



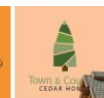
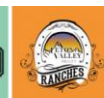
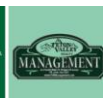
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MARY LOU HANSEN

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Ex-Officio Recorder Deputy M. Webster

Index to: DECLARATION OF COVENANTS

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

THE OVERLOOK AT FOXCREEK

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

The Overlook At Fox Creek

This Declaration of Covenants, Conditions, and Restrictions for The Overlook At Fox Creek is made this _____ day of _____, 2006, by Landsource Holdings, LLC, an Idaho limited liability company ("Declarant").

ARTICLE I

DEFINITIONS

- 1.1 "Annual Assessments" means the Assessments levied pursuant to Section 6.2.
- 1.2 "Articles" means the Articles of Incorporation of the Association, as amended from time to time.
- 1.3 "Assessment" means an Annual Assessment or Special Assessment.
- 1.4 "Assessment Lien" means the lien created and imposed by Article VI.
- 1.5 "Assessment Period" means the period set forth in Section 6.2.1.
- 1.6 "Association" means The Overlook At Fox Creek Owners Association, Inc., an Idaho nonprofit corporation, and its successors and assigns.
- 1.7 "Association Land" means all land, together with all Improvements situated thereon, which the Association at any time owns in fee or in which the Association has a leasehold interest, easement or license for as long as the Association is the owner of the fee or holds such leasehold interest, easement or license.
- 1.8 "Association Member" means any Person who is a member of the Association as provided in Section 5.6.
- 1.9 "Association Membership" means a membership in the Association.
- 1.10 "Association Rules" means the rules adopted by the Board pursuant to Section 5.3, as amended from time to time.
- 1.11 "Board" means the Board of Directors of the Association.
- 1.12 "Building Envelope" means an outlined area within a Lot identified on the Plat or designated by Declarant, within which all Residences shall be constructed.
- 1.13 "Bylaws" means the Bylaws of the Association, as amended from time to time.
- 1.14 "Common Area" means (a) all Association Land; (b) all land, and the Improvements situated thereon, within the Project which the Declarant indicates on the Plat, or other Recorded instrument is to be conveyed to the Association for the benefit and use of the Association Members; (c) all land, and the Improvements situated thereon, within the Project which the Declarant indicates on the Plat or other Recorded instrument is to be designated as Common Area and used for landscaping, open space, drainage or water retention, flood control or other purposes for the benefit of the Project or the general public, including, without limitation, all the roads located in the Project, as shown on the Plat; (d) all real property, and the Improvements situated thereon, within or adjacent to the Project located within dedicated rights-of-way to which Teton County or any other municipality has not accepted

responsibility for the maintenance thereof, but only until such time as Teton County or any other municipality has accepted all responsibility for the maintenance, repair and replacement of such areas.

1.15“Common Expenses” means expenditures made by, or financial liabilities of, the Association, including, without limitation, property taxes, insurance and all other costs incurred in connection with the ownership, maintenance, improvement, upkeep and operation of the Common Area, together with any allocations to reserves.

1.16“Declarant” means Landsource Holdings, LLC, an Idaho limited liability company, its successors and any Person to whom it may expressly assign any or all of its rights under this Declaration.

1.17“Declarant Affiliate” means any Person directly or indirectly controlling, controlled by or under common control with the Declarant, and shall include, without limitation, any general or limited partnership, limited liability company, limited liability partnership or corporation in which the Declarant (or a Declarant Affiliate) is a general partner, managing member or controlling shareholder.

1.18“Declaration” means this Declaration of Covenants, Conditions and Restrictions for The Overlook At Fox Creek, as amended from time to time.

1.19“Design Guidelines” means the design guidelines established and administered by the Association pursuant to Section 3.2.1.

1.20“First Mortgage” means a Mortgage Recorded against a Lot which has priority over all other Mortgages Recorded against that Lot.

1.21“Improvement” means (a) any Residence, building, fence or wall; (b) any swimming pool, tennis court, basketball court, playground equipment, road, driveway, parking area, satellite dish antenna or similar device; (c) any trees, plants, shrubs, grass or other landscaping improvements of every type and kind; (d) any statuary, fountain, artistic work, craft work, figurine, ornamentation or embellishment of any type or kind (whether or not affixed to a structure or permanently attached to a Lot); and (e) any other structure of any kind or nature located on the Property.

1.22“Lessee” means the lessee or tenant under a lease, oral or written, of any Residence, including an assignee of the lessee’s or tenant’s interest under a lease.

1.23“Lot” means a portion of the Project intended for independent ownership and residential use and designated as a lot on the Plat and, where the context indicates or requires, shall include any Residence, building, structure or other Improvements situated on the Lot.

1.24 “Mortgage” means a deed of trust or a mortgage Recorded against a Lot.

1.25“Mortgagee” means a beneficiary under a deed of trust, or a mortgagee under a mortgage, Recorded against a Lot, and “First Mortgagee” means such a beneficiary or mortgagee under a First Mortgage.

1.26“Occupant” means any Person other than an Owner who occupies or is in possession of a Lot, or any portion thereof or building or structure thereon, whether as a Lessee or otherwise, other than on a merely transient basis (and shall include, without limitation, a Resident).

1.27“Owner” means the Person or Persons who individually or collectively own fee title to a Lot (as evidenced by a Recorded instrument), provided that: (a) the Declarant (and not the fee title holder) shall be deemed to be the “Owner” of each Lot with respect to which fee title is held by a Declarant Affiliate or by a trustee (other than the trustee of a deed of trust) for the benefit of the Declarant or a Declarant Affiliate; (b) in the event that, and for so long as, the Declarant or a Declarant Affiliate has, pursuant to a written agreement, an existing right or option to acquire any one or more Lots (other than by exercise of a right of first refusal or right of first offer), the Declarant shall also be deemed to be the “Owner” of each Lot with respect to which the Declarant or a Declarant Affiliate has such right or option; and (c) in any case where fee title to a Lot is vested in a trustee under a deed of trust pursuant to

Idaho law, the owner of the trustor's interest under the deed of trust shall be deemed to be the "Owner" of that Lot. Where reference is made in this Declaration to Lots "owned by" a Person, such phrase shall be deemed to refer to Lots of which that Person is the Owner, as determined pursuant to this Section.

1.28 "Period of Declarant Control" means the period commencing on the date of the Recording of this Declaration and ending on the earlier of: (a) one hundred twenty (120) days after the Declarant has conveyed the last Lot owned by the Declarant in the Project to third-party purchasers (provided, however, that any bulk sale of Lots where the purchaser is designated as successor Declarant hereunder shall not be included in such calculation); (b) December 31, 2013; or (c) the date the Declarant Records a written instrument terminating the Period of Declarant Control.

1.29 "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, limited liability company, limited liability partnership, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

1.30 "Plat" shall mean The Overlook At Fox Creek Subdivision filed in the office of the County Recorder of Teton County, Idaho, as such may be amended from time to time.

1.31 "Project" or "Property" means the real property described on Exhibit A, together with all Improvements located thereon.

1.32 "Project Documents" means this Declaration, the Articles, the Bylaws, the Association Rules and Design Guidelines.

1.33 "Purchaser" means any Person, other than the Declarant, who by means of a voluntary transfer becomes the Owner of a Lot except for: (a) a Person who purchases a Lot and then leases it to the Declarant for use as a model in connection with the sale of other Lots; or (b) a Person who, in addition to purchasing a Lot, is expressly assigned any or all of the Declarant's rights as the Declarant under this Declaration.

1.34 "Record," "Recording," "Recorded" and "Recordation" means placing or having placed an instrument of public record in the Official Records of Teton County, Idaho.

1.35 "Resident" means each individual who resides in any Residence.

1.36 "Residence" means (a) any building, or portion of a building, situated upon on the Building Envelope on a Lot and designed and intended for separate, independent use and occupancy as a residence.

1.37 "Special Assessment" means any Assessment levied pursuant to Section 6.3.

1.38 "Visible From Neighboring Property" means, with respect to an object, that the object is or would be visible to a six-foot tall person standing at ground level on any part of neighboring property, except where the object is visible solely through a wrought iron fence and would not be visible if the wrought iron fence were a solid fence.

