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TETON CO., ID  
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**155797**

**Instrument # 155797**

DRIGGS, TETON, IDAHO  
2003-07-03 11:16:01 No. of Pages: 22  
Recorded for: FIRST AMERICAN TITLE  
NOLAN G. BOYLE Fee: 66.00  
Ex-Officio Recorder Deputy *N. Boyle*  
Index to: DECLARATION OF COVENANTS

**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR TRAIL CREEK SPRINGS**

THIS DECLARATION is made as of the 3 day of July, 2003, by KINCAID CONSTRUCTION, INCORPORATED, an Idaho corporation, and ROBERT F. KINCAID, collectively as the Declarant.

**RECITALS:**

A. The Declarant is the owner of certain real property located in Teton County, Idaho, which is generally described as Trail Creek Springs.

B. The Property is subject to that certain Declaration of Covenants, Conditions and Restrictions for Trail Creek Springs, dated April 23, 2003, and recorded April 23, 2003 as Instrument No. 154350 with the County Recorder of Teton County, Idaho (the "Original Declaration").

C. The Declarant has also recorded with the County Recorder of Teton County, Idaho, the Trail Creek Springs Planned Unit Development plat for the Property (the "Plat").

D. The Property contains high scenic and natural values, and Declarant is adopting these covenants, conditions and restrictions to preserve and maintain the character and value of the Property for the benefit of all existing and future owners of the Property, in conjunction with the residential development of the Property, as a first-class residential real estate project.

E. A portion of the Property consists of Lots used or to be used as sites for the construction of residential townhomes.

F. The Original Declaration is hereby amended and restated in its entirety, and the Property is hereby made subject to the covenants, conditions, restrictions, reservations, assessments, charges and liens contained or provided for in this Declaration, all of which shall be enforceable equitable servitudes and shall run with the land.

G. The Property shall generally be known as "Trail Creek Springs", and by such other or additional names as may be designated by the Declarant from time to time.

NOW, THEREFORE, the Declarant hereby declares that all of the Property shall be held, sold, conveyed, leased, transferred, used and occupied subject to the provisions of this

**155797**

Declaration, including the covenants, restrictions, reservations, assessments, regulations, charges and liens contained or provided for herein, which are for the purpose of protecting the value and desirability of the Property as a first-class residential real estate project, and which shall be construed as covenants of equitable servitude and shall run with the land and be binding on all parties having any right, title or interest in the Property or any part thereof, and their heirs, successors and assigns.

## ARTICLE I DEFINITIONS

Section 1. "Association" shall mean Trail Creek Springs Home Owners Association, Inc., an Idaho nonprofit corporation, and its successors and assigns.

Section 2. "Property" shall mean the real property located in Teton County, Idaho, particularly described as follows:

All property located within the boundaries of Trail Creek Springs Planned Unit Development as shown on the plat for such planned unit development recorded in the records of Teton County, Idaho, together with such additions and improvements thereto as may now be located on said real property or as may hereafter be conveyed or brought within the ownership or jurisdiction of the Association.

Section 3. "Lot" shall mean each of the residential townhome lots shown on the Plat as Lots 1 through 48.

Section 4. "Building" shall mean the residential townhomes constructed on any two (2) or more contiguous Lots as shown on the Plat.

Section 5. "Owner" or "Ownership" shall mean the record owner, whether one (1) or more persons and/or entities, of a fee simple title to each Lot, including contract buyers of record, but excluding mortgagees, contract sellers or others having such interest merely as security for the performance of an obligation unless and until said mortgagee or other holder of a security interest has acquired title to a Lot which is part of the Property pursuant to forfeiture, foreclosure or a proceeding in lieu thereof. An "Owner" shall mean all of the owners of a particular Lot collectively and shall be jointly regarded as a single Owner for purposes of this Declaration. Any owner of an equity interest of record in a Lot, and any

partner, officer or shareholder of an entity which is an Owner of record, may be treated by the Association as the representative of all the Ownership of such Lot for purposes of giving notices, voting and other matters.

Section 6. "Members" shall mean the Owners, as described in Article II hereof.

Section 7. "Declarant" shall mean Kincaid Construction, Incorporated, an Idaho corporation, and Robert F. Kincaid, and their successors and assigns as the developer of the Property.

Section 8. "Management Committee" shall mean the Board of Directors of the Association, as described in the articles of incorporation and bylaws of the Association and in this Declaration.

Section 9. "Common Areas and Facilities" shall mean any property (including walkways, lighting facilities, easements, improvements, water rights and irrigation facilities) acquired by the Association for the common use and enjoyment of all the Members of the Association. Generally, all utility pipes, lines or systems, roads and streets, walkways, custodial and maintenance buildings and other similar improvements owned by the Association shall be deemed to be Common Areas and Facilities and operated and maintained as such up to the point, if applicable, where the improvement or facility borders upon a residential Lot.

