

# DECLARATION OF CONDOMINIUM FOR

## HILLSIDE BUSINESS COMPLEX

This Declaration is made and executed effective the 30<sup>th</sup> day of November, 2001, by **H & I DEVELOPMENT, LLC**, a Wyoming limited liability company, hereinafter referred to as Declarant, pursuant to the provisions of the Condominium Ownership Act of the State of Wyoming.

### RECITALS:

A. Declarant is the owner of certain real property and improvements located in the County of Teton, State of Wyoming, and more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof.

B. Declarant desires to establish and has executed and filed simultaneously herewith, in the office of the County Clerk and Ex-Officio Register of Deeds of Teton County, a condominium map or plat depicting the location and dimensions of the Property and all improvements situated thereon.

C. Declarant desires and intends to, and does hereby, submit the above-described Property, together with all buildings, structures, improvements and other permanent fixtures of every kind thereon, or in anywise pertaining thereto, to the provisions of the Wyoming Condominium Ownership Act.

D. Declarant desires and intends, by submitting the afore-described Property and all improvements situated thereon, to the Wyoming Condominium Ownership Act, to impose upon said Property mutually beneficial rights, easements, privileges, obligations and restrictions under a general plan of use, conduct, maintenance and improvement for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and improvements for the benefit of the Declarant, and all owners and occupants of the property.

### DECLARATION

1. DEFINITIONS. Unless the context clearly indicates otherwise, the following words and terms, when used in this Declaration, shall be defined as follows:

(a) "Association" shall mean **HILLSIDE BUSINESS COMPLEX CONDOMINIUM OWNERS ASSOCIATION**, a Wyoming not-for-profit corporation, organized to be the association referred to herein.

Grantor: H & I DEVELOPMENT LLC

Grantee: THE PUBLIC

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Sherry L Dalgie, Teton County Clerk fees: 71.00

By **KIMBERLEE JANSEN** Deputy

(b) "Board of Directors" shall mean the governing board of the Association, appointed or elected in accordance with this Declaration and the Articles of Incorporation and Bylaws of the Association.

(c) "Common Elements or Common Areas" shall mean all portions of the Property other than the Units.

(d) "Common Expenses" means expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves.

(e) "Building" means the structure containing one or more Units constructed on the Property.

(f) "Condominium Act" shall mean the Wyoming Condominium Ownership Act and amendments thereto.

(g) "Declarant" shall mean all persons who execute the Declaration or on whose behalf the Declaration is executed. From the time of the recordation of any amendment to the Declaration expanding an expandable condominium, all persons who executed that amendment or on whose behalf that amendment is executed shall also come within this definition. Any successors of the persons referred to in this subsection who come to stand in the same relation to the Condominium as their predecessors did shall also come within this definition.

(h) "Declaration" shall mean the instrument by which the property is submitted to the provisions of the Condominium Ownership Act and its lawful amendments.

(i) "General Common Elements" shall mean and include the Property and all common elements or areas except the Units and the Limited Common Elements, as hereinafter defined; but, in any event, all parts of the Property, improvements, utility service, conduits, pipes, etc., and buildings necessary or convenient to the existence, use, maintenance and safety of the same or normally and reasonably in common use.

(j) "Limited Common Elements" shall mean those common elements or areas designated as reserved or allocated for the exclusive use of one Owner or more than one Owner but fewer than all of the Owners, including but not limited to entries, parking spaces, stairways, hallways, walkways, loading areas, porches, storage facilities, or other elements which are identified on the plat with the same number or other designation by which a Unit is identified.

(k) "Manager" shall mean the person or firm designated by the Association to manage, in whole or in part, the affairs of the Association and the Project.

(l) "Mortgage" shall mean any mortgage, deed of trust or other security instrument by which a Unit or any part thereof is encumbered.

(m) "Mortgagee" shall mean any person named as the Mortgagee or beneficiary under any mortgage by which the interest of any owner is encumbered, or any successor to the interest of such person under such mortgage.

(n) "Owner" shall mean any person or entity, including Declarant, at any time owning a beneficial interest in a Unit, including, but not limited to Declarant, but not including a person having an interest in a Unit solely as security for an obligation.

(o) "Person" shall mean a natural person, corporation, partnership, association, trust or other entity, or any combination thereof.

(p) "Project" shall mean the entire Hillside Business Complex, including the Property, together with any other buildings or properties located upon Lot 5 of the Valley View Subdivision and incorporated into the condominium by expansion or merger as the result of filing a supplemental Declaration.

(q) "Property" means the parcel of real property described on Exhibit "A," together with all other property, Buildings, improvements and structures submitted by this Declaration or any supplemental declarations to the provisions of the Condominium Act.

(r) "Plat, Condominium Plat, or Supplemental Condominium Plat" shall mean and include the map of survey of the Property depicting and locating thereon all of the improvements, floor and elevation plans, and filed in the records of the Clerk of Teton County, Wyoming.

(s) "Unit" means an individual air space unit, consisting of enclosed rooms or one or more bays occupying part of the Building and bounded primarily by the interior planes or surfaces of the walls, floors, ceilings, windows and doors, along the perimeter boundaries of the air space of said boundaries, as shown on the Plat, together with all fixtures and improvements therein contained. Notwithstanding the fact that they may be within the boundaries of said air space, the following are not part of a Unit insofar as they are necessary for the support or use and enjoyment of another Unit: structural components of the Buildings, such as columns, support beams, girders, struts, posts, bearing walls, floors, ceilings, and roofs (except the interior surfaces thereof), foundations, ceiling equipment, tanks, pumps, pipes, vents, ducts, shafts, flues, chutes, conduits, wires, and other utility installations, except the outlets thereof located within the Unit.

(t) "Condominium or Condominium Unit" shall mean the fee simple and title in and to a Unit, together with an undivided interest in the Common Elements or Common Areas and facilities appurtenant to said Unit.

2. SUBMISSION TO CONDOMINIUM. Declarant hereby submits the Property, including the Building and all other improvements thereon, to the provisions of the Condominium Act for the term set forth herein. All of said Property is and shall be held, conveyed, hypothecated, encumbered, leased, subleased, rented, used, occupied, maintained, altered and improved pursuant to the Condominium Act and the Declaration. All of said Property is and shall

be subject to the covenants, conditions, restrictions, uses, limitations and obligations set forth herein, each and all of which are declared and agreed to be for the benefit of said Project and in furtherance of a plan for improvement of the said Property and division thereof into Condominium Units. Further, each and all of the provisions hereof shall be deemed to run with the land and shall be mutual and equitable servitudes, burdening and benefiting the Declarant, their successors and assigns, and any owner or other person acquiring, leasing, subleasing, or owning an interest in the real property and improvements comprising the Property or the Project, their assigns, lessees, sublessees, heirs, executors, administrators, devisees, and successors.