ARTICLE II

PLAN OF DEVELOPMENT

2.1 Property Subject to the Declaration. This Declaration is being Recorded to establish a general plan for the development and use of the Project in order to protect and enhance the value and desirability of the Project. All of the property within the Project shall be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any of the Property subject to this Declaration, each Person, for himself, herself or itself, and his, her or its heirs, personal representatives, successors, transferees and assigns, binds himself, herself or itself, and his, her or its heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration. In addition, each such Person by so doing acknowledges that this Declaration sets forth a general

scheme for the development and use of the Property and evidences his, her or its intent that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, Purchasers, assignees, Lessees and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the Association and all Owners.

2.2 Disclaimer of Representations. The Declarant makes no representations or warranties whatsoever that: (a) the Project will be completed in accordance with the plans for the Project as they exist on the date this Declaration is Recorded; (b) any property subject to this Declaration will be committed to or developed for a particular use or for any use; or (c) the use of any property subject to this Declaration will not be changed in the future. Nothing contained in this Declaration and nothing which may be represented to a purchaser by real estate brokers or salesmen representing the Declarant or shall be deemed to create any covenants or restrictions, implied or express, with respect to the use of the Property.

ARTICLE III

LAND USES, PERMITTED USES AND RESTRICTIONS

3.1 Land Uses. The property in the Project shall be used for single family detached residential use, as well as ancillary, complementary or subsidiary use including, without limitation, Common Area.

3.2 Architectural Control.

3.2.1 All Improvements shall comply with design guidelines established and administered by the Association ("Design Guidelines"). The Design Guidelines shall define and describe the design standards for the Project. The Design Guidelines may be modified or amended from time to time by the Board. The Board, in its sole discretion, may excuse compliance with such Design Guidelines as are not necessary or appropriate in specific situations and may permit compliance with different or alternative requirements. The Design Guidelines shall not be subject to modification or amendment by the Association Members. The Design Guidelines shall be established solely by the Board and Declarant. Without limiting the generality of the foregoing, the Design Guidelines shall provide for the following:

(a) Building Envelopes may be shown on the Plat and/or be designated by the Declarant, in advance of purchase, on certain of the Lots. No structure of any kind shall be constructed outside of the Building Envelopes with out the approval of the presiding home owners association.

(b) All structures in the Project shall be constructed of natural or natural appearing materials.

(c) Guidelines shall be established to preserve the visual harmony of the Project with the surrounding area during periods of construction, including the storage of equipment and building materials, and the control of refuse and construction waste.

(d) No boundary fences shall be erected around the exterior lot lines of any Lot or around the perimeter of any Building Envelope without the approval of the Board. Fences shall be constructed of natural or natural appearing materials, designed to be consistent with the character of the other Improvements on the Lot. Boundary fences shall not be constructed in the event that they may obstruct the natural grazing or migration of native wildlife. If there is a fence constructed within or outside of the building envelope it shall be no taller than 42 inches in height and should be built to allow for wildlife passage. Barbed wire, woven wire and buck-and rail fences are prohibited. Additionally, fences are prohibited from being constructed through the riparian habitats along Fox Creek. The Design Guidelines may include other details regarding the approved colors, materials and design "theme" for fencing within the Project.

(e) Retaining walls which exceed four (4) feet in height shall be stepped to form terraces, the visual impact of which can be mitigated with landscaping, and shall be constructed of natural materials (including, without limitation, stone and rough-cut timbers), consistent with the character of the other Improvements to the Lot.

(f) There shall be no building of any kind constructed or placed on any portion of the property which exceeds a natural grade of 20%.

3.2.2 All Improvements constructed within the Project shall be of new construction, and no buildings or other structures shall be removed from other locations to the Project (except for construction and sales trailers or similar facilities approved in advance by the Board).

3.2.3 No Lot may be split, divided or further subdivided in any manner without the prior written approval of the Board.

3.2.4 No Lot or Residence shall be used: for (i) for the operation of a timesharing, fractional ownership, interval ownership, membership club, private residence club or similar program whereby the right to exclusive use of the Lot or Residence rotates among participants in the program, regardless of whether such program utilizes a fixed or floating schedule, a first come-first served reservation system or any other arrangement; (ii) the operation of a reservation or time-use system among co-Owners of a Lot or Residence, regardless of whether or not any 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, if one or more of the following conditions exist: (a) the ownership interest in such Lot or Residence is marketed for sale to the public subject to such system, or (b) the co-Owners are or were required as a condition of purchase of the ownership interest in such Lot or Residence to subject the interest to a pre-determined reservation or time-use system among co-Owners; or (iii) the marketing, offering or selling of any club membership interest, limited liability company interest, limited partnership interest, program interest or other interest whereby the interest-holder acquires a right to participate in a reservation or time-use system among the interest-holders, or among the interest-holders and others, involving the Lot or Residence, or involving the Lot or Residence and other alternate or substitute properties, regardless of whether such interest is equity or non-equity, regardless of whether or not any interest-holder may later opt out of such system and regardless of whether the reservation or time-use system is recorded or unrecorded, fixed or floating (such interest referred to herein as an "Interest"), if one or more of the following conditions exist: (a) the Interest is marketed for sale to members of the public, or (b) the Interest-holders are or were required as a condition of purchase of the Interest to be subject to a pre-determined reservation or time-use system among Interest-holders, or among Interest-holders and others. All of the foregoing uses, systems or programs described in this Section are hereinafter called a "Timeshare Program"). Mere co-ownership of a Lot or Residence, ownership of a Lot or Residence by an entity, or short-term leasing of a Lot or Residence shall not create a Timeshare Program unless it meets any of the conditions described above.

3.2.5 The provisions of this Section do not apply to any construction, installation, addition, alteration, repair, change, replacement or other work by, or on behalf of, the Declarant.

3.2.6 The requirements of this Section shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation, or under any other Recorded instrument.

3.3 Temporary Occupancy and Temporary Buildings. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings, trailers or other structures used during the construction of Improvements approved by the Board shall be removed immediately after the completion of construction, and in no event shall any such buildings, trailers or other structures be maintained or kept on any property for a period in excess of twelve (12) months without the prior written approval of the Board.

3.4 Maintenance of Landscaping. Each Owner of a Lot shall properly maintain and keep neatly trimmed, properly cultivated and free of trash, weeds and other unsightly material all shrubs, trees, hedges, grass and

plantings of every kind (collectively, "Landscaping") located on: (a) his, her or its Lot; (b) any public right-of-way or easement area which abuts or adjoins the Owner's Lot and which is located between the boundary line of his, her or its Lot and the paved area of any street, sidewalk, path or similar area (unless otherwise directed by the Board); and (c) any non-street public right-of-way or easement area adjacent to his, her or its Lot (unless otherwise directed by the Board); provided, however, that such Owner shall not be responsible for maintenance of any area over which: (i) the Association assumes the responsibility in writing; (ii) the Association has been given such responsibility by this Declaration; or (iii) Teton County or any other municipality or other governmental agency or entity having jurisdiction over such property assumes or has responsibility. For purposes of this Section 3.4, proper maintenance of Landscaping shall include, without limitation, removal and replacement of dead Landscaping, subject to the Project Documents. Lots numbered 15 through 18 are required to have sprinklers built within the landscaping to irrigate the surrounding landscaping. Teton County nor any other municipality or other governmental agency or entity assumes no responsibility for lost or damaged landscaping including all shrubs, trees, hedges, grass and plantings of every kind due to native wildlife.

3.5 Weed Control. The Association may implement and follow a program of noxious weed control which may address the control and elimination of Canadian Thistle and other undesirable weeds. The Association shall have the right to enter upon a Lot and conduct a weed control program within the area of such Lot lying outside the Building Envelope.

3.6 Private Water Systems and Wastewater Disposal. Each Residence shall be connected to a private water supply system (well) and a private sewage disposal system at the sole expense of the owner of the Lot and such system shall conform to all applicable standards of Teton County or any other regulatory agency. Owners may jointly develop common or shared wells and distribution systems or leach fields. No outdoor toilets shall be permitted, except for a one hundred eighty (180) day period during construction.

The locations of wells and leach fields are directed by the proximity of wastewater disposal sites on adjacent Lots in order to assure pure culinary water on each Lot. Sewage disposal systems shall conform to all applicable standards of Teton County and the State of Idaho.