Section 10. "Common Improvements" shall mean the exterior roofing, siding and paint of the Buildings, the structural aspects of the roof and exterior walls of Buildings, the structural aspects of the common walls between the Lots, all hot tubs located on the Lots and all landscaping and other improvements located on the Lots and outside the Buildings. The foregoing to the contrary notwithstanding, the Common Improvements do not include the doors, windows or garage doors of the Lots which shall be maintained by the respective Lot Owners.

## ARTICLE II THE ASSOCIATION

Section 1. Membership. Every Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from Ownership of any Lot, and Ownership of a Lot shall be the sole qualification for membership. Each Ownership shall constitute one Member.

Section 2. Voting. Voting by Members of the Association upon any matter allowing or requiring a vote of Members shall be as follows: there shall be one (1) vote allowed for each Lot. If an Owner includes more than one (1) person and/or entity, the vote for said Member shall be cast in such manner as the persons and/or entities constituting the same shall determine, but the decision of the Management Committee as to the authority conferred upon one (1) or more Owners or other representatives by the Ownership in casting the one (1) vote of the Ownership shall be conclusive and binding.

Section 3. Management Committee.

(a) The administration of the Property on behalf of the Association shall be conducted by a board of directors, which is referred to herein as the Management Committee, consisting of five (5) natural persons (or such lesser number as may be determined by the Declarant pursuant to paragraph (f) below), who are not required to be Owners and shall not be required to be residents of the State of Idaho.

(b) At each annual meeting of the Association, subject to the provisions of paragraph (f) below, the Association shall elect members to fill any vacancies on the Management Committee.

(c) Each member of the Management Committee shall serve for a term equal to the number of members of the Management Committee. The terms of the members of the Management Committee shall be staggered terms, so that one (1) member is up for re-election each year. The members of the Management Committee shall serve until their respective successors are elected, or until their earlier death, resignation or removal. Any member of the Management Committee may resign at any time by giving written notice to the Association. Any member of the Management Committee may be removed from membership on the Management Committee by a two-thirds ( $\frac{2}{3}$ ) majority vote of a quorum of the Association. Whenever there shall occur a vacancy on the Management Committee due to death, resignation, removal or any other cause, the remaining members of the Management Committee shall appoint a successor member to serve until the next annual meeting of the Association, at which time said vacancy shall be filled by the Association for the unexpired term, if any. If no such successor is appointed due to a deadlock between the remaining Management Committee members, a special meeting of Members may be called by any Management Committee member to elect a successor.

(d) The members of the Management Committee shall receive no compensation for their services, other than reimbursement of expenses, unless expressly

approved by a majority of a quorum of the Association; provided, however, that any member of the Management Committee may be employed by the Association in another capacity and receive compensation for such employment.

(e) The Management Committee, for the benefit of the Property and the Association, shall manage the business, property and affairs of the Association and shall enforce the provisions of this Declaration, and may adopt rules and regulations (including without limitation schedules of fines for violations) governing the Property. The Management Committee shall have the powers, duties and responsibilities with respect to the Property as contained in Article III hereof and the other provisions of this Declaration and its articles of incorporation and bylaws, as well as any other applicable law.

(f) At any time until December 31, 2013, that Declarant is the Owner of at least sixteen (16) Lots, the Declarant shall have the option to appoint and remove all members of the Management Committee, to appoint and remove all officers of the Association, and to exercise the powers and responsibilities otherwise assigned by this Declaration to the Association. The initial membership of the Management Committee may be less than five (5), as determined by Declarant during the period referred to in the preceding sentence. Declarant shall have the option at any time, by an express written declaration, to turn over to the Association the total responsibility for electing and removing members of the Management Committee and the officers. No term of office of a Management Committee member or an Association officer or agent shall expire or otherwise be affected by the expiration of such period during which the Declarant may control the Association, and if the number of Management Committee members shall be less than five (5) at the end of such period, the vacancies may be filled in accordance with paragraph (c) above.

Section 4. Other Matters. The Association may adopt bylaws containing more detailed provisions governing the internal affairs of the Association, to the extent the Management Committee deems such bylaws to be consistent with this Declaration.

### ARTICLE III STATUS OF OWNERS; MANAGEMENT COMMITTEE

Section 1. Legal Status. The Owners do not constitute an association or entity of any kind, and the sole legal entity created hereunder is the Association. The name of the Association shall be the name in which contracts shall be entered into, title to property shall be acquired, held, dealt in and disposed of, bank accounts shall be opened and suit shall be

brought and defended by the Association, the Management Committee or officers thereof on behalf of and as agents for the Owners in the manner specified in this Declaration, the articles of incorporation, the bylaws, or by applicable law.