3. DIVISION AND INCIDENTS OF OWNERSHIP.

3.1. Division Into Condominium Units. The Property is hereby divided into Condominium Units, each consisting of a separate fee simple estate in and to a Unit, together with an undivided interest in the Common Elements appurtenant thereto.

3.2. Ownership of Common Areas. Each Unit Owner shall be entitled to a maximum percentage of undivided interest in the Common Elements appurtenant to each Unit and its Owner for all purposes, including voting, as set forth on the schedule attached hereto as Exhibit "B" and by this reference made a part hereof. Such maximum interest shall be subject to diminution, to accommodate expansion or conversion under the provisions hereof. Except as provided herein for expansion of the condominium by the addition or conversion of other property and buildings located upon Lot 5 of the Valley View Subdivision, the percentage of undivided interest in the Common Elements appurtenant to any Unit shall not be changed except with the unanimous consent of all of the Unit Owners in the Condominium Project expressed in an amendment to this Declaration, duly executed by all such Owners and recorded. Such percentages have been computed by dividing the square footage of each Unit by the total square footage of all the Units in the Property.

3.3. Declarant's Reserved Rights. Declarant reserves the right, as to all Units then owned by it, to: (i) physically combine the space within one Unit with the space within one or more adjoining Units; (ii) to combine a part of or combination of parts of the space within one Unit with parts of the space within one or more adjoining Units; and (iii) to divide into separate Units the space of one Unit. The aggregate or divided undivided interest in the Common Elements and voting rights resulting therefrom shall be reflected by an amendment to Exhibit "B" hereof to the Plat. With the written consent of the Association, two or more Units may be utilized by the Owner(s) thereof as if they were one Unit. To the extent permitted in the written consent of the Association, any walls, floors or other structural separations between any such Units, or any space which would be occupied by such structural separation but for the utilization of the Units as one Unit, may, for as long as the two Units are utilized as one Unit, be utilized by the Owner(s) of the adjoining Units as limited Common Areas, except to the extent that any such structural separations are necessary or contain facilities necessary for the support, use or enjoyment of other Units.

Declarant also reserves, for itself and all future owners of condominium units in any expansion of the condominium to all portions of Lot 5, as well as their tenants, guests, contractors and invitees, an easement for access and for utilities over, under and across all roadways and drives and within all utility easements within the Property, whether depicted on the plat or not.

3.4. Description of Condominium Unit. Every contract for the sale of a Unit and every other instrument affecting title to a Unit may describe a Unit by its identifying number or Unit designation, the name of the Project, the recording data for the Declaration, and the county in which the Condominium is located. Such description will be construed to describe the Unit, together with the appurtenant undivided interest in the Common Elements, and to incorporate all the rights incident to ownership of a Condominium Unit within the Project and all of the limitations on such ownership as described in this Declaration and/or the Rules and Regulations or Bylaws of the Association.

3.5. Title. Title to a Condominium Unit within the Project may be held or owned by any person or entity in any manner in which title to any other real property may be held or owned in the State of Wyoming.

3.6. Inseparability of Condominium Unit. Title to no part of a Condominium Unit within the Project may be separated from any other part thereof and each Unit, the appurtenant undivided interest in the General Common Elements, and the appurtenant Limited Common Elements shall together comprise one Condominium Unit, shall be inseparable, and shall be conveyed, devised, leased, encumbered and otherwise affected only as a complete Condominium Unit. Every gift, devise, bequest, transfer, lease, encumbrance, conveyance or other disposition of a Condominium Unit, or any part thereof, shall be construed as affecting the entire Condominium Unit, together with all appurtenant rights created by law or by this Declaration, including appurtenant membership in the Association as hereinafter set forth.

3.7. Partition Not Permitted. The Common Elements shall be owned in common by all of the Owners of the Unit and shall remain undivided, and no Owner shall bring action for partition or division of the Common Elements.

3.8. Mechanics Liens. No labor performed or materials furnished for use in connection with any Condominium Unit with the consent or at the request of the Owner thereof or his agent, contractor or subcontractor, shall create any right to file a statement of mechanic's lien against the Unit of any other Owner not expressly consenting to or requesting the same or against any interest in the Common Elements except as to the undivided interest therein appurtenant to the Unit of the Owner for which such labor shall have been performed and such materials shall have been furnished. Each Owner shall indemnify and hold harmless each of the other Owners from and against liability or loss arising from the claim of any claim against the Condominium Unit of the Owner, or any part thereof, for labor performed or for materials furnished in work on such Owner's Unit. At the written request of any Owner, the Association shall enforce such indemnity by collecting from the Owner of the Condominium Unit on which the labor was performed and materials furnished the amount necessary to discharge any such lien, and all costs incidental thereto, including attorney's fees. If not promptly paid, the Association may collect the same in the manner provided herein for collection of assessments for the purpose of discharging the lien.

3.9. Separate Taxation. All taxes, assessments and other charges of the State of Wyoming or of any political subdivision or of any special improvement district or of any other taxing or assessing authority shall be assessed against and collected on each Condominium Unit separately,

not on the Building or the Property as a whole, and each Condominium Unit shall be carried on the tax records as a separate and distinct parcel.

For the purpose of valuation for assessment, the valuation of the Common Elements shall be apportioned among the Condominium Units in proportion to the fractional undivided interests in Common Elements appurtenant to and part of each Condominium Unit. The Association shall deliver to the County Assessor a written notice, as required by the Condominium Ownership Act of Wyoming, setting forth descriptions of the Condominium Units, and shall furnish all necessary information with respect to such apportionment of valuation of Common Elements for assessment.

The lien for taxes assessed to any Condominium Unit shall be confined to that Unit. No forfeiture or sale of any Condominium Unit for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Condominium Unit.