3.7 Nuisances; Construction Activities. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, or other property, and no odors, loud noises or loud music shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon or adjacent to any Lot or other property so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Normal construction activities and parking in connection with the building of Improvements on a Lot or other property shall not be considered a nuisance or otherwise prohibited by this Declaration, but during construction periods, Lots and other property shall be kept in a neat and tidy condition, and no loud music shall be permitted. The Board in its sole discretion shall have the right to determine the existence of any such nuisance. The provisions of this Section shall not apply to construction activities of the Declarant.

3.8 Diseases and Insects. No Person shall permit any thing or condition to exist upon any Lot or other property which shall induce, breed or harbor infectious diseases or noxious insects.

3.9 Repair of Building. No Residence, building, structure or other Improvement on any Lot or other property shall be permitted to fall into disrepair and each such Residence, building, structure and other Improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any Residence, building, structure or other Improvement is damaged or destroyed, then, subject to the requirements of Section 3.2, such Residence, building, structure or other Improvement shall be immediately repaired or rebuilt or shall be demolished.

3.10 Antennas, Poles, Towers and Dishes. To the fullest extent permitted by law, no television, radio, shortwave, microwave, satellite or other antenna, pole, tower or dish shall be placed, constructed or maintained upon any Lot or other part of the Property unless such antenna, pole, tower or dish is fully and attractively screened or concealed so as not to be Visible From Neighboring Property, which means of screening or concealment shall be subject to the regulation of the Association. Notwithstanding the foregoing, the Board may adopt a rule or

regulation permitting an Owner or Occupant to install and maintain a flagpole upon the Owner's or Occupant's Lot, provided that the location and size of such flagpole (and the number and size of any flag(s) mounted thereon) may be regulated by the Board. Nothing in this Section shall be deemed to prohibit the Declarant from installing and maintaining flagpoles on, at or adjacent to model homes within the Project.

3.11 Mineral Exploration. No Lot or other property shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, gas, earth or any earth substance of any kind, except for the drilling, operation and maintenance of any testing, inspection or other water wells approved by the Board.

3.12 Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot or other property except in sanitary, wildlife proof, covered containers. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash or garbage shall be removed from Lots and other property and shall not be allowed to accumulate thereon. No outdoor incinerators shall be maintained on any Lot or other property.

3.13 Clothes Drying Facilities. No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on any Lot or other property so as to be Visible From Neighboring Property.

3.14 Utility Service. No lines, wires or other devices for the communication or transmission of electric current or power, including telephone, television and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot or other property unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures for emergency purposes or incident to the construction of buildings. Notwithstanding the foregoing, utility meters and related panels and similar equipment may be placed on outside building walls exposed to view from a street in order to comply with any requirements, regulations, orders, conditions or specifications of any public, quasi-public or private utility or any governmental agency or body, provided that reasonable efforts shall be made to avoid placing any such meter, panel or other equipment on the outside front wall of a residence or other building facing the street running directly in front of such residence.

3.15 Overhead Encroachments. No tree, shrub or planting of any kind on any Lot or other property shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, trail, path or pedestrian way from ground level to a height of eight (8) feet.

3.16 Health, Safety and Welfare. In the event additional uses, activities or facilities are deemed by the Board to be a nuisance or to adversely affect the health, safety or welfare of Owners and Occupants, the Board may make rules restricting or regulating their presence in the Project as part of the Association Rules.

3.17 Incidental Uses. The Board may approve uses of property which are incidental to the full enjoyment of the Owners and Occupants of such property. Such approval may be subject to such regulations, limitations and restrictions, including termination of the use, as the Board may wish to impose, in its sole discretion, for the benefit of the Project as a whole.

3.18 Residential Use and Trades or Businesses. All Lots and Residences shall be used, improved and devoted exclusively to residential use. No trade or business may be conducted on any Lot or in or from any Residence, except that an Owner or other Resident may conduct a business activity in a Residence so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residence; (b) the business activity conforms to all applicable zoning ordinances or requirements; (c) the business activity does not involve the door-to-door solicitation of Owners or other Residents in the Project; (d) the use of the Residence for trade or business shall in no way destroy or be incompatible with the residential character of the Residence or the surrounding neighborhood; (e) the trade or business shall be conducted only inside the Residence or inside an accessory building or garage, and shall not involve the viewing, purchase or taking delivery of goods or merchandise at, to, from or in any Residence; (f) the trade or business shall be conducted by a Resident(s) of the Residence; (g) no more than twenty percent (20%) of the total floor area of the Residence shall be used for trade or

business; (h) the Residence used for trade or business shall not be used as a storage facility for a business conducted elsewhere; (i) the volume of vehicular or pedestrian traffic or parking generated by such trade or business shall not result in congestion or be in excess of what is customary in a residential neighborhood; (j) a trade or business shall not utilize flammable liquids or hazardous materials in quantities not customary to a residential use; and (k) a trade or business shall not utilize large vehicles not customary to a residential use. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (i) such activity is engaged in full or part time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required for such activity. The leasing of a Residence by the Owner thereof shall not be considered a trade or business within the meaning of this Section.

3.19 Animals. Except as otherwise provided herein, no animal, livestock, poultry or fowl of any kind, other than a reasonable number of house pets, shall be maintained on or in any Lot and then only if they are kept or raised thereon solely as domestic pets and not for commercial purposes. No house pets shall be permitted to make an unreasonable amount of noise or create a nuisance or be permitted to harass wildlife. No structure for the care, housing or confinement of any pet shall be Visible From Neighboring Property. Notwithstanding the foregoing, no pets may be kept on or in any Lot which, in the opinion of the Board, result in an annoyance to other Owners, Occupants, and/or wildlife in the vicinity. All pets shall be leashed properly or restrained at all times. Persons walking any pet shall promptly and properly remove and dispose of the pet's waste. There shall be no open containers, feeders, or anything of the like in which to feed and/or attractive native wild animals or fowl of any kind placed, operated or maintained upon or adjacent to any Lot or structure. All livestock is prohibited from grazing along the creek or in the riparian habitat. Wildlife damage to landowner property is solely the responsibility of the landowner and landowners cannot file a claim against the Idaho Department of Fish and Game for wildlife damage to their property.

3.20 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot, except: (a) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures or other Improvements; and (b) that which Declarant or the Association may permit or require for the development, operation and maintenance of the Project.

3.21 Signs. No signs whatsoever which are Visible from Neighboring Property shall be erected or maintained on any Lot except:

3.21.1 Signs required by legal proceedings.

3.21.2 Residence identification signs.

3.21.3 Such construction job identification signs and subdivision identification signs which are in conformance with the requirements of Teton County or any municipality having jurisdiction over the property.

3.21.4 Temporary "Open House" signs indicating that a Residence is available for inspection by interested parties.

3.21.5 Temporary "for sale" signs.

3.22 Required Approvals for Further Property Restrictions. No applications for rezoning, variances or use permits, or for waivers of or modifications to existing variances, use permits, zoning stipulations or similar restrictions, shall be filed with any governmental authority or agency without the prior written approval of the Board, and then only if such proposed zoning, variance or use, or waiver or modification, is in compliance with this Declaration.

3.23 Vehicles. In general, all Vehicles (as defined below) must be parked, kept, maintained, stored, constructed, reconstructed or repaired only within a fully-enclosed garage, or in other areas on a Lot approved in writing by the Board (which approval may be conditioned upon the planting or construction of landscaping or other screening approved by the Board). For purposes of this Section, the term "Vehicles" includes cars, trucks and vans of all sizes, motorcycles, motorbikes, mopeds, mini-bikes, motor scooters, all-terrain vehicles, off-road vehicles, motor homes, recreational vehicles, trailers, travel trailers, tent trailers, camper shells, detached campers, boats, boat trailers, mobile homes, or other similar machinery or equipment, whether motorized or not, whether wheeled or not and whether or not in operating condition. Notwithstanding the foregoing: (a) up to 2 cars, vans or trucks having a capacity of 3/4 tons or less may be parked on driveways or other improved parking areas on a Lot so long as the same are in operating condition and are regularly used for transportation of passengers; (b) additional cars, vans or trucks having a capacity of 3/4 tons or less may be parked from time to time on driveways or other improved parking areas on a Lot to accommodate visitors or guests of the Owner or Occupant of that Lot (provided that the Board may adopt rules or regulations relating to the number or frequency of guest or visitor vehicle parking, if it determines, in its discretion, that such rules or regulations are necessary); (c) service, repair or delivery vehicles may be parked on a Lot, but only for the period reasonably required to effect the needed service, repair or delivery; and (d) a temporary construction trailer may be placed and maintained on a Lot in connection with construction of Improvements on that Lot. Except for emergency repairs, no Vehicle shall be repaired, constructed or reconstructed on the Property except within a fully-enclosed garage. No Vehicle shall be parked on any roadway or street within or adjacent to the Property for more than 24 consecutive hours.