Section 2. Management of Association. The business, property and affairs of the Association shall be managed by a Management Committee as provided in this Declaration and its articles of incorporation and bylaws.

Section 3. Powers and Duties of Management Committee. The Management Committee, acting on behalf of the Association; shall have all the powers, duties and responsibilities which are now or may hereafter be provided by this Declaration, including but not limited to the following:

(a) To make and enforce all administrative rules and regulations and design guidelines covering the usage, operation and maintenance of the Property.

(b) To engage the services of a manager or managing company, accountants, attorneys or other employees or agents and to pay said persons a reasonable compensation for their services.

(c) To operate, maintain, repair, improve and replace the Common Areas and Facilities, including but not limited to road maintenance and snow removal and the entering into of agreements for use and maintenance of the Common Areas and Facilities and adjacent contiguous property for the benefit of the Association.

(d) To maintain, repair and replace the Common Improvements, including but not limited to the entering into of agreements for the maintenance, repair and replacement of the Common Improvements.

(e) To determine and pay Common Expenses and other expenses of the Association.

(f) To assess and collect the proportionate shares of Common Expenses and other applicable expenses from the Owners.

(g) To enter into contracts, deeds, leases, and/or other written instruments or documents and to authorize the execution and delivery thereof by the appropriate officers.

(h) To open bank accounts on behalf of the Association and to designate the signatures thereof.

(i) To purchase, hold, sell, convey, mortgage, or lease any one or more Lots in the name of the Association or its designee.

(j) To bring, prosecute and settle litigation for itself, the Association and the Property.

(k) As more particularly provided in Article VIII, to obtain casualty insurance on the Buildings, casualty and liability insurance for the Association with respect to the Common Areas and Facilities, and liability insurance for the Association's directors, officers and employees, as well as workmen's compensation insurance as needed.

(l) To repair or restore the Common Areas and Facilities, the Buildings and any property owned by the Association following damage or destruction or a permanent taking by a power in the nature of eminent domain or by an action or deed in lieu of condemnation.

(m) To own, purchase or lease, hold, sell or otherwise dispose of on behalf of the Owners, items of personal property necessary to or convenient in the management of the business and affairs of the Association and the Management Committee and in the administration, operation and maintenance of the Common Areas and Facilities, the Common Improvements and any property owned by the Association.

(n) To keep adequate books and records, which will be available to the Owners for inspection on a reasonable basis.

(o) To do all other acts necessary for the administration, operation and maintenance of the Common Areas and Facilities, the Common Improvements and any property owned by the Association, including the maintenance and repair of any improvements on the Common Areas and Facilities if the same is necessary or desirable to protect or preserve the Common Areas and Facilities and any property owned by the Association.

Section 4. Delegation of Powers. The Management Committee may delegate to a manager or managing company all of its foregoing powers, duties and responsibilities referred to in Section 3 above except: the final determination of common expenses, budgets,



and assessments based thereon; the promulgation of rules and regulations; the power to purchase, hold, sell, convey, mortgage, or lease any property in the name of the Association; or any other power, duty or responsibility nondelegable by law.

Section 5. Limited Liability of Management Committee, etc. Members of the Management Committee and their officers, assistant officers, agents and employees: (i) shall not be liable to the Owners as a result of their activities as such for any mistake of judgment, negligence or otherwise, except for their own willful misconduct or bad faith; (ii) shall have no personal liability in contract to an Owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the Association in their capacity as such; (iii) shall have no personal liability in tort to any Owner or any person or entity, except for their own willful misconduct or bad faith; (iv) shall have no personal liability arising out of the use, misuse or condition of the Property which might in any way be assessed against or imputed to them as a result of or by virtue of their capacity as such.

Section 6. Indemnification. The Association hereby indemnifies and holds harmless any person, their heirs and personal representatives from and against all personal liability and all expenses, including attorney's fees, incurred or imposed or arising out of or in settlement of any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, instituted by any one or more Owners or any other persons or entities to which he shall be or shall be threatened to be made a party by reason of the fact that he or she was a member of the Management Committee or an officer or assistant officer, member, attorney or manager of the Association, other than to the extent, if any, such liability or expense shall be attributable to his willful misconduct or bad faith; provided, further that in the case of any settlement that the Management Committee shall have approved, the indemnification shall apply only when the Management Committee approves the settlement as being in the best interests of the Association. Such right of indemnification shall not be deemed exclusive of any other rights to which such person may be entitled as a matter of law or agreement or vote of Owners or of the Management Committee or otherwise. The indemnification by the Owners as contained herein shall be paid by the Management Committee on behalf of the Owners and shall constitute a common expense and shall be assessed and collectable as such.