3.10. Separate Mortgages. Each Owner shall have the right to mortgage or otherwise encumber his Condominium Unit; however, no Owner shall attempt to or shall have the right to mortgage or otherwise encumber the Common Elements or any part thereof except the undivided interest therein appurtenant to his Condominium Unit. Any mortgage or other encumbrance of any Condominium Unit within the Project shall be subordinate to all of the provisions of this Declaration, and in the event of foreclosure the provisions of this Declaration shall be binding upon any Owner whose title is derived through the foreclosure by private power of sale, judicial foreclosure, or otherwise.

#### 4. USE AND OCCUPANCY OF COMMON ELEMENTS AND OTHER RIGHTS.

4.1. Use of General Common Elements or Areas. Subject to other provisions of the Declaration, each Owner shall have a non-exclusive right to use and enjoy the General Common Elements as may be required for the purposes of access and ingress and egress to and use and occupancy and enjoyment of the respective Condominium Unit owned by such Owner. Such right to use the General Common Elements or Areas shall extend to each Unit Owner and the agents, contractors, employees, tenants, customers, clientele, guests and invitees of each Unit Owner. Such rights to use shall be consistent with the rights of use and enjoyment of the other Owners and shall be subject to and governed by the provisions of this Declaration, the Bylaws, and the Rules and Regulations of the Association.

4.2. Use of Limited Common Elements. Subject to the other provisions of this Declaration, each Owner, as well as their agents, contractors, employees, tenants, customers, clientele, guests and invitees shall have the exclusive right to use and enjoy Limited Common Elements designated herein or on the Plat as appurtenant to the Unit(s) owned by such Condominium Owner(s). The Declarant shall, in a separate recorded Supplement hereto, assign parking spaces to the Units (including any sharing arrangements) and the Board may regulate the reasonable use of access, entries, parking, loading and storage areas.

4.3. Owner's Rights in Unit. Subject to the other provisions of this Declaration, each Owner shall have full and complete dominion and ownership of his Unit, which is part of the

Condominium owned by such Owner, and each Owner and such Owner's agents, contractors, employees, tenants, customers, clientele, guests and invitees shall have the exclusive right to use and enjoy the same.

4.4. Association's Right to Use Common Elements. The Association shall have a non-exclusive right and easement to make such use of the Common Elements or Common Areas as may be necessary or convenient to perform the duties and functions that it is obligated or permitted to perform pursuant to this Declaration, including, without limitation, the right to construct and maintain in the General Common Elements facilities for use by Owners generally or by the Association and its agents exclusively.

4.5. Owner's Easement for Access, Support and Utilities. Declarant hereby grants, and the Association and each Owner shall have, a non-exclusive easement for access between the Owner's Unit and all private or public roads, alleys and streets, over the halls, corridors, stairs, walks, and exterior access and other easements that are part of the Common Elements and over under and through all lands of Declarant within the remainder of Lot 5 of the Valley View Subdivision. Each Owner, and the Association, shall have a non-exclusive easement for utility service between the Owner's Unit and all utility services, such as water sewer electricity, gas and telephone or cable television service, over under and through all lands of Declarant within the remainder of Lot 5 of the Valley View Subdivision not subject to this Declaration, as shown on the Plat, or otherwise. Each Owner shall have a non-exclusive easement to, in and over Common Elements, including Common Elements within the Unit of another Owner, for horizontal and lateral support of the Unit and for utility service to that Unit, including water, sewer, gas, electricity, telephone and television service. Said easements may not be restricted and shall be perpetual and appurtenant to each Unit.

4.6. Easements for Maintenance, Cleaning and Repair. Some of the Common Elements are or may be located within the Units or may be conveniently accessible only through the Units. The Association or its agents shall have the irrevocable right to have access to each Unit and to all Common Elements from time to time during such reasonable hours as may be necessary for the maintenance, cleaning, repair or replacement of any Common Element accessible therefrom or for making emergency repairs at any time therein necessary to prevent damage to the Common Elements or to a Unit or Units. In addition, the Association or its agents may enter any Unit when necessary in connection with any cleaning, maintenance, repair, replacement, or construction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Association.

4.7. Easements for Encroachments. If any part of the Common Elements encroaches or shall hereafter encroach upon a Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Elements, or upon an adjoining Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of the Common Elements or any part of a Unit or Units encroaches or shall hereafter encroach on real property owned by the Declarant outside the boundaries of the Property, an easement for such encroachment shall and does exist. Such encroachments shall not be considered to be encumbrances either on the Common Elements or the Unit. Encroachments referred to herein

include, but are not limited to, encroachments caused by error in the original construction of any improvement constructed or to be constructed within the Project, by error in the Plat, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof, or utility services, such as fire sprinkler water lines.

4.8. Easements to Others in Common Elements. The Common Elements are encumbered by easements to Valley View Water Company, Valley View Sewer Co., LLC and various Utility companies or adjoining lots in Valley View Subdivision for utility services or shared access drives. Each Owner's interest in the Common Elements and their respective rights to use of the Common Elements shall be subject to such easements, whether shown on the Plat or not.

4.9. Easements Deemed Appurtenant. The easements and rights herein created for an Owner shall be appurtenant to the Condominium Unit of that Owner and all conveyances of and other instruments affecting title to a Condominium Unit, whether by Declarant or otherwise, shall be deemed to grant and reserve such reciprocal easements as are provided for herein, even though no specific reference to such easements appear in any such conveyance.

## 5. USE COVENANTS, CONDITIONS AND RESTRICTIONS.

5.1 Use of Units. The Units may be used and occupied for industrial, commercial, retail office and, with approval of Teton County, residential purposes.

5.2. No Noxious or Offensive Activity. No noxious or offensive activities shall be carried on in or upon any part of the Property, nor shall anything be done or placed in or upon any part of the Property which is or may become a nuisance or may cause embarrassment, disturbance or annoyance to other Owners, or their agents, contractors, employees, tenants, customers, clientele, guests or invitees. No sound shall be emitted on any part of the Project which is unreasonably loud or annoying to any occupant of the Building or the surrounding Property.

5.3. No Hazardous Activities. No activities shall be conducted, nor improvements constructed, in or upon any part of the Project which are or may become unsafe or hazardous to any person or property, or that would increase the general liability insurance or the fire and extended coverage insurance upon the Property or the Building, without the approval of the Board and unless the Owner so doing pays all of the additional insurance premium therefore.

5.4. Restriction on Signs. No signs, flags or advertising devices of any nature, including, without limitation, commercial, political, informational, or directional signs or devices or name plates, shall be erected or maintained on any part of the Project without the prior inspection and written approval of the Association, except as may be necessary temporarily to caution or warn of danger.