3.24 Towing of Vehicles. The Board has the right, without notice, to have any Vehicle which is parked, kept, maintained, constructed, reconstructed or repaired in violation of the Project Documents towed away at the sole cost and expense of the owner of the Vehicle. Any expense incurred by the Association in connection with the towing of any Vehicle must be paid to the Association upon demand by the owner of the Vehicle. If the Vehicle is owned by an Owner or Occupant, any amounts payable to the Association will be secured by the Assessment Lien against that Owner's or Occupant's Lot, and the Association may enforce collection of those amounts in the same manner provided for in this Declaration for the collection of Assessments.

3.25 Snow Removal. Each Owner shall be responsible for removal of snow and ice from the driveways, walkways and sidewalks on or adjacent to such Owner's Lot. The Board shall be responsible for hiring an independent contractor for snow removal on all roads within the Project.

3.26 Variances. The Board may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article III if the Board determines in its discretion that: (a) a restriction would create an unreasonable hardship or burden on an Owner or Occupant or a change of circumstances since the recordation of this Declaration had rendered such restriction obsolete or unnecessary; and (b) the activity permitted under the variance will not have any substantial adverse effect on Owners and Occupants and is consistent with the high quality of life intended for Residents of the Project.

3.27 Change of Use of Common Area. Upon: (a) adoption of a resolution by the Board stating that in the Board's opinion the then present use of a designated part of the Common Area is no longer in the best interests of the Owners; and (b) the approval of such resolution by Association Members casting more than seventy-five percent (75%) of the votes entitled to be cast by Association Members who are present in person or by proxy at a meeting duly called for such purpose and who are entitled to use such Common Area under the terms of this Declaration, the Board shall have the power and right to change the use thereof (and in connection therewith, construct, reconstruct, alter or change the buildings, structures and improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided such new use shall be consistent with any zoning regulations restricting or limiting the use of the Common Area. This Section 3.27 shall not apply to, or be deemed to limit in any way, the right and power of the Association pursuant to Section 4.1.1 to grant easements over, under or through portions of the Common Area, or to dedicate portions of the Common Area to public, quasi-public or private utility companies, municipalities or other governmental agencies or entities, in connection with or at the time of development of property within or adjacent to the Project, where required or requested by any municipality or other governmental agency or entity, or any public, quasi-public or private utility company.

3.29 Natural Vegetation. No Residence, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct and/or interfere with the

natural growth or existence of native vegetation within the Common Area or for any Lot as shown on the site plans on file with the county or municipality in which the Project is located.

3.28Drainage. No Residence, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Project, or any part thereof, or for any Lot as shown on the drainage plans on file with the county or municipality in which the Project is located.

3.29Ponds. Ponds are located on certain of the Lots. The Association shall have the right to regulate the use, maintenance and upkeep of such ponds. No pesticides or dangerous chemicals shall be put in or allowed to enter in to these ponds. There are hereby created easements for ingress and egress across Lots with ponds to allow the Declarant, the Association, Teton County and any other municipality or other governmental agency or entity having jurisdiction over the Property, to access and withdraw water from the ponds for the purpose of fighting fires at the Project or in Teton County. Furthermore, Owners shall not be entitled to any compensation for water withdrawn from the ponds pursuant to this Section 3.29.

3.30Garages and Driveways. The interior of all garages shall be maintained in a neat, clean and sightly condition. Garages shall be used only for parking vehicles and storage, and shall not be used or converted for living or recreational activities. Garage doors shall be kept closed at all times except to the limited extent reasonably necessary to permit the entry or exit of vehicles or persons.

3.31Rooftop HVAC Equipment Prohibited. No heating, ventilating, air conditioning or evaporative cooling units or appurtenant equipment may be mounted, installed or maintained on the roof of any Residence or other building so as to be Visible from Neighboring Property.

3.32Basketball Goals or Play Structures. Basketball goals, backboards or similar structures or devices, swing sets or other play structures, may be placed or constructed on any Lot with the approval of the Board (including, without limitation, approval as to appearance and location).

3.33Tanks. No tanks of any kind (including tanks for the storage of fuel) shall be erected, placed or maintained on any Lot unless such tanks are buried underground. Nothing herein shall be deemed to prohibit use or storage upon any Lot of an aboveground propane or similar fuel tank with a capacity of ten (10) gallons or less used in connection with a normal residential gas barbecue, grill or fireplace or a spa or "hot tub," so long as any such tank either: (a) has a capacity of ten (10) gallons or less; or (b) is appropriately stored, used and/or screened, in accordance with the Association Rules or as otherwise approved by the Board, so as not to be Visible From Neighboring Property.

3.34Exterior Lighting. Exterior lighting fixtures shall be downcast ninety (90) degree cut off fixtures. Lights cast upwards towards walls or trees shall not be allowed on any site. All interior lights shall be designed to avoid emission of glare or unreasonable brightness from any window, door or other opening in the building. Exterior lighting, except downcast walkway and driveway lighting not more than three (3) feet above ground, shall not be used for extended periods, shall not be left on overnight and shall not be used unless the site is occupied. All building plans shall include specifications for both the general interior and specific exterior lighting plans and shall be subject to approval by the Board in its sole discretion.

3.35House Numbers. All Residence must have the Teton County assigned street address displayed on the Residence or elsewhere in clear view so as to facilitate immediate location of homes for fire, law enforcement or other emergencies.

3.36Declarant Exemption. Nothing contained in this Declaration shall be construed to prevent the construction, installation or maintenance by the Declarant, any Declarant Affiliate or any agents or contractors thereof, during the period of development, construction and sales on the Property, of Improvements, landscaping or

signs deemed necessary or convenient by the Declarant, in its sole discretion, to the development or sale of property within the Project.

ARTICLE IV

EASEMENTS

4.1 Owners' Easements of Enjoyment.

4.1.1 Subject to the rights and easements granted to the Declarant in Section 4.4, each Owner, and each Occupant of such Owner's Lot, shall have a non-exclusive right and easement of enjoyment in, to and over the Common Area, which right and easement shall be appurtenant to and shall pass with the title to each Lot, subject to the provisions of this Declaration including, without limitation, the following:

(a) Except as otherwise provided in this Declaration, no dedication, transfer, mortgage or encumbrance of all or any portion of the Common Area shall be effective unless approved by Owners representing two-thirds (2/3) of the votes of Association Members. Notwithstanding the preceding sentence or any other provision of this Declaration to the contrary, the Association shall have the right, without the consent of the Owners or any other Person (except Declarant, whose consent shall be required so long as Declarant owns any part of the Property), to dedicate portions of the Common Area to the public, or grant easements over, under or through portions of the Common Area to the public, to any municipal or other governmental agency or entity, or to any public, quasi-public or private utility company, for use as right-of-way, for utilities, public trails, for public landscape purposes and the like, as may be required or requested by the Teton County or any municipal or other governmental agency or entity having jurisdiction, or by a public, quasi-public or private utility company, in connection with or at the time of the development of portions of the Property.

(b) The Association shall have the right to regulate the use of the Common Area through the Association Rules and to prohibit access to such portions of the Common Area, such as landscaped right-of-ways, not intended for use by the Owners, Lessees or other Occupants.

(c) The Declarant and the Association shall each have the right to grant easements or licenses to other Persons for the construction of Improvements on the Common Area, and the Declarant and the Association shall each have the right to grant ingress and egress easements over the streets and roads in the Project to Persons who are not Association Members of the Association.

(d) The Declarant and the Association shall each have the right to convey certain portions of the Common Area to Owners of adjoining Lots in connection with the correction or adjustment of any boundary between Common Area and any one or more adjoining Lots; provided, however, that neither the Association nor the Declarant shall have the right to transfer or convey any portion of the Common Area upon which is situated any recreational facility unless approved by a vote of the Association Members pursuant to Subsection 4.1.1(a).

4.1.2 If a Lot is leased or rented by its Owner, the Occupants of such Lot shall have the right to use the Common Area during the term of the lease, and the Owner of such Lot shall have no right to use the Common Area until the termination or expiration of such lease.