Section 7. No Amendment Without Consent. The provisions of Section 5 and Section 6 above may not be amended with any retroactive effect so as to limit the rights of any person otherwise entitled to the benefits thereof.

#### ARTICLE IV

8 Amended and Restated Declaration of Covenants, Conditions and Restrictions for Trail Creek Springs

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OWNERSHIP OF COMMON AREAS AND FACILITIES;  
ASSOCIATION EASEMENT

The Association, as a separate entity, shall own the Common Areas and Facilities. The Association shall have an easement to go upon the Lots for the purposes of installing, maintaining, repairing and replacing the Common Areas and Facilities. Notwithstanding that the Plat and this Declaration may contemplate that certain improvements will be made by Declarant to the Property as Common Areas and Facilities, Declarant shall, in its sole and absolute discretion, determine the timing and locations for and the extent of such improvements, and Declarant is not obligated to complete any such improvements until actual construction thereof has commenced.

ARTICLE V  
ASSESSMENTS

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

Section 1. Shares of Common Expenses. Each Owner of a Lot shall be responsible for an equal proportionate share of all General Common Expenses. Such "General Common Expenses" include the following services obtained by the Association: road maintenance and snow removal services, landscaping of Common Areas and Facilities, installation and maintenance of any Common Area walkways, installation and maintenance of Common Area facilities, and the cost of the administration of the Property (including accounting, legal, equipment, insurance, personnel and overhead), including without limitation the cost of casualty and liability insurance with respect to the Common Areas and Facilities and liability insurance covering the Association and its directors, officers and employees, as well as workmen's compensation insurance as needed. Each Owner of a Lot shall also be responsible for a proportionate share of all Building Common Expenses relating to the Building partially located on such Owner's Lot. Such "Building Common Expenses" include all expenses incurred by the Association for the maintenance, repair and replacement of the Common Improvements. The cost of any casualty insurance maintained by the Association on the Buildings shall be allocated either to the General Common Expenses or the Building Common Expenses, whichever is more equitable to the Owners as determined by the Management Committee in its sole and absolute discretion.

Section 2. Payment of Assessments; Lien Created. Assessments not paid on or before fifteen (15) days after the date due shall bear interest at the rate of eighteen percent (18%) per annum. The Management Committee may also impose a late charge of up to five percent (5%) of any amount remaining unpaid for fifteen (15) days or more. All payments on account shall be first applied to interest or other charges and then to the assessment payments in the order of when due (that is, the oldest unpaid amounts shall be paid first). All annual and special assessments, together with interest, late charges, reasonable attorney fees and all costs and expenses incurred by the Management Committee incident to the collection of such assessments, shall be a charge upon the Lot involved and shall be a continuing lien upon the Lot (including all improvements thereon) for which the assessment was made, as well as the personal obligation of each Owner, jointly and severally, who had any interest of record in or to such that at the time the assessment became due or at any time thereafter.

It is expressly understood and agreed that fines for any violations of this Declaration or the rules and regulations of the Management Committee may be assessed against a Lot and against an Owner, for violations by that Owner or by tenants or invitees.

Section 3. Rights to Collect from Tenant. If an Owner shall, at any time, lease their Lot and shall be in default for a period of one month or more in the payment of assessments or other charges, the Management Committee may, at its option, so long as such default shall continue, demand and receive from any tenant or subtenant of the Owner the rent due or becoming due, and the payment of such rent to the Management Committee shall discharge such tenant or subtenant from the obligation for rent to the Owner and the Owner from his obligation to the Association, to the extent of the amount so paid. The Management Committee shall be fully entitled to demand and receive a copy of the applicable lease agreement.

## ARTICLE VI

### PURPOSE OF THE PROPERTY, AND CERTAIN RESTRICTIONS ON USE

Section 1. General Purpose. The general purpose of this Declaration is to provide for the maintenance, administration and control of the Property as a first class residential community.

Section 2. No Further Subdividing. No Lot may be further subdivided, provided, however, that nothing herein shall prevent the transfer or sale of any Lot to more than one person to be held by them as tenants in common, joint tenants, tenants by the entirety or as community property.