5.5. No Obstructions. There shall be no obstructions of the Common Areas by any Owner or its agents, contractors, employees, tenants, customers, clientele, guests and invitees. Owners shall neither store nor leave any of their property in the Common Areas, except with the prior consent of the Association.

5.6. Restrictions on Visible Exteriors and Lighting. Each Unit Owner shall be obligated to maintain and keep the Owner's Unit, its windows and doors, and any porch or entry area which the Owner has the exclusive right to use and occupy, in good and clean order and repair. The use of the interior surfaces of windows, whether shades, signs or other items visible on the exterior of the building, shall be subject to the rules and regulations of the Board. Only the original lighting provided by the Declarant or such additional lighting as is approved by the Board of the Association shall be permitted.

5.7. Antennas, Etc. Owners shall not cause or permit anything to be hung or displayed on the outside of windows or placed on the outside walls of the Buildings, and no awnings, canopies, shutters, or antennae or other similar structures may be affixed to or placed upon the exterior walls or roof or any part thereof without the prior consent of the Board.

5.8. Restriction on Animals. No animals or pets of any kind shall be kept in any Unit or in the General or Limited Common Areas and facilities unless the same, in each instance, be expressly authorized, in writing, by the Association, and the same shall be subject to the Rules and Regulations adopted by the Board; and further provided that the Board, in its sole discretion, shall have the right to revoke such authorization at any time. In no event shall dogs be permitted in any of the public portions of the Property unless carried or on a leash. The Owner shall indemnify the Association and hold it harmless against any loss or liability of any kind or character arising from or growing out of having any animal on the Property. If a dog or other animal becomes obnoxious or a nuisance to other Owners by barking or otherwise, the Owner thereof must cause the problem to be corrected immediately or, if it is not corrected immediately, the Owner, upon written notice by the Association, shall dispose of the animal.

If any animal shall violate the terms of this Declaration, any other Owner of a Unit, the Manager, the Board, or any other person shall have the authority to impound such animal at any available location and to deliver the same to the County Animal Control Officer for appropriate disposition. No Owner of any such animal impounded shall have a right of action against the Association, Board, or any member thereof, any other Owner, the Manager, or any other person for the impoundment of any such animal.

5.9. Owners' Duty of Maintenance. Notwithstanding anything herein contained to the contrary, each Unit Owner shall have the responsibility to maintain, repair, replace and keep in a clean, safe and sanitary condition, at the Unit Owner's expense, all portions of the Unit Owner's Unit, except those portions to be maintained, repaired and replaced by the Association. The Unit Owner shall also keep clean and in a safe and sanitary condition all Limited Common Areas.

5.10. Unsuitability. No unpermitted outside storage of equipment, vehicles, materials, supplies, trash, rubbish, or other unsightly items of waste shall be placed or permitted to remain anywhere within the General or Limited Common Areas within the Property, except at the areas specified on the Plat or by the Board. Any such objects shall be removed immediately upon receipt of written notification by the Board of Directors. In the event the same is not removed within 24 hours after the delivery of such written notice, the Board of Directors may remove or cause the same to be removed immediately at the expense of the Owner of the Unit responsible for

the same and may dispose of the same at the Teton County Landfill or any other appropriate place without being responsible for taking any care in the removal or storage of the same, and neither the Association nor the Manager or any other person or Owner enforcing the terms of this provision shall be liable for any costs, expenses, liability or damages arising out of the removal or storage of such matter.

In addition to the foregoing, no vehicle belonging to an Owner or a customer, employee guest, tenant, or contractor of any Owner shall be parked in such a manner as to impede or prevent ready access to another Owner's parking stall or loading area or to impede or prevent ready access over (including maintenance and snowplowing) of any road or alley serving the Property.

5.11. No Structural Alterations. No Owner shall, without the prior written consent of the Board of Directors, make or permit to be made any structural or exterior alteration, improvement or addition in or to the Owner's Unit or the Common Elements. No Owner shall, without the prior written consent of the Association, do any act that would impair the structural soundness of the Building or Common Elements or the safety of property or impair any easement or other rights to the Property, or affect any utility services, or otherwise affect its size or exterior appearance.

5.12. No Violation of Law. No Owner and no Owner's agents, contractors, employees, tenants, customers, clientele, guests and invitees shall do anything or keep anything in or on the Project which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

5.13. Utilities. No Unit Owner shall overload the electrical wiring in the Building, or operate any machines, appliances, accessories or equipment in such manner as to cause, in the judgment of the Board, an unreasonable disturbance to others, or connect any machines, appliances, accessories or equipment to the heating system or plumbing system, without the prior written consent of the Board.

No electrical, plumbing or similar work within any Unit shall be done without the prior written consent of the Board. Each Owner shall see to it that the Owner's Unit is sufficiently heated during the winter so as to assure that there shall be no freezing or breakage of pipes.

5.14. Prohibition of Damage and Certain Activities. Nothing shall be done or kept in any Unit or in the Common Areas or any part thereof which would result in cancellation of the insurance on the Project or any part thereof, nor shall anything be done or kept in any Unit which would increase the rate of insurance on the Property or any part thereof over what the Association, but for such activity, would pay, without the prior written consent of the Association. No damage to, or waste of, the Common Elements or any part thereof shall be committed by any Owner or its agents, contractors, employees, tenants, customers, clientele, guests and invitees, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by the Owner or its agents, contractors, employees, tenants, customers, clientele, guests and invitees and such Unit Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Board, to the extent not covered by insurance

5.15. Rules and Regulations. No Owner and no Owner's agents, contractors, employees, tenants, customers, clientele, guests and invitees shall violate the Rules and Regulations for the use of the Units and Common Elements, as adopted from time to time by the Association.

5.16. Declarant's Exemptions. Declarant, and persons it may select, shall have the right of ingress and egress over, upon, and across the Common Elements or Common Areas and the right to store materials thereon and make such other use thereof as may reasonably be necessary incident to construction, development, maintenance, repairs and sales of the Building or the Units and the Common Areas and facilities in connection with the Property.

5.17. Leasing Restrictions. All renting, leasing or other arrangements whereby parties other than the Owner occupy a Unit shall be pursuant to written lease (or similar) agreements and subject to this Declaration, the Bylaws and the rules and regulations. All tenants and occupants shall be subject to such restrictions relating to parking and loading vehicles as the Association may determine.