4.1.3 The Board shall have the right to limit the number of guests and invitees who may use any recreational facilities located on the Common Area at any one time and may restrict the use of the recreational facilities by guests and invitees to certain specified times.

4.2 Utility Easement. There is hereby created an easement upon, across, over and under the Common Area, Lots and other property for reasonable ingress, egress, installation, replacement, repair or maintenance of all

utilities, including, but not limited to, gas, water, sewer, telephone, cable television and electricity. The primary utility easements are shown on the Plat. By virtue of this easement, it shall be expressly permissible for the providing utility company to install and maintain the necessary equipment on the Common Area, Lots (within the easement areas shown on the Plat) and other property but no sewers, electrical lines, water lines or other utility or service lines may be installed or located on the Common Area, Lots and other property except as initially designed, approved and/or constructed by the Declarant or as approved by the Board (and, in the case of a Lot, by the Owner of such Lot). If any utility company requests that a more specific easement be granted in its favor in substitution for the blanket easement hereby established with respect to the Common Area, the Association shall have the power and authority, without the need for any consent by the Owners or any other Person, to grant the more specific easement on such terms and conditions as the Board deems appropriate.

4.3 Easements for Ingress and Egress. There are hereby created easements for ingress and egress for pedestrian traffic over, through and across sidewalks, trails, paths, walks and lanes that from time to time may exist upon the Common Area. There is also created an easement for ingress and egress for pedestrian and vehicular traffic over, through and across such driveways and parking areas as from time to time may be paved and intended for such purposes. Such easements shall run in favor of and be for the benefit of the Owners and Occupants of the Lots, and their guests, families, tenants and invitees. There is also hereby created an easement upon, across and over the Common Area, private driveways and private parking areas within the Project for vehicular and pedestrian ingress and egress for police, fire, medical and other emergency vehicles and personnel. The Board shall have the right to relocate and/or reconfigure any and all such easements from time to time as it sees fit without the consent of any Owners (but subject to any necessary approvals of Teton County or any other governmental body or agency having jurisdiction thereover including in particular, but without limitation, the easements granted herein for police, fire, medical and other emergency vehicles and personnel).

4.4 Declarant Use and Easements.

4.4.1 The Declarant shall have the right and an easement (which, in its discretion, it may delegate to and/or share with one or more developers, upon and subject to such terms and conditions as the Declarant may deem appropriate) to maintain sales or leasing offices, management offices and models throughout the Project and to maintain one or more advertising signs on the Common Area with respect to the sale of Lots. The Declarant reserves the right (which, in its discretion, it may delegate to and/or share with one or more developers, upon and subject to such terms and conditions as the Declarant may deem appropriate) to place models and sales offices on any Lots or other property owned by the Declarant (or by such developer(s), as applicable) and on any portion of the Common Area in such number, of such size and in such locations as the Declarant deems appropriate.

4.4.2 The Declarant shall have the right and an easement on and over the Common Area to construct all Improvements the Declarant may deem necessary and to use the Common Area and any Lots and other property owned by the Declarant for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work respecting the Project and property.

4.4.3 The Declarant shall have the right and an easement upon, over and through the Common Area as may be reasonably necessary for the purpose of exercising the rights granted to or reserved by the Declarant in this Declaration.

4.5 Easement in Favor of Association. The Lots and Common Area are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

4.5.1 For inspection during reasonable hours of the Lots and Common Area in order to verify the performance by Owners or other Persons of all items of maintenance and repair for which they are responsible;

4.5.2 For inspection, maintenance, repair and replacement of portions of the Common Area accessible only from such Lots;

4.5.3 For correction of emergency conditions on one or more Lots or on portions of the Common Area accessible only from such Lots;

4.5.4 For the purpose of enabling the Association, the Board, or any other committees appointed by the Board to exercise and discharge during reasonable hours their respective rights, powers and duties under the Project Documents; and

4.5.5 For inspection during reasonable hours of the Lots and Common Area in order to verify that the Owners and Occupants, and their guests, tenants and invitees, are complying with the provisions of the Project Documents.

ARTICLE V

THE ASSOCIATION; ORGANIZATION; ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

5.1 Formation of Association. The Association shall be a nonprofit Idaho corporation charged with the duties and vested with the powers prescribed by law and set forth in the Articles, the Bylaws and this Declaration. In the event of any conflict or inconsistency between this Declaration and the Articles, Bylaws, Association Rules or Design Guidelines, this Declaration shall control.

5.2 Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. Unless the Project Documents specifically require the vote or written consent of the Association Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board. The Board may appoint various committees at its discretion. The Board may also appoint or engage a manager to be responsible for the day-to-day operation of the Association and the Common Area; the Board shall determine the compensation to be paid to any such manager. The initial number of directors on the Board shall be three (3) and, until Declarant no longer owns a Lot at the Project, all directors, unless Declarant otherwise agrees in writing, will be appointed by Declarant, subject to applicable Idaho law. If the Declarant relinquishes its right to appoint the directors of the Board, the Board at the time of such relinquishment or termination shall continue in office until the next special or annual meeting of Owners who shall then have authority to elect a new Board in accordance with the Bylaws. Moreover, the terms of the directors of the Board, the filling of Board vacancies and similar operational matters of the Board shall be conducted in accordance with the Bylaws.

5.3 Association Rules. The Board may, from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations pertaining to: (a) the management, operation and use of the Common Area including, but not limited to, any improvements situated upon the Common Area; (b) traffic and parking restrictions; (c) minimum standards for any maintenance of Common Areas and Lots within the Project; or (d) any other subject within the jurisdiction of the Association. In the event of any conflict or inconsistency between the provisions of this Declaration and the Association Rules, the provisions of this Declaration shall prevail.

5.4 Personal Liability. No member of the Board, or any other committee of the Association, no officer of the Association and no manager or other employee of the Association shall be personally liable to any Association Member, or to any other Person including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board or any member thereof, or any member thereof, the manager, any representative or employee of the Association, any officer of the Association or any member of any other committee of the Association; provided, however, the limitations set forth in this Section shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

5.5 Implied Rights. The Association may exercise any right or privilege given to the Association expressly by the Project Documents and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association by the Project Documents or reasonably necessary to effectuate any such right or privilege.

5.6 Membership in the Association. Every Owner of a Lot shall be an Association Member, and the Declarant shall be an Association Member so long as it owns any Lots in the Project. There shall be one (1) Association Membership for each Lot, which Association Membership shall be held jointly by all Owners of that Lot.

5.7 Votes in the Association.

5.7.1 Except as otherwise provided in Section 5.7.2, there shall be one (1) vote for each Lot.

5.7.2 Until the expiration or termination of the Period of Declarant Control, the Declarant shall be entitled to ten (10) votes for each Lot owned by the Declarant. After the expiration or termination of the Period of Declarant Control, the Declarant shall have one (1) vote for each Lot owned by the Declarant.

5.8 Voting Procedures. A change in the ownership of a Lot shall be effective for voting purposes from the time the deed or other instrument effecting such change is Recorded and the Board receives written notice of such change, with satisfactory evidence thereof. The vote for each Lot must be cast as a whole, and fractional votes shall not be allowed. In the event that a Lot is owned by more than one Person and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Association Member casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he, she or it was acting with the authority and consent of all other Owners of the same Lot unless objection thereto is made at the time the vote is cast. In the event more than one Owner attempts to cast the vote or votes for a particular Lot, the vote or votes for that Lot shall be deemed void and shall not be counted.

5.9 Transfer of Association Membership. The rights and obligations of any Association Member other than the Declarant shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Lot, and then only to the transferee of ownership of the Lot. A transfer of ownership of a Lot may be effected by deed, intestate succession, testamentary disposition, foreclosure or such other legal process as is now in effect or as may hereafter be established under or pursuant to applicable law. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership of a Lot shall operate to transfer the Association Membership appurtenant to said Lot to the new Owner thereof. Each Purchaser of a Lot shall notify the Association of his, her or its purchase of a Lot.