Section 3. Use as Residences Only. The Lots may only be occupied and used for residential purposes, and for such incidental purposes as may be approved by the Management Committee. Each Lot shall be occupied in a manner consistent with all Association rules and regulations and design guidelines. Provided, however, notwithstanding anything in such rules and regulations to the contrary, (a) Owners may rent the residences on the Lots to third parties and the usage of the residences by such third party tenants shall be considered as occupancy and use for residential purposes and such usage by tenants under rental agreements with Owners shall not be deemed a violation of the covenants, conditions and restrictions set forth herein, or any rules and regulations of the Association; and (b) Owners may use the residences on the Lots for home businesses, provided that such use (i) occurs solely inside the residence, (ii) is not more than a de minimus use of the residence, (iii) has at most a negligible impact on the amount and character of traffic to the residence, and (iv) has been approved by the Management Committee.

Section 4. Use of Parking Facilities and Roadways; Storage. The Management Committee shall have full power and authority to regulate the parking and storage of cars and any and all motor homes, recreational vehicles, boats, bicycles, motorbikes, motorcycles, trailers and other similar vehicles and equipment, and to regulate the use of roadways by imposing and enforcing speed limits and other restrictions, all with full power and authority to impose and enforce (by special assessments hereunder or otherwise) fines and other penalties for violations of such regulations.

Section 5. Certain Additional Restrictions. The following additional restrictions are applicable to Lots. Each reference to "Owners" includes their tenants and invitees.

(a) Keeping Outside Areas Clean and Sightly. The Owners shall not place or store anything on porches or balconies or within the Common Areas and Facilities without the prior written consent of the Management Committee or its designee except in a facility specifically designated or approved for their storage. All Owners shall keep their residences and their Lots in a reasonably clean, safe, sightly and tidy condition, except for reasonable activities permitted by the Management Committee during the construction of an authorized improvement. Refuse, garbage and trash shall be kept at all times in a covered container, and such covered container shall be screened from view at all times.

(b) Obstructing Common Areas and Facilities. Owners shall not obstruct Common Areas and Facilities.

(c) No Fireworks. The discharge of firearms, firecrackers or fireworks is forbidden without the prior express written consent of the Management Committee.

(d) Signs and Lighting. No signs of any character shall be placed or maintained on any Lot, except:

- (1) one (1) sign advertising the premise for sale or rent, which sign shall not exceed six (6) square feet; and
- (2) one (1) sign identifying the name and/or address of the Lot, which sign shall not exceed two (2) square feet.

Flashing light signs shall not be permitted. Any light used to illuminate signs, parking areas or for any other purposes shall be so arranged as to reflect the light away from, and not be obtrusive to, other Lots and away from the vision of passing motorists.

(e) Animals. No animals of any kind shall be raised, bred or kept, except that dogs, cats, and other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose. No dogs will be allowed on the Property at any time unless they are actually owned by an Owner or the Owner's family or guest. Large dogs, dogs which are not kept strictly as house pets and dogs owned by tenants may be banned completely by the Management Committee at any time and from time to time. Dogs must be under the personal control of and supervised by an Owner or the Owner's family or guest at all times. Any unsupervised dogs on the Property at any time may be reported to and impounded by animal control authorities, and a release of such dogs may be conditioned upon the payment of a fine or penalty to the Association. Dogs may be walked only in portions of the Common Areas and Facilities that have been designated for such purpose by the Management Committee. Dogs must be kept away from all water ways and ponds. All owners of animals shall exercise such proper care and control of their animal or animals to prevent them from becoming a nuisance. "Nuisance" means any noisy animal, any vicious animal or any animal which destroys, or in any other manner injures clothing, garbage containers, gardens, flowerbeds, lawns, trees, shrubbery, or any other property within the Property. Molesting passersby, chasing vehicles, habitually attacking other animals, trespassing upon private property in such a manner as to damage property shall also be deemed a nuisance. "Noisy animal" means any animal which habitually, constantly or frequently barks or otherwise disturbs the sleep, peace, or quiet of any person. The

Association shall impose fines for the violation of this paragraph in the amount of \$50.00 for the first violation, \$100.00 for the second violation and \$300.00 for the third and each subsequent violation. The amount of such fines may be adjusted by the Management Committee from time to time.

(f) Limitations on Certain Activities. Owners shall not permit any obnoxious or offensive activity or nuisance to be carried on in or around their Lot or in the Common Areas and Facilities. No light shall be emitted or reflected from any Lot which is unreasonably bright or causes unreasonable glare for any adjacent Owner. No unreasonably loud or annoying noises, or noxious or offensive odors, shall be emitted from any Lot.

(g) No Hazardous Activities. No activities shall be conducted on the Property which are or might be unsafe or hazardous to any person or property.

(h) No Mining and Drilling. No property shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth.

(i) Utility Lines. All utility services, including but not limited to, phone lines, power lines, and water and sewer lines shall be located below ground.

