless the owners and first mortgagees agree not to build in accordance with the provisions set forth hereinafter.

a. In the event of damage or destruction due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct improvements, shall be applied by the Management Committee, as attorney-in-fact, to such reconstruction, and improvements shall be promptly repaired and reconstructed. The Management Committee shall have full authority, right and power, as attorney-in-fact, to cause the repair and restoration of the improvements.

b. If the insurance proceeds are insufficient to repair and reconstruct improvements, and if such damage is to one-third

or fewer condominium units, such damage or destruction shall be promptly repaired and reconstructed by the Management Committee, as attorney-in-fact, using the proceeds of insurance and the proceeds of an assessment to be made in the manner hereinafter set out. If any mortgage or trust deed holder of any damaged unit required and received payment of any part of the insurance proceeds, the owner of that unit shall pay to the Management Committee the amount so received by such mortgagee or trust deed holder for use by the Management Committee, with the balance of the insurance proceeds, in repairing and reconstructing pursuant hereto. The insurance proceeds, together with payments made by unit owners shall be held in a building account for use in repairs and reconstruction pursuant hereto. Any deficiency in the building account shall be assessed against the unit owners as a common expense. Such assessment shall be payable within ninety (90) days after written notice thereof to the owners assessed. The Management Committee shall have full authority, right and power, as attorney-in-fact, to cause the repair or restoration of improvements using all of the insurance proceeds and unit owner to pay an assessment. The assessment provided for herein shall be a debt of each owner and a lien on his condominium unit and may be enforced and collected as is provided in Paragraph 43. In addition thereto, the Management Committee, as attorney-in-fact, shall have the absolute right and power to sell the condominium unit of any owner refusing or failing to pay such deficiency assessment within the time provided, and if not so paid, the Management Committee shall cause to be recorded a notice that the condominium unit of the delinquent owner shall be required to pay to the Management Committee the costs and expenses for filing the notices, interest at the rate of 10% per annum on the amount of the assessment from and after said 90 day period, and all reasonable attorney's fees incurred in selling the unit and collecting said assessment. The proceeds derived from the sale of such condominium unit shall be used and disbursed by the Management Committee, as attorney-in-fact, in the following order:

1. For payment of taxes and special assessment liens in favor or any assessing entity, and the customary expense of sale;

2. For payment of the balance of the lien of any first mortgage or trust deed, with interest any prepayment penalty;

3. For payment of unpaid common expenses, the assessment, with interest, made for repair and reconstruction of the project, and all costs, expenses, and fees incurred by the Management Committee in selling such lot and collecting the assessment, not paid pursuant to 1. above;

4. For payment of junior liens and encumbrances in the order of and to the extent of their priority; and

5. The balance remaining, if any, shall be paid to the lot owner.

c. If the insurance proceeds are insufficient to repair and reconstruct the damaged improvements, and if such damage is to more than one-third of the condominium units, and if the owners representing an aggregate ownership interest of 51

percent, or more, of the general common elements do not voluntarily, within 100 days after such damage, make provisions for reconstruction, which plan must have the unanimous approval or consent of every holder of a first mortgage then of record, the Management Committee shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice, the entire condominium project shall be sold by the Management Committee pursuant to the provisions of this paragraph, as attorney-in-fact for all of the owners, free and clear of the provisions contained in this Declaration and the Map. The insurance settlement proceeds shall be collected by the Management Committee, and such proceeds shall be divided by the Management Committee according to each owner's percentage interest in the general common elements, and such divided proceeds shall be paid into separate accounts, each account representing one of the condominium unit designation and the name of the owner. The total funds of each account shall be used and disbursed, without contribution from one account to another, by the Management Committee, as attorney-in-fact, for the same purposes and in the same order as is provided in subparagraph (b)1. through 5. of this paragraph.

If the owners representing an aggregate ownership interest of 51%, or more, of the lots adopt a plan for reconstruction, which plan has the unanimous approval of all holders of first mortgages then of record, then all of the owners shall be bound by the terms and other provisions of such plan. Any assessment made in connection with such plan, shall be a lien, and may be enforced to the extent and in the manner set out in subparagraph (b) of this paragraph and shall be due and payable as provided by the terms of such plan, but not sooner than 90 days after written notice thereof. The Management Committee shall have full authority, right and power, as attorney-in-fact, to cause the repair or restoration of improvements using all of the insurance proceeds and any lot owner's payments for such purpose notwithstanding the failure of any owner to pay an assessment.