ARTICLE VI

COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

6.1 Creation of Lien and Personal Obligation of Assessments. The Declarant, for each Lot, hereby covenants and agrees, and each Owner, other than the Declarant, by becoming the Owner of a Lot, is deemed to covenant and agree, to pay Assessments to the Association in accordance with this Declaration. All Assessments shall be established and collected as provided in this Declaration. The Assessments, together with interest, late charges and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made. Each Assessment, together with interest and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall also be the personal obligation of each Person who was an Owner of the Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them (unless title is transferred to one or more such successors for purposes of avoiding payment of any Assessment or is transferred to a Person controlling, controlled by or under common control with the Owner transferring title), but the lien created by this Declaration against the applicable Lot shall continue to secure payment of such delinquent Assessment (including, but not limited to, any and all interests and late charges) until the same are fully paid.

6.2 Annual Assessment. In order to provide for the operation and management of the Association and to provide funds for the Association to pay all Common Expenses and to perform its duties and obligations under the Project Documents, including, without limitation, the establishment of reasonable reserves for replacements,

maintenance and contingencies, the Board, for each fiscal year, shall assess an Annual Assessment against each Lot. Annual Assessments shall be computed and assessed against all Lots in the Project as follows:

6.2.1 Annual Assessments shall be determined and levied on the basis of a fiscal year beginning January 1 and ending December 31 ("Assessment Period"). The first fiscal year shall begin on the date of this Declaration and end on December 31 of the same year. Subsequently, the Board in its sole discretion from time to time may change the Assessment Period. The Board shall prepare and furnish to each Owner, or cause to be prepared and furnished to each Owner, an operating budget for the upcoming fiscal year. The budget shall itemize the estimated Common Expenses for such fiscal year, anticipated receipts (if any) and any deficit or surplus from the prior operating fiscal year. The budget shall serve as the supporting document for the Annual Assessment for the upcoming fiscal year and as the major guideline under which the Project shall be operated during such fiscal year.

6.2.2 Beginning with the 2007 Assessment Period, the Board shall give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give prior notice shall not affect the validity of the Annual Assessment established by the Board nor relieve any Owner from its obligation to pay the Annual Assessment. If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are, or will become, inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessments by Association Members, it may increase the Annual Assessment for that Assessment Period and the revised Annual Assessment shall commence on the date designated by the Board.

6.2.3 The amount of any Annual or Special Assessment against each Lot shall be fixed at a uniform rate per Lot. Annual Assessments may be collected on an annual, monthly or other basis and Special Assessments may be collected as specified by the Board unless otherwise determined by the resolution of the Members of the Association approving the Special Assessment.

6.2.4 Notwithstanding any other provision of this Declaration to the contrary, no Annual Assessment shall be levied against Lots owned by the Declarant. During the Period of Declarant Control, the Declarant shall subsidize the Association for the amount by which the cost of operating and administering the Association and maintaining reasonable reserves for maintenance, replacement and repairs and for contingencies exceeds the total amount of Assessments levied against Lots owned by Owners other than the Declarant. The subsidy required of Declarant under this paragraph may be in the form of cash or in the form of "in-kind" contributions of goods or services, or in any combination of the foregoing, and any subsidies made by Declarant in the form of "in-kind" contributions of goods or services shall be valued at the fair market value of the goods or services contributed. Declarant shall make payments or contributions in respect of its subsidy obligations under this paragraph at such times as the Board may reasonably request from time to time (but shall not be required to make such payments or contributions more often than monthly). At the end of each fiscal year of the Association, either: (a) Declarant shall pay or contribute to the Association such additional funds, goods or services (or any combination thereof) as may be necessary, when added to all other funds, goods and services paid or contributed by Declarant during such fiscal year, to satisfy in full Declarant's subsidy obligations under this paragraph for such fiscal year; or (b) the Association shall pay to Declarant or credit against Declarant's subsidy obligation for the immediately following fiscal year, as Declarant may elect, the amount, if any, by which the total of all payments or contributions paid or made by Declarant during such fiscal year exceeded the total subsidy obligation of Declarant for such fiscal year under this paragraph.

6.2.5 If the rate of assessment for any Lot changes during any Assessment Period, the Annual Assessment attributable to such Lot shall be prorated between the applicable rates upon the basis of the number of days in the Assessment Period that the Lot was assessed under each rate.

6.3 Special Assessments. The Association may levy against each Lot in any Assessment Period, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of Improvements upon the Common Area, including fixtures and personal property related thereto, and for other purposes deemed necessary and appropriate by the Board, provided that any Special

Assessment shall have the assent of two thirds (2/3) of the votes entitled to be cast by Association Members who are voting in person or by proxy at a meeting duly called for such purpose. Alternatively, such consent may be obtained by written ballot without a meeting.

6.4 Rules Regarding Billing and Collection Procedures. Annual Assessments shall be collected on an annual or other basis as may be selected by the Board. Special Assessments may be collected as specified by the Board. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments provided that the procedures are not inconsistent with the provisions of this Declaration. The failure of the Association to send a bill to an Association Member shall not relieve any Association Member of his, her or its liability for any Assessment or charge under this Declaration, but the Assessment Lien therefore shall not be foreclosed or otherwise enforced until the Association Member has been given not less than thirty (30) days written notice prior to such foreclosure or enforcement that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an Assessment Period; successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

6.5 Effect of Nonpayment of Assessments; Remedies of the Association.

6.5.1 Any Assessment, or any installment of an Assessment, not paid within thirty (30) days after the Assessment, or the installment of the Assessment, first became due shall bear interest from the due date at the rate established from time to time by the Board. In addition, the Board may establish a late fee to be charged to any Owner who has not paid any Assessment, or any installment of an Assessment, within thirty (30) days after such payment was due.

6.5.2 Subject to applicable Idaho law, the Association shall have a lien on each Lot for all Assessments levied against the Lot and for all other fees and charges payable to the Association by the Owner of the Lot pursuant to this Declaration. Recording of this Declaration constitutes record notice and perfection of the Assessment Lien. The Association may, at its option, Record a notice of lien setting forth the name of the delinquent Owner as shown in the records of the Association, the legal description and street address of the Lot against which the notice of lien is Recorded and the amount claimed to be past due as of the date of the Recording of the notice, including interest, lien recording fees and reasonable attorneys' fees.

6.5.3 The Assessment Lien shall have priority over all liens or claims except for (a) tax liens for real property taxes; (b) assessments in favor of any municipal or other governmental body or assessment district; and (c) the lien of any First Mortgage.

6.5.4 The Association shall not be obligated to release any Recorded notice of lien until all delinquent Assessments, interest, late fees, lien fees, reasonable attorneys' fees, court costs, collection costs and all other sums payable to the Association by the Owner of the Lot have been paid in full.

6.5.5 The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, lien fees, reasonable attorneys' fees, costs and any other sums due to the Association in any manner allowed by law including, but not limited to: (a) bringing an action at law against the Owner personally obligated to pay the delinquent Assessments and such action may be brought without waiving the Assessment Lien securing the delinquent Assessments; or (b) enforce the Assessment Lien against the applicable Lot by sale or foreclosure conducted in accordance with the provisions of Idaho law applicable to the exercise of powers of sale or judicial foreclosure of deeds of trust or mortgages or in any other manner permitted by law. The Association and each Owner hereby appoints First American Title Company as trustee for the purpose of exercising the power of sale in connection with any non-judicial foreclosures as provided in the Act; provided, however, the Association reserves the right to substitute and appoint a successor trustee as provided for in the Act. Each Owner hereby conveys all of its right, title and interest in its Lot and Residence to such trustee, in trust, with a power of sale, for the sole purpose of securing each Owner's obligations under the Declaration, including but not limited to the obligation to pay all Common Assessments. In any such foreclosure, the Owner of the Lot being foreclosed shall be required

to pay the costs and expenses of such proceeding (including reasonable trustee's and attorneys' fees), and such costs and expenses shall be secured by the lien being foreclosed. The Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

6.5.6 By acceptance of the deed or other instrument of transfer of a Lot, each Owner irrevocably waives the homestead exemption provided by Title 55, Chapter 10, Idaho Code, as amended.

6.6 Evidence of Payment of Assessments. Upon receipt of a written request by an Association Member or any other Person, the Association, within a reasonable period of time thereafter, shall issue to such Association Member or other Person a written certificate stating: (a) that all Assessments, interest and other fees and charges have been paid with respect to any specified Lot as of the date of such certificate; or (b) if all Assessments have not been paid, the amount of such Assessments, interest, fees and charges due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matters therein stated as against any bona fide Purchaser of, or lender on, the Lot in question.