6. OWNERS' RIGHTS OF USE AND ENJOYMENT. Every Owner shall have a right and easement of use and enjoyment in and to the General Common Area, which shall be appurtenant to and pass with the title to every Unit. In addition, each Owner shall have the right to the exclusive use of certain parking spaces and loading areas, if depicted on the Condominium Map or Plat or, if not so depicted, as designated by the Declarant or the Board of Directors of Association, and subject to such rules and regulations or limitations they may establish.

7. THE ASSOCIATION AND ITS ADMINISTRATION OF THE PROPERTY. The governing body for all of the Unit Owners for the administration and operation of the Property, as provided for in the Condominium Act and in this Declaration, shall be the Association. The Association, as referred to in this Declaration, has been formed and incorporated as a Wyoming not-for-profit business corporation.

7.1. Powers of Association. Subject to the remaining provisions of this Declaration, the Association may:

- (a) Adopt and amend its Bylaws and Rules and Regulations;
- (b) Adopt and amend budgets for revenues, expenditures and reserves and collect assessments for Common Expenses from Unit Owners;
- (c) Hire and terminate managers and managing agents, and other employees, agents, independent contractors, and professional consultants, including those providing legal and accounting services, necessary or desirable in connection with the administration of the Project;
- (d) Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Unit Owners on matters affecting the Condominium;

(e) Make contracts and incur liabilities, including but not limited to road and parking area maintenance and snow removal and providing water and sewer service to the member's units;

(f) Regulate the use, maintenance, repair, replacement and modification of the Common Elements;

(g) Cause additional improvements to be made as a part of the Common Elements;

(h) Acquire, hold, encumber and convey in its own name any right, title or interest to real or personal property;

(i) Grant easements, leases, licenses and concessions through or over the Common Elements;

(j) Impose and collect from each Unit Owner an amount equal to two months' assessment for Common Expenses to be held as a security for prompt payment of any Common Expense charge or assessment; such amounts being held by a trust fund in an institution in this state insured by a governmental agency. The deposit is to be refunded to the Unit Owner at the time of transfer of the ownership interest or at the end of 12 continuous months wherein prompt payment of the Common Expense assessment has been made to be discretionary with the Association. Any interest accruing from deposit of the money may be used by the Association for any purpose consistent with the provisions of this act;

(k) Impose charges for late payment of assessment, accelerate the payment of any annual payment upon an arrearage in payments, and, after notice and an opportunity to be heard, levy reasonable fines for violations of the Declaration, Bylaws and Rules and Regulations of the Association;

(l) Impose reasonable charges for the preparation and recordation of amendments to the Declaration, resale or estoppel certificates, or statements of unpaid assessments;

(m) Provide for the indemnification of its officers and Board of Directors and maintain Directors' and officers' liability insurance;

(n) Obtain and pay for such types and quantities of insurance as shall be provided in this Declaration or the Bylaws or otherwise reasonably necessary under the circumstances;

(o) Exercise any other powers conferred by the Declaration or the Bylaws;

(p) Exercise all other powers that may be exercised in this state by legal entities of the same type as the Association;

(q) Exercise any other powers, rights or privileges reasonably implied from the existence of any other right given to it herein or reasonably necessary or proper to effectuate any such right or privilege or for the governance and operation of the Association.

Notwithstanding the provisions of this section, the Declaration may not impose limitations on the power of the Association to deal with the Declarant that are more restrictive than the limitations imposed on the power of the Association to deal with other persons. Furthermore, all of the foregoing powers shall be subject to the following provisions regarding the Declarant's control of the Association during the period of Declarant's control.

#### 7.2. Declarant Control.

(a) Subject to subsection 7.2.(b) hereof, there shall be a period of Declarant control of the Association, during which period the Declarant, or any persons designated by it, may appoint and remove the officers of the corporation and the members of the Board of Directors. Such period of Declarant control shall extend from the date of the first conveyance of a Unit to a person other than a Declarant for a period not exceeding the greater of five (5) years from this date, or two (2) years after the build-out of all of the Project area of Lot 5. Notwithstanding the provisions contained herein, the period of Declarant control shall terminate no later than sixty (60) days after Declarant voluntarily surrenders the right to appoint and remove officers and members of the Board of Directors, but in such event it may require, for the duration of the period of Declarant control, that specified actions of the Association or Board of Directors, as described in a recorded instrument executed by Declarant, be approved by the Declarant for it to become effective.

(b) No special Declarant rights created or reserved under this section may be transferred except by an instrument evidencing the transfer recorded in the records of Teton County and the instrument has been executed by the transferee.

Upon transfer of any special Declarant right, the liabilities and rights of the transferor Declarant and the rights, liabilities and obligations of the transferee Declarant shall be as provided by law.

7.3. Membership. Each Owner shall automatically become, by virtue of his ownership of a Unit, a member of the Association and shall have all of the rights and obligations of a member as provided for herein and in the Article of Incorporation and Bylaws of said corporation. Membership shall be appurtenant to the fee simple title to such Unit and shall be transferred automatically and immediately by conveyance of the Unit. If fee simple title to a Unit is held by more than one person or entity, the membership appurtenant to that Unit shall be shared by all such persons or entities in the same proportionate interest and by the same type of ownership as fee simple title to the Unit is held. An Owner shall be entitled to one membership for each Unit owned by that Owner. No person or entity other than an Owner may be a member of the Association, and membership in the Association may not be transferred except in connection with the transfer of a Unit.

7.4. Votes. The number of votes appurtenant to each respective Unit shall be as shown on Exhibit "B" attached hereto and by this reference made a part hereof. The number of votes appurtenant to each Unit, as shown on said exhibit, shall be changed only in the manner provided for in this Declaration.

7.5. Board of Directors. The affairs of the Association shall be managed by a Board of Directors which may, by resolution, delegate any portion of its authority to an executive committee composed of not less than two (2) members of the Board. Subject to the provisions contained herein regarding the period of Declarant control, members of the Board of Directors shall be elected annually by the Owners.

7.6. Amplification. The provisions of this section relating to the Association may be amplified by the Articles of Incorporation and the Bylaws of the Association; provided, however, that no such amplification shall substantially alter or amend any of the rights or obligations of the Declarant or of the Owners set forth in this Declaration.