(j) Antennas. There shall be no antennas of any sort either installed or maintained on the Property. The location and size of satellite dishes must be approved by the Management Committee.

(k) Clothes Lines. There shall be no clothes lines permitted on the Property, and all laundry shall be washed and dried inside each Owner's residence.

(l) Swimming. No swimming is permitted in any water ways and ponds located on the Property.

(m) Compliance with Rules and Regulations. Owners shall not violate any rules and regulations for the use of Common Areas and Facilities adopted by the Management Committee and furnished in writing to the Owners. Fines and other penalties for violations thereof may be imposed and enforced (by special assessment or otherwise) by the Management Committee for violations of such rules and regulations, and it is expressly understood that Owners may be held responsible for acts of their tenants and invitees. Any

Owner, tenant or invitee in violation of this Declaration or any related rules or regulations shall be subject to a fine equal to \$100.00 for each day that such violation remains uncured.

(n) Limitation of Owners' Use. Each Owner's right to the use of Common Areas and Facilities, shall be restricted to their personal family, tenants, and guests, with the right of the Management Committee to reasonably limit the number of guests which an Owner, tenant or lessee may invite to use such facilities.

(o) Declarant's Use During Construction and Sale. As part of Declarant's program of development of the Property and to encourage the marketing of Lots, Declarant shall have the right, during the construction and marketing period and as an aid for marketing, without charge, to the reasonable use of Common Areas and Facilities.

Section 6. Alteration of Improvements. No structure or improvement on the Property shall be altered, added to or reconstructed, and no such activities shall be commenced, until any such activity has been approved by the Management Committee in its sole and absolute discretion.

Section 7. Other Development and Use Restrictions. All development on and use of Lots shall conform to the following requirements:

(a) Provisions in Addition to Land Use Regulations. Conformity with any and all applicable land use regulations of the City of Victor and Teton County shall be required, in addition to the requirements of these covenants. In cases of any conflict, the more stringent requirements shall govern.

(b) Authorized Use. Only residential use shall be permitted on Lots, as provided in Section 3 above.

(c) Authorized Structures. No structure or improvement shall be constructed, placed or maintained on or under any Lot, except one townhome residence, garage facilities, and related underground utilities. The townhomes on the Lots shall be constructed in accordance with plans and specifications to be prepared by and pre-approved by the Declarant.

(d) Building Envelope. All improvements shall be constructed within the building envelope of a Lot as designated on the Plat by the broken line within each Lot. No development shall be permitted outside of the building envelope of a Lot, except for access

driveways, utility installations and landscaping activities by the Management Committee and other improvements for the benefit of the Association approved by the Management Committee.

(e) Temporary Structures Prohibited. No temporary structures, such as trailers, tents, shacks or other similar buildings shall be permitted on the Property, except during construction as authorized by the Management Committee.

(f) Wood burning Stoves. No wood burning stoves, fireplaces or inserts are permitted. The Management Committee has express authority to prescribe requirements and limitations applicable to any other stoves, fireplaces and inserts to be installed in any structure. All outdoor fires must be in pre-approved areas and containers that the Management Committee deems prudent. There will be no burning of trash under any circumstances.

## ARTICLE VII MAINTENANCE

The maintenance, alteration, replacement and repair of the Common Areas and Facilities shall be the responsibility of the Association. The Management Committee as part of its responsibility, shall maintain, repair and provide for snow removal and maintenance activities on all roadways constituting part of the Common Areas and Facilities. The maintenance, repair and replacement of the Common Improvements shall also be the responsibility of the Association.

## ARTICLE VIII INSURANCE

The Association shall maintain casualty insurance on the Buildings for the full replacement value thereof less a commercially reasonable deductible, and casualty and liability insurance for the Association with respect to the Common Areas and Facilities. The Association shall obtain such insurance policies from insurance companies licensed in the State of Idaho and on such terms and conditions as are approved by the Management Committee. Each Owner is solely responsible for obtaining their own casualty and liability insurance covering the contents of and any liability with respect to the use and occupancy of their Lot.



Anything in this Declaration to the contrary notwithstanding, the Association may at any time elect not to obtain and maintain casualty insurance on the Buildings and to require the Owners to obtain and maintain casualty insurance on the Buildings, in which case each Owner shall obtain and maintain casualty insurance on such Owner's Lot for the full replacement value thereof, including the interior, exterior and roof of such Lot and including to the center of the common walls with any other Lots. Such insurance must be provided by a company licensed in the State of Idaho and approved by the Management Committee. The Association must be named as an additional insured and a loss-payee on each insurance policy. Each insurance policy must provide that all notices to be given by the insurance company pertaining to termination of coverage, changes in coverage, delinquent premiums or other matters pertaining to the insurance coverage shall be sent to both the Owner and the Association. Each insurance policy must provide that it cannot be amended or terminated without thirty (30) days prior written notice to the Association. Each Owner shall deliver to the Association a certificate evidencing such insurance policy on the ACORD 27 form entitled "Evidence of Insurance". The Association shall also have the right at any time to require any Owner to provide to the Association a copy of such insurance policy and evidence that all premiums have been paid in full by such Owner. If any Owner fails to obtain and maintain the insurance policy required above, the Association may obtain such casualty insurance and pay the premiums therefore, which shall constitute a special assessment against such Owner and a continuing lien upon such Owner's Lot pursuant to Article V, Section 2 of this Declaration.