6.7 Purposes for Which Association's Funds May be Used. The Association shall apply all funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of the Project, and the Owners and Occupants, by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without the Project, which may be necessary, desirable or beneficial to the general common interests of the Project, the Owners and the Occupants, and to the establishment and funding of reasonable reserves for replacements and contingencies. The following are some, but not all, of the areas in which the Association may seek to aid, promote and provide for such common benefit: social interaction among Association Members and Occupants, maintenance of landscaping on Common Area and public right-of-way and drainage areas within the Project, construction, operation and maintenance of recreational and other facilities on Common Area, recreation, insurance, communications, health, utilities, public services, safety, indemnification of officers, directors and committee members of the Association, employment of professional managers, and hiring professional consultants such as architects, engineers, attorneys and accountants.

6.8 Surplus Funds. The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for reserves, and for the greater financial security of the Association and the accomplishment of its purposes.

ARTICLE VII

MAINTENANCE

7.1 Common Area and Public Right of Way.

7.1.1 The Association, or its duly delegated representative, shall manage, maintain, repair and replace the Common Area and all Improvements located thereon, except the Association shall not be obligated to maintain areas which any governmental entity or any utility company is maintaining or is obligated to maintain.

7.1.2 The Board shall be the sole judge as to the appropriate maintenance of all Common Area and other properties maintained by the Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of said properties shall be taken by the Board or by its duly delegated representative.

7.2 Lots and Residences. Each Owner shall be responsible for maintaining, repairing or replacing all buildings, Residences, landscaping or other Improvements situated on its Lot. All buildings, Residences, landscaping and other Improvements shall at all times be kept in good condition and repair. Landscaping shall be maintained as required by Section 3.4. All Lots upon which no Residences have been constructed shall be maintained in an attractive manner, with grass and weeds regularly trimmed to reduce fire hazards and improve appearance.

7.3 Installation of Landscaping. The Owner of a Lot shall install (if not already installed) grass, trees, plants and other landscaping improvements on such Lot (together with an irrigation system sufficient to adequately water any grass, trees, plants and other landscaping improvements) no later than twelve (12) months after the date on which a certificate of occupancy is issued with respect to the Residence on that Lot. If landscaping and an irrigation system are not installed on a Lot in the manner and by the applicable date provided for in this Section, the Association shall have the right, but not the obligation, to enter upon such Lot to install such landscaping improvements as the Association deems appropriate (together with an irrigation system sufficient to adequately water the same), and the cost of any such installation shall be paid to the Association by the Owner of the Lot, upon demand from the Association. Any amounts payable by an Owner to the Association pursuant to this Section shall be secured by the Assessment Lien and the Association may enforce collection of such amounts in the same manner and to the same extent as provided elsewhere in this Declaration for the collection and enforcement of Assessments.

7.4 Assessment of Certain Costs of Maintenance and Repair. In the event that the need for maintenance or repair of the Common Area or any other area maintained by the Association is caused through the willful or negligent act of any Association Member, his or her family, tenants, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Association Member and the Association Member's Lot is subject and shall be secured by the Assessment Lien. Any charges or fees to be paid by the Owner of a Lot pursuant to this Section in connection with a contract entered into by the Association with an Owner for the performance of an Owner's maintenance responsibilities shall also become a part of such Assessment and shall be secured by the Assessment Lien.

7.5 Improper Maintenance and Use of Lots. In the event any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Project which are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner which violates this Declaration or in the event the Owner of any Lot is failing to perform any of its obligations under the Project Documents, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said 14-day period the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be added to and become a part of the Assessment to which the offending Owner and the Owner's Lot is subject and shall be secured by the Assessment Lien.

7.6 Fences. Fences (other than common fences) located on a Lot shall be maintained, repaired and replaced by the Owner of the Lot. The rights and duties of Owners of Lots with respect to common fences shall be determined by applicable statute or common law. Any fence which is placed on the boundary line between a Lot and the Common Area shall be maintained, repaired and replaced by the Owner of the Lot. In the event any common fence encroaches upon a Lot or the Common Area, a valid easement for such encroachment and for the maintenance of the common fence shall and does exist in favor of the Owners of the Lots which share such common fence.

ARTICLE VIII

INSURANCE

8.1 Scope of Coverage. Commencing not later than the time of the first conveyance of a Lot to a Purchaser, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

8.1.1 If there are insurable improvements to the Common Area, property insurance on the Common Area shall be obtained insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Common Area, as determined by the Board; provided however, that the total amount of insurance shall not be less than one hundred percent (100%) of the current replacement cost of the insured property (less reasonable deductibles), exclusive of the land, excavations, foundations and other items normally excluded from a property policy;

8.1.2 Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Area and other portions of the Project which the Association is obligated to maintain under this Declaration, and shall also include hired automobile and non-owned automobile coverage's with cost liability endorsements to cover liabilities of the Owners as a group to an Owner;

8.1.3 Worker's compensation insurance to the extent necessary to meet the requirements of applicable law;

8.1.4 Such other insurance as the Board shall determine from time to time to be appropriate to protect the Association or the Owners;

8.1.5 Each insurance policy purchased by the Association shall, to the extent reasonably available, contain the following provisions:

(a) The insurer issuing such policy shall have no rights of subrogation with respect to claims against the Association or its agents, servants or employees, or with respect to claims against Owners or Occupants;

(b) No act or omission by any Owner, unless acting within the scope of his, her or its authority on behalf of the Association, will void the policy or adversely affect recovery on the policy;

(c) The coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners, Occupants or Mortgagees;

(d) A "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner or Occupant because of the negligent acts of the Association or other Owners or Occupants;

(e) A statement naming the Association as the insured; and

(f) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify any Mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.

8.2 Certificates of Insurance. An insurer which has issued an insurance policy under this Article shall issue a certificate or a memorandum of insurance to the Association and, upon request, to any Owner or Mortgagee. Any insurance obtained pursuant to this Article shall not be canceled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association and to each Owner and each Mortgagee to whom certificates of insurance have been issued.

8.3 Payment of Premiums. The premiums for any insurance obtained by the Association pursuant to this Declaration shall be included in the budget of the Association and shall be paid by the Association.

8.4 Payment of Insurance Proceeds. With respect to any loss to the Common Area covered by property insurance obtained by the Association, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any Mortgagee. Subject to the provisions of Section 8.5, the proceeds shall be disbursed for the repair or restoration of the damage to the Common Area.

8.5 Repair and Replacement of Damaged or Destroyed Property. Any portion of the Common Area which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (a) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (b) Owners representing at least eighty percent (80%) of the total votes in the Association vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If the entire Common Area is not repaired or replaced, insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall either be: (i) retained by the Association as an additional capital reserve; or (ii) used for payment of operating expenses of the Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of Association Members representing more than fifty percent (50%) of the votes in the Association.

ARTICLE IX

GENERAL PROVISIONS

9.1 Enforcement. The Association or any Owner shall have the right to enforce the Project Documents.

9.2 Term; Method of Termination. Unless terminated in accordance with this Section, this Declaration (as amended from time to time pursuant to the provisions of this Declaration, if applicable) shall continue in full force and effect for a term of fifty (50) years from the date this Declaration is Recorded, after which time this Declaration shall be automatically extended for successive periods of ten (10) years each. This Declaration may be terminated at any time if such termination is approved by the affirmative vote or written consent, or any combination thereof, of Association Members holding eighty percent (80%) or more of the votes in the Association. If the necessary votes and consents are obtained, the Board shall cause to be Recorded a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to applicable law.

9.3 Amendments.

9.3.1 Except for amendments made pursuant to Subsections 9.3.2 or 9.3.3 of this Declaration, this Declaration may only be amended by the written approval or the affirmative vote, or any combination thereof, of Association Members holding not less than sixty-seven percent (67%) of the votes in the Association.

9.3.2 Either the Board or the Declarant may amend this Declaration, without obtaining the approval or consent of any Owner, Mortgagee or other Person, in order to conform this Declaration to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency whose approval of the Project or the Project Documents is required by law or requested by the Declarant.

9.3.3 Throughout the Period of Declarant Control, the Declarant may amend this Declaration without the consent or approval of any other Owner or other Person.

9.3.4 So long as the Declarant or any Declarant Affiliate owns any Lot or other portion of the Property, no amendment to this Declaration shall be effective unless approved in writing by the Declarant (or unless the Declarant expressly waives in writing its right to approve such amendments).