8. RIGHTS, OBLIGATIONS AND DUTIES OF THE ASSOCIATION. The Association, in addition to other powers, rights, duties and obligations provided for herein, shall have the following rights, duties and obligations:

8.1 Common Element Maintenance. The Association, subject to the rights and duties of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Elements and all improvements thereon and shall keep the same in good, clean, attractive, safe and sanitary condition, order, maintenance and repair; provided, however, that each Owner of a Unit shall keep the Limited Common Areas, if any, appurtenant to his Unit in a good, clean, safe, sanitary and attractive condition.

8.2 Other Association Functions. The Association may obtain and pay for the services of any person or entity to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable for the proper operation of the Property, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Association may acquire and pay for out of the Common Expense fund water, sewer, garbage collection, electrical, gas, roadway and parking area maintenance and snow removal, and other necessary utility services for the Common Elements (and the Units to the extent not separately metered), and other goods and services common to the Units.

8.3 Personal Property. The Association may acquire and hold tangible and intangible personal property for the use and benefit of all of the Owners and may dispose of such personal property by sale or otherwise. Subject to the Rules and Regulations of the Association, each Owner and his family members, guests, tenants and invitees may use the personal property.

8.4 Rules and Regulations. The Association may make and enforce reasonable and uniformly applied Rules and Regulations governing the use of the Units and the Common Areas;

which Rules and Regulations shall be consistent with the rights and duties established in this Declaration. Such Rules and Regulations may, without limitation, include:

(a) Regulating the use of Common Elements to assure equitable use and enjoyment by all persons entitled thereto;

(b) Assigning particular access, loading, storage or parking areas within the Common Elements for exclusive use by Owners of particular Condominium Units, etc., if not already assigned by the Plat. The Association may take judicial action against any Owner to enforce compliance with such Rules and Regulations or other obligations of Owners arising hereunder or to obtain damages for noncompliance, all to the fullest extent permitted by law. The Association may also suspend any Owner's voting rights in the Association during any period or periods during which the Owner fails to comply with such Rules and Regulations or any other obligation of such Owner under this Declaration; provided, however, that the Association shall first provide such Owner with written notice of the claimed violation and an opportunity for a hearing regarding such violation.

8.4 Expenses of Board of Directors. Members of the Board of Directors shall not receive pay for their services as Directors; provided, however, that bona fide expenses, such as expenses for travel, food and lodging, incurred by any Director in attending duly-called meetings of the Board of Directors shall be paid by the Association.

8.6 Limitation on Association's Liability. The Association shall not be liable for any failure of any service to be obtained and paid for by the Association, or for injury or damage to person or property caused by the elements or by another Owner or person in the Property or resulting from the electricity, water, rain, snow, or ice which may leak or flow from outside or from any parts of the Buildings or the Common Elements, including any of the pipes, drains, conduits, appliances or equipment thereof, or from any other place, unless caused by the gross negligence of the Association. No diminution or abatement of any assessments under this Declaration shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs, maintenance, or improvements to the Property or the Common Elements or any part thereof, or from any action taken to comply with any law, ordinance, or orders of a governmental authority.

## 9. ASSESSMENTS.

9.1 Members Obligations to Pay Assessments and Other Amounts. Declarant, for each Condominium owned by it within the Property, and for and as the Owner of the Property and every part thereof, hereby covenants and each Owner of any Condominium, by the acceptance of instruments of conveyance and transfer therefor (whether or not it be so expressed in said instruments) shall be deemed to covenant and agree with each other and with the Association, to pay the Association all assessments made by the Association for the purposes provided in this Declaration, as well as such reasonable and uniformly-applied charges for use of property and reasonable and uniformly-applied fines imposed for violation of Rules and Regulations adopted by the Association as provided in this Declaration. Such assessments shall be fixed, established and collected from time to time, as provided in this paragraph.

9.2. Regular Assessments. The regular assessments against all Condominium Units within the Property shall be based upon estimates of cash requirements by the Association to provide for the payment of all expenses arising out of or connected with the maintenance and operation of the Common Elements and furnishing utility services and other common items to the Units; which estimates shall include all sewer utilities provided by the Town of Jackson, other utilities provided by any sewer or water company or agency, and may include, among other things, the expenses of management; taxes and special assessments unless and until Condominium Units are separately assessed; premiums for all insurance which the Association is required or permitted to maintain hereunder; repairs and maintenance; wages of Association employees; utility charges; legal and accounting fees; any deficit remaining from a previous period; creation of a reasonable reserve fund for unforeseen contingencies and periodic maintenance repair and replacement of the Common Elements, as well as the eventual paving of all parking areas; and any other expenses and liabilities which may be incurred by the Association for the benefit of all of the Owners or by reason of this Declaration. Such shall constitute the estimated Common Expense, and all funds received from assessments under this subparagraph shall be part of the Common Expense fund.

(a) Apportionment of Regular Assessments. Expenses attributable to the Common Expense or to the Property as a whole shall be apportioned among and assessed to all Owners in proportion to their respective undivided interests in the Common Areas. Declarant will be liable for the amount of any assessment against completed Condominium Units owned by it.

(b) Notice and Payment of Regular Assessments. Regular assessments shall be made on a January 1st through December 31st fiscal basis. The Association shall give written notice to each Owner as to the amount of the regular assessment with respect to his Condominium Unit on or before the 10<sup>th</sup> day of January of each respective year. The regular assessments shall be due and payable, in advance, on or before the 30<sup>th</sup> day of January each respective year or on such other reasonable date or dates thereafter as the Association may designate in writing; provided, however, that the first regular assessment shall be for the balance of the fiscal year remaining after the date hereof. Each regular assessment shall bear interest at the maximum legal interest rate from the date it is declared due and collectible, if not paid by such date. Notwithstanding the foregoing, in the event that the Board elects to collect said annual assessments in monthly, quarterly or semi-annual installments, the Board may, upon default in the payment of any one or more installments, declare the entire balance of said annual assessment accelerated, at the option of the Board, and declare the same due and payable in full immediately.

(c) Inadequate Funds. In the event that the Common Expense fund proves inadequate during any fiscal year for any reason, including nonpayment of any Owner's assessment, the Association may levy additional assessments in accordance with the procedure set forth in the following subparagraph, except that such assessment need not be approved by the Owners.