d. The owners representing an aggregate ownership interest of one-third of the common elements may agree that the buildings should be razed and new ones built, and adopt a plan for the renewal and reconstruction, which plan shall require the unanimous approval of all holders of first mortgages of record at the time of the adoption of such plan. If a plan for the renewal or reconstruction shall be payable by all of the owners as common expenses; provided, however, that an owner not a party to such plan for renewal or reconstruction may give written notice to the Management Committee within 30 days after the date of option of such plan that such unit shall be purchased by the Management Committee for the fair market value thereof. The Management Committee shall then have 60 days thereafter within which to cancel such plan. If such plan is not canceled, the unit of the requesting owner shall be purchased according to the following procedures. If such owner and the Management Committee can agree on the fair market value thereof, then such sale shall be consummated within 60 days thereafter. If the parties are unable to agree, the date when either party notifies the other that he or it is unable to agree with the other on the sixtieth day after notice demanding purchase is given to the Management Committee, whichever date is earlier, shall be the "commencement date" from which all periods of time mentioned herein shall be measured. Within ten days following the

commencement date, each party shall nominate in writing (and give notice of such nomination to the other party) an appraiser. If either party fails to make such a nomination, the appraiser nominated shall within five days after default by the other party, appoint and associate with him another appraiser. If the two designated or selected appraisers are unable to agree, they shall appoint another appraiser to be umpire between them, if they can agree on such person. If they are unable to agree upon such umpire, each appraiser previously appointed shall nominate two appraisers, and from the names of the four appraisers so nominated one shall be drawn by lot by any judge of any court of record in Wyoming, and the name so drawn shall be such umpire. The nominations from whom the umpire is to be drawn by lot shall be submitted within ten days of the failure of the two appraisers to agree, which, in any event, shall not be later than 20 days following the appointment of the second appraiser. The decision of the appraisers to the fair market value, or in the case of their disagreement, then such decision of the umpire, shall be final and binding. The expenses and fees of such appraisers shall be borne equally by the Management Committee and the owner. The sale shall be consummated within 15 days thereafter and the Management Committee, as attorney-in-fact shall pay the purchase price therefore in cash and shall disburse such purchase price for the same purposes and in the same order as is provided in subparagraph (b) 1. through 5. of this paragraph, except as modified herein. At the time of payment to such owner, such owner shall deliver to the Management Committee, or its nominee, a good and sufficient warranty deed to the lot, fully executed and in recordable form, free and clear of all liens, charges and encumbrances.

37. **General Reservations.** Declarant reserves the right until completion of the project and until a written statement to that effect is recorded by Declarant, to establish easements, reservations, exceptions, and exclusions and for the best interests of the project.

38. **Covenants to Run With Land.** Each of the covenants of this Declaration shall run with the real property which is the subject of this Declaration, and each and every condominium and every interest therein or pertaining thereto, and shall bind Declarant, its successors, grantees and assigns, and all parties claiming by, through, or under Declarant. Each purchaser of any lot shall, by acceptance of the deed or other conveyance of any such lot, be conclusively deemed to have consented to and agreed to each to each and all of said covenants for himself and his heirs, executors, administrators, successors and assigns, and does, by said acceptance, covenant for himself and his heirs, executors, administrators, successors, and assigns, to observe, perform and be bound by each and all of said covenants.

39. **Assignment of Declarant's Rights.** Declarant and its successors and assigns reserve the right to vest any entity with all or any of the rights, interests, privileges, easements, powers and duties herein retained or reserved by Declarant, by a supplemental declaration and assignment which shall be effective when recorded in the Office of the County Clerk, Teton County, Wyoming, and Declarant shall thereupon be relieved and discharged from every duty so vested in such other corporation or association.

IN WITNESS WHEREOF, this Declaration has been executed by the Declarant effective as of the date of recordation hereof.

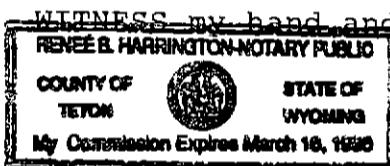
ELK RUN TOWNHOUSE LIMITED
LIABILITY COMPANY, a Wyoming
limited liability company

By Ronald D. Saypol
Manager

By Karen Terra
Manager

STATE OF WYOMING)
) ss.
COUNTY OF TETON)

The foregoing instrument was acknowledged by Ronald D. Saypol and Karen Lynne Terra, known by me to be the Managers of Elk Run Townhouse Limited Liability Company, who acknowledged said instrument on this 16th day of December, 1993.



(seal)
My commission expires: March 16, 1996

Renee B. Harrington
Notary Public