9.3.5 Any amendment approved pursuant to Subsection 9.3.1 of this Declaration or by the Board pursuant to Subsection 9.3.2 of this Declaration shall be signed by the President or Vice President of the Association and shall be Recorded. Any such amendment shall certify that the amendment has been approved as required by this Section. Any amendment made by the Declarant pursuant to Subsections 9.3.2 or 9.3.3 of this Declaration shall be executed by the Declarant and shall be Recorded.

9.4 Interpretation. Except for judicial construction, the Board shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Board's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefited or bound by this Declaration.

9.5 Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

9.6 Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of the person holding the office of President of the United States on the date this Declaration is Recorded.

9.7 Change of Circumstances. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

9.8 Rules and Regulations. In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Association shall have the right to adopt, as part of the Association Rules, additional rules and regulations with respect to any other aspects of the Association's rights, activities and duties, provided said additional rules and regulations are not inconsistent with the provisions of the other Project Documents.

9.9 Laws, Ordinances and Regulations.

9.9.1 The covenants, conditions and restrictions set forth in this Declaration and the provisions requiring Owners and other Persons to obtain the approval of the Board or with respect to certain actions are independent of the obligation of the Owners and other Persons to comply with all applicable laws, ordinances and regulations, and compliance with this Declaration shall not relieve an Owner or any other Person from the obligation also to comply with all applicable laws, ordinances and regulations.

9.9.2 Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Project is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement proceedings set forth herein.

9.10 References to this Declaration in Deeds. Deeds to and instruments affecting any Lot or any other part of the Project may contain the covenants, conditions and restrictions herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any deed or instrument, each and all of the provisions of this Declaration shall be binding upon the grantee-Owner or other Person claiming through any instrument and his, her or its heirs, executors, administrators, successors and assigns.

9.11 Gender and Number. Wherever the context of this Declaration so requires, any word used in the masculine, feminine or neuter genders shall include each of the other genders, words in the singular shall include the plural, and words in the plural shall include the singular.

9.12 Captions and Title; Section References; Exhibits. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the meaning or intent thereof.

References in this Declaration to numbered Articles, Sections or Subsections, or to lettered Exhibits, shall be deemed to be references to those paragraphs or Exhibits so numbered or lettered in this Declaration, unless the context otherwise requires. Any Exhibits referred to in this Declaration are hereby incorporated herein by reference and fully made a part hereof.

9.13 Notices. If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, the Project Documents or resolution of the Board to be given to any Owner, Lessee or Resident then, unless otherwise specified in the Project Documents or in the resolution of the Board, or unless otherwise required by law, such notice requirement shall be deemed satisfied if notice of such action, proposed action or meeting is: (a) sent by United States mail to the last known mailing address of the Owner, Lessee or Resident (as applicable), as shown in the records of the Association; or (b) if no such mailing address is reflected on the records of the Association, then sent by United States mail to the mailing address of the Lot (as applicable) if, at the time, there is a Residence situated thereon; or (c) if there is no such mailing address reflected in the records of the Association and there is then no Residence situated on the applicable Lot, then sent or given in whatever reasonable manner the Board may elect, which may include, without limitation, publishing the same in any newspaper in general circulation within Teton County, Idaho. This Section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other reasonable and appropriate manner.

9.14 Indemnification. The Association shall indemnify each and every officer and director of the Association, and each and every member of any committee appointed by the Board (including, for purposes of this Section, former officers and directors of the Association, and former members of committees appointed by the Board) (collectively, "Association Officials" and individually an "Association Official") against any and all expenses, including attorneys' fees, reasonably incurred by or imposed upon an Association Official in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the Board serving at the time of such settlement) to which he or she may be a party by reason of being or having been an Association Official, except for his or her own individual willful misfeasance, malfeasance, misconduct or bad faith. No Association Official shall have any personal liability with respect to any contract or other commitment made by them or action taken by them, in good faith, on behalf of the Association (except indirectly to the extent that such Association Official may also be an Association Member of the Association and therefore subject to Assessments hereunder to fund a liability of the Association), and the Association shall indemnify and forever hold each such Association Official free and harmless from and against any and all liability to others on account of any such contract, commitment or action. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any Association Official may be entitled. If the Board deems it appropriate, in its sole discretion, the Association may advance funds to or for the benefit of any Association Official who may be entitled to indemnification hereunder to enable such Association Official to meet on-going costs and expenses of defending himself or herself in any action or proceeding brought against such Association Official by reason of his or her being, or having been, an Association Official. In the event it is ultimately determined that an Association Official to whom, or for whose benefit, funds were advanced pursuant to the preceding sentence does not qualify for indemnification pursuant to this Section 9.14 or otherwise under the Articles, Bylaws or applicable law, such Association Official shall promptly upon demand repay to the Association the total of such funds advanced by the Association to him or her, or for his or her benefit, with interest (should the Board so elect) at a rate not to exceed ten percent (10%) per annum from the date(s) advanced until paid.

9.15 No Partition. No Person acquiring any interest in the Property or any part thereof shall have a right to, nor shall any person seek, any judicial partition of the Common Area, nor shall any Owner sell, convey, transfer, assign, hypothecate or otherwise alienate all or any of such Owner's interest in the Common Area or any funds or other assets of the Association except in connection with the sale, conveyance or hypothecation of such Owner's Lot (and only appurtenant thereto), or except as otherwise expressly permitted herein. This Section shall not be construed to prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring or disposing of title to real property (other than disposition of title to the Common Area, which is subject to Section 4.1) which may or may not be subject to this Declaration.

9.16 Number of Days. In computing the number of days for purposes of any provision of this Declaration or the Articles or Bylaws, all days shall be counted including Saturdays, Sundays and holidays; provided however,

that if the final day of any time period falls on a Saturday, Sunday or legal holiday, then the final day shall be deemed to be the next day which is not a Saturday, Sunday or legal holiday.

9.17 Notice of Violation. The Association shall have the right to Record a written notice of a violation by any Owner or Occupant of any restriction or provision of the Project Documents. The notice shall be executed and acknowledged by an officer of the Association and shall contain substantially the following information: (a) the name of the Owner or Occupant; (b) the legal description of the Lot against which the notice is being Recorded; (c) a brief description of the nature of the violation; (d) a statement that the notice is being Recorded by the Association pursuant to this Declaration; and (e) a statement of the specific steps which must be taken by the Owner or Occupant to cure the violation. Recordation of a notice of violation shall serve as a notice to the Owner and Occupant, and to any subsequent purchaser of the Lot, that there is such a violation. If, after the Recordation of such notice, it is determined by the Association that the violation referred to in the notice does not exist or that the violation referred to in the notice has been cured, the Association shall Record a notice of compliance which shall state the legal description of the Lot against which the notice of violation was recorded, the Recording data of the notice of violation, and shall state that the violation referred to in the notice of violation has been cured or, if such be the case, that it did not exist. Notwithstanding the foregoing, failure by the Association to Record a notice of violation shall not constitute a waiver of any existing violation or evidence that no violation exists.

9.18 Disclaimer of Representations. Notwithstanding anything to the contrary herein, neither the Declarant nor any Declarant Affiliate makes any warranties or representations whatsoever that the plans presently envisioned for the complete development of the Project can or will be carried out, or that any real property now owned or hereafter acquired by the Declarant or by any Declarant Affiliate is or will be subjected to this Declaration, or that any such real property (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such real property is once used for a particular use, such use will continue in effect. While neither the Declarant nor any Declarant Affiliate believes that any of the restrictive covenants contained in this Declaration is or may be invalid or unenforceable for any reason or to any extent, neither the Declarant nor any Declarant Affiliate makes any warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by accepting a deed to the Lot agrees to hold the Declarant and all Declarant Affiliates harmless therefrom.

9.19 Amendments Affecting Declarant Rights. Notwithstanding any other provision of this Declaration to the contrary, no provision of this Declaration (including but not limited to, this Section) which grants to or confers upon the Declarant or upon any Declarant Affiliate any rights, privileges, easements, benefits or exemptions (except for rights, privileges, easements, benefits, or exemptions granted to or conferred upon Owners generally) shall be modified, amended or revoked in any way, so long as the Declarant, any Declarant Affiliate or a trustee for the benefit of the Declarant or any Declarant Affiliate owns any portion of the Property, without the express written consent of the Declarant.

[Signature on Following Page]

EXHIBIT A

Description of the Property