(d) Working Capital Fund. The Association shall establish, for the initial months of the Project operations, a fund equal to at least a two months' estimated Common Area charge

for each Unit. Said sums shall, after the initial months, be held as security for prompt payment of charges and expenses, as provided in paragraph 7.1 hereof.

9.3. Special Assessments for Capital Improvements. In addition to the regular assessments authorized by this paragraph, the Association may levy, at any time and from time to time, upon the affirmative vote of at least seventy-five percent (75%) of the total votes of all members of the Association, special assessments, payable over such periods as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Project or any part thereof, or for any other expenses incurred or to be incurred, as provided in this Declaration. This subparagraph shall not be construed as an independent source of authority for the Association to incur expenses, but shall be construed to describe the manner of assessing for expenses authorized by other paragraphs and subparagraphs hereof, as appropriate. Any amounts assessed pursuant hereto shall be assessed to Owners in proportion to their respective undivided interests in the Common Areas. Notice in writing of the amount of such special assessment and the time for payment thereof shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall have been mailed. A special assessment shall bear interest at the maximum legal interest rate from the date it becomes due and payable. All funds received from assessments under this subparagraph shall be part of the Common Expense fund.

9.4. Individual Assessments. In addition to other assessments authorized under this paragraph, the Association may levy against any Owner an individual assessment, payable to the Association over such periods as the Association may determine, for the purpose of paying, in whole or in part, the cost of replacing, repairing, cleaning, or otherwise correcting any damage to Units or Common Areas caused by the intentional or negligent act or omission of any such Owner, its agents, contractors, employees, tenants, customers, clientele, guests and invitees, except damages arising from normal wear and tear.

9.5. No Waiver of Assessments. The failure of the Association, before the expiration of any fiscal year, to fix and/or give notice of the assessments for the next year, shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of the Owner from the obligation to pay assessments or any installment thereof for that or any subsequent year. However, the date on which payment for such assessment shall become due shall be deferred to a date thirty (30) days after notice thereof shall have been made, but in no event sooner than the first date of the fiscal year to which such assessment relates.

9.6. Expenditure of Funds. All funds received hereunder from assessments shall be expended by the Association exclusively to promote the business, safety and welfare of the Owners and occupants of the Property, the improvement, operation and maintenance of the Common Elements and the performance of the duties and exercise of the powers of the Association set forth in this Declaration.

9.7. Lien for Assessments. All sums assessed to Owners of any Condominium Unit within the Property pursuant to the provisions of this paragraph, together with interest thereon and a reasonable attorney's fee as provided herein, shall be secured by a lien on such Condominium Unit in favor of the Association. To evidence a lien for sums assessed pursuant to this paragraph,

the Association may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Condominium Unit and a description of the Condominium Unit. Such a notice shall be signed and acknowledged by the Association and may be recorded in the office of the County Clerk of Teton County, Wyoming. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by judicial foreclosure by the Association in the same manner in which mortgages on real property may be foreclosed in Wyoming. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding, including a reasonable attorney's fee, and the costs and expenses, including attorney's fees, shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessments against the Condominium Unit which shall become due during the period of foreclosure. The Association shall have the right and power to bid in at any foreclosure sale, and to hold, lease, mortgage or convey the subject Condominium Unit.

9.8. Personal Obligation of Owner. The amount of any regular assessment, special assessment, charge, fine, or individual assessment against any Condominium Unit, including interest, costs and attorneys fees, shall be the personal obligation of the Owner thereof to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. In such event, the Unit Owner shall be obligated to pay not only the interest provided for herein, at the maximum legal rate, but also all costs and expenses incurred in maintaining such suit, including attorney's fees.

No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Areas or Elements, by abandonment of the Owner's Condominium Unit, or by waiving any services or amenities provided for in this Declaration.

9.9. Liability of Owners, Purchasers and Encumbrancers. The amount of any assessment payable with respect to any Unit shall be a joint and several obligation to the Association by such Owner and such Owner's heirs, successors and assigns.

9.10. Estoppel Certificate. Upon payment of a reasonable fee not to exceed fifty Dollars (\$50.00) and upon written request of any Owner or any person with any right, title or interest in a Unit or intending to acquire any right, title or interest in a Unit, the Association shall furnish a written statement setting forth the amount of any assessments or charges, if any, due and unpaid with respect to a Unit and the amount of the assessment for the current fiscal period. Said statement shall, with respect to the party to whom it is issued, be conclusive against the Association and all parties, for all purposes, that no greater other amounts were then due or accrued and unpaid.

## 10. INSURANCE.

10.1. Types of Insurance. The Association shall obtain and keep in full force and effect at all times the following insurance coverage provided by responsible companies duly authorized to do business in the State of Wyoming:

(a) Fire and Casualty Insurance. The Association shall obtain a policy or policies of insurance on the Common Elements and Limited Common Elements (except land, foundation, excavation and other items normally excluded from coverage), including fixtures to the extent they are part of the Common Elements, Building service equipment and supplies and other common personal property of the Association. The Association may assess Unit Owners for such additional coverage in such amounts as shall provide for the replacement of the Units, Common Elements, and any other Common Facility in the event of damage or destruction from casualty against which such insurance is obtained, which insurance shall be in accordance with coverage customarily maintained by other condominium projects similar in construction, design and use, and at least equal to such coverage as is commonly required by prudent institutional mortgage investors in the area. Such insurance shall include fire and extended coverage, vandalism and malicious mischief, theft, and such other risks and hazards against which the Association shall deem it appropriate to provide insurance protection, but in any event such perils normally covered by the standard extended coverage and "all risk" endorsement. The Association may comply with the above requirement by the purchase of blanket coverage and may elect such "deductible" provisions as in the Association's opinion are consistent with good business practice. The policy shall be in an amount equal to 100% of current replacement cost of the Property, exclusive of land, foundation, excavation and other items normally excluded from coverage.

(b) Public Liability and Property Damage Insurance. The Association shall obtain a broad form of comprehensive general liability insurance coverage in such amounts and in such forms as it deems advisable to provide adequate protection. Coverage shall include, without limitation, all of the Common Elements and public ways of the Property, including death, liability for personal injuries, property damage, liability of the Owners and their officers, directors and employees, as well as the Association, its officers, Directors and employees arising with the ownership, operation, maintenance, administration, management, use or occupancy of the Property as well as such other riders customarily covered with respect to similar condominiums. The limits of such insurance policies shall be not less than \$1,000,000.00 for each person and not less than \$1,000,000.00 for each occurrence with respect to personal liability and with limits of not less than \$100,000.00 for each accident with respect to property damage liability.