ARTICLE IX  
DESTRUCTION, DAMAGE OR OBSOLESCENCE

In the event of any damage to or destruction of any Building or any Common Area improvements on the Property, the Association is solely responsible for the repair and reconstruction of such improvements only to the extent insurance proceeds are made available to the Association for that purpose. Each Owner is solely responsible for any damage to or destruction or obsolescence of the contents of such Owner's Lot, including but not limited to all appliances, equipment and utility facilities and systems located therein. The Owner shall commence any necessary repair work within six (6) weeks after the occurrence of the damage or destruction and shall diligently pursue such repair to completion.

ARTICLE X  
EMINENT DOMAIN

Whenever any proceeding is instituted that could result in the temporary or permanent taking, injury or destruction of all or part of the Common Areas and Facilities and facilities by the exercise of the power in the nature of eminent domain or by any action or deed in lieu of condemnation, the Management Committee shall be entitled to timely written notice thereof and the Management Committee shall participate in the proceedings incident thereto.

ARTICLE XI  
LEASING OF LOTS

All leases of Lots shall be subject in all respects to the provisions of this Declaration and failure of the lessee to comply with the terms of this Declaration shall be a default under the lease and shall be enforceable against the lessee directly by the Association, but without limitation of any other rights of the Association.

ARTICLE XII  
ENCROACHMENTS

None of the rights and obligations of any Owner created by this Declaration, the bylaws or by any deed conveying a Lot shall be affected in any way be an encroachment by any portion of the Common Areas and Facilities upon any Lot. There are hereby created valid easements for the maintenance of any encroachments permitted by this Article so long as such encroachments exist.

ARTICLE XIII  
CONVEYANCES; DESCRIPTION OF LOTS

Every deed, lease, mortgage, instrument of conveyance or sale, or other instrument affecting title to a Lot may describe the Lot by its identity number as set forth in the Plat with appropriate reference to the Plat. Every such description shall be deemed to convey, transfer, encumber or otherwise affect the Owner's corresponding percentage of undivided member in the Association, as set forth herein, also incorporating all rights and limitations incident to Ownership described in this Declaration, even though the same are not exactly mentioned or described.

ARTICLE XIV  
CERTAIN ADDITIONAL COVENANTS AND AGREEMENTS

The following covenants and agreements are made a part of this Declaration, and this Article XIV may not be amended or deleted without the consent of the City of Victor.

It is expressly understood and agreed by the Declarant and by each Owner and by any other person or entity having an interest in the Property at any time, that (i) the use and development of the Property involves potential conflict with wildlife, and that the Idaho Fish and Game Department will not be financially liable for any damage or losses caused by wildlife, (ii) irrigation ditches and waterways within the Property are subject to rights of access, maintenance and usage by certain downstream users and other persons, and (iii) any dogs on the Property at any time will be subject to strict dog control rules and regulations adopted by the Management Committee, and Owners will be subject to fines and other penalties for any violation thereof by an Owner or his tenants or invitees.

The Association will ensure that an adequate road maintenance and snow removal program is maintained, and if necessary will establish a reserve fund for such purpose. All ponds and watercourses, and other aquatic landscape features, will be professionally maintained to ensure quality standards, abatement of mosquito populations, and continuity in aesthetic presentation until such time that the Association is in place to assure the upkeep and maintenance.

(a) It is recognized by the Declarant and the Owners of any Lot within the Property, that many wildlife species live on or migrate through the Property during various times of the year. The following limitations on use and development are intended, in addition to all the other requirements of this Declaration, to protect, preserve and maintain the existing wildlife habitat on the Property.

1. Dogs and other domestic animals (other than cats) shall be controlled and restrained at all times and shall not be allowed to run at large on any portion of the Property. A fine of \$50.00 or more shall be imposed by the Association for any Owner cited by the Association for a violation of this requirement, and fines may also be imposed by City of Victor authorities for violations of dog control laws.

2. No hunting or shooting of guns shall be allowed on the Property at any time.

(b) No mining or other mineral extraction or development activities shall be permitted on the Property at any time, including the removal of gravel for any purpose other than construction and maintenance of permitted improvements.

(c) The common areas depicted on the Plat referred to in Paragraph C of the Recitals herein will not be vacated without the consent of the City of Victor.

#### ARTICLE XV NOTICES

Any notice permitted or required to be delivered as provided herein may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to be delivered forty-eight (48) hours after a copy of the same has been deposited in the U.S. mail, postage prepaid.

#### ARTICLE XVI NO WAIVER

The failure of the Management Committee or its agents to insist, in one or more instances, upon the strict performance of any of the terms, covenants, conditions, or restrictions of this Declaration, or to exercise any right or option herein contained, or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment, for the future, of such term, covenant, condition or restriction; but such term, covenant, condition or restriction shall remain in full force and effect. The receipt and acceptance by the Management Committee or its agent of the payment of any assessment from an Owner, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by the Management Committee of any provision hereof shall be deemed to have been made unless expressed in writing and duly signed by or on behalf of the Management Committee.

#### ARTICLE XVII ENFORCEMENT

Each Owner shall strictly comply with the provisions of the Declaration, and the rules, regulations and decisions issued by the Management Committee. Failure to so comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, or any other remedy allowed by law, maintainable by the Management Committee or its designee on behalf of the Association or by Declarant or, in an appropriate case, by an aggrieved

Owner. Any violation of the provisions of the Declaration or any related rules or regulations is declared to be and shall constitute a nuisance and may be abated by Declarant or the Management Committee. The Association shall be entitled to payment of all attorney fees incurred by the Association (or the Management Committee), payable by an Owner or tenant in violation of this Declaration or any such rules or regulations.

In addition, upon any failure of an Owner to pay when due any assessment for General Common Expenses, Building Common Expenses or any other assessment, the Management Committee may seek any remedy provided in this Declaration or otherwise available at law or equity. Unless specifically agreed in writing, liability for payment of assessments shall be joint and several against any and all persons and/or entities holding or claiming any ownership or leasehold interest in the applicable Lot.

#### ARTICLE XVIII AMENDMENTS

The provisions of this Declaration, other than this Article and except as otherwise provided in this Declaration, may be amended by an instrument in writing signed and acknowledged by the president and secretary of the Association certifying that such amendment has been approved by the vote or written consent of Owners who own at least two-thirds ( $\frac{2}{3}$ ) of the Lots and such an amendment shall be effective upon its recordation with the Recorder of Teton County, Idaho, and shall be binding upon all Owners and all mortgagees and deed of trust beneficiaries of Lots and all other portions of the Property.

#### ARTICLE XIX GENERAL PROVISIONS

Section 1. Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision herein.

Section 2. Captions, Gender and Grammar. The captions in this Declaration are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope and intent of this Declaration or any provision hereof. The singular wherever used herein shall be construed to mean the plural whenever applicable or vice versa and necessary grammatical changes required to make the provisions hereof apply either to

By: Robert F. Kincaid (President)  
Robert F. Kincaid, President

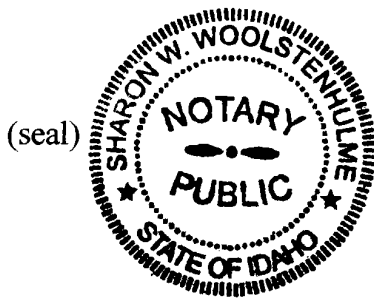
Robert F. Kincaid  
Robert F. Kincaid

STATE OF IDAHO )

County of Teton )ss.

On the 3rd day of July, 2003, before me, the undersigned, a notary public in and for said State, personally appeared Robert F. Kincaid, known or identified to me to be the President of Kincaid Construction, Incorporated, and the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



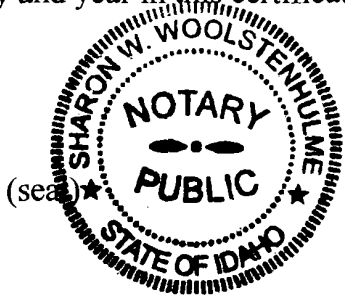
Sharon W. Woolstenhulme  
Notary Public for Idaho  
Residing at Victor, Idaho  
My Commission Expires: Oct. 15, 2008

STATE OF IDAHO )

County of Teton )ss.

On the 3<sup>rd</sup> day of July, 2003, before me, the undersigned, a notary public in and for said State, personally appeared Robert F. Kincaid, known or identified to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.



Sharon W. Woolstenhulme  
Notary Public for Idaho  
Residing at Victor, Idaho  
My Commission Expires: Oct. 15, 2008

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