(c) Workmen's Compensation Insurance. The Association shall obtain Workmen's Compensation and Employer's Liability insurance and all other similar insurance with respect to employees of the Association in the amount and in the forms now or hereafter required by law.

(d) Fidelity Insurance or Bond. The Association may obtain blanket fidelity insurance or a blanket fidelity bond for coverage against dishonesty of those members of the Board of Directors, officers, the Manager, or employees of the Association handling or responsible for the administration of the funds of the Association.

(e) Additional Coverage. The provisions of this Declaration shall not be construed to limit the power or authority of the Association to obtain and maintain

insurance coverage, in addition to any insurance coverage required by this Declaration, in such amounts and in such forms as the Association shall deem appropriate from time to time.

10.2. Form of Insurance.

(a) Casualty Insurance. Casualty insurance shall be carried in a form or forms naming the insured as follows: "Association of owners of the Condominium for the use and benefit of the individual owners." The loss payable shall be in favor of the Association as trustee for each Unit Owner and the Owner's mortgagee, as their interest may appear, and said parties shall be beneficiaries of the policy based upon ownership percentages of the Common Elements. Each policy shall provide a standard, non-contributory mortgagee clause in favor of each mortgagee or insurer or guarantor of a mortgage, in a form commonly accepted by private institutional mortgagors in the area. Each policy shall also provide that it cannot be canceled by either the insured or the insurance company until after thirty (30) days' prior written notice is first given to each Owner, to Declarant, and to each mortgagee who is listed as a scheduled first mortgage holder in the policies. The Association shall upon request furnish to each Owner or mortgagee a certificate of coverage, including an identification of such Owner's interest.

(b) Public Liability and Property Damage Insurance. Public liability and property damage insurance shall name the Association, the Manager, each Owner and its officers, directors and employees, and the Declarant, whether or not the Declarant is the Owner, and shall protect each insured against liability for acts of the Association in connection with the ownership, operation, maintenance or other use of the Property. Each such policy shall provide that it cannot be canceled either by the insured or by the insurance company until after ten (10) days' written notice to each and all of the insured.

(c) Adjustment. Exclusive authority to adjust losses under policies hereafter in force on the Property shall be vested in the Board of Directors of the Association.

(d) Contribution. The coverage may, but need not, provide that the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual Owners or their mortgagees.

(e) Individual Insurance. Each Owner may obtain additional insurance at his own expense over and above coverage provided in policies obtained by the Association; provided, however, that no Owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Association may realize under any insurance policy the Association may have in force on the Project at any particular time.

(f) Notice of Improvement. Each Owner shall be required to notify the Association of all improvements made by the Owner to his Unit the value of which exceeds five thousand Dollars (\$500.00); provided, however, that this subparagraph shall not be construed as authorizing any improvement.

(g) Policy. The Association shall be required to secure insurance policies that will provide for the following:

(i) That the insurer shall waive subrogation as to any claims against the Association, the Manager, the Owners, and their respective servants, agents and guests;

(ii) The policy or policies on the Property cannot be canceled, invalidated or suspended on account of the conduct of any one or more individual Owner not in control of the Owners collectively;

(iii) That the policy or policies on the Project cannot be canceled, invalidated or suspended on account of the conduct of any Director, officer or employee of the Association without a prior demand in writing that the Association cure the defect;

(iv) That any "no other insurance" clause in the policy or policies on the Property exclude individual Owner's policies from consideration;

(v) A "Special Condominium Endorsement" or its equivalent;

(vi) If available, the policies shall contain an "Agreed Amount Endorsement" and an "Inflation Guard Endorsement."

(h) Review of Insurance. The Association shall review annually the coverage and policy limits of all insurance on the Project and adjust the same at its discretion. Such annual review shall include an appraisal of the improvements on the Property by a representative of the insurance carrier or carriers providing the policy or policies on the Property, or such other qualified appraisers as the Association may select.

10.3. Insurance Trustee/ Attorney-In-Fact. Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any insurance trust agreement or any successor to such trustee (each of whom shall be referred to herein as the "Insurance Trustee"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance and to perform such other functions as are necessary to accomplish this purpose.

Where appropriate under applicable law, each Unit Owner hereby appoints the Association, or any Insurance Trustee or substitute Insurance Trustee designated by the Association, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose.

## II. DAMAGE OR DESTRUCTION.

II.1. Association as Attorney-in-Fact. All of the Owners irrevocably constitute and appoint the Association their true and lawful attorney-in-fact in their name, place and stead for the purpose of dealing with the Property upon its damage or destruction, as hereinafter provided. Acceptance by any grantee of deed from the Declarant or from any Owner shall constitute appointment by said grantee of the Association as his attorney in-fact, as herein provided. As attorney-in-fact, the Association shall have full and complete authorization, right and power to make, execute and deliver any contract, deed, or other instrument with respect to the interest of an Owner which may be necessary or appropriate to exercise the powers herein granted.

II.2. General Authority of Association. Repair and reconstruction of the improvements, as used herein, means restoring the Property to substantially the same condition in which it existed prior to damage, with each Unit and the Common Elements having substantially the same vertical and horizontal boundaries, Common Areas, and facilities as before. Proceeds of any insurance collected shall be available to the Association for the purpose of repair or reconstruction, unless the Owners upon the affirmative vote of at least seventy-five percent (75%) of the total votes of all Owners agree not to rebuild within one hundred (100) days after such destruction or damage in accordance with the provisions set forth hereinafter.

II.3. Estimate of Costs. As soon as practicable after an event causing damage to, or destruction of, any part of the Property, the Association shall obtain complete and reliable estimates of the costs of repair or reconstruction of that part of the Property damaged or destroyed.

II.4. Repair or Reconstruction. As soon as practicable after receiving these estimates, the Association shall diligently pursue to completion the repair or reconstruction of that part of the Property damaged or destroyed. The Association shall take all necessary or appropriate action to effect repair or reconstruction, as attorney-in-fact for the Owners, and no consent or other action by any Owner shall be necessary in connection herewith. The Project shall be restored or repaired to substantially the same condition in which it existed prior to the fire or other destruction, with each Unit and the Common Elements having the same vertical and horizontal boundaries as before.

II.5. Funds for Reconstruction. The proceeds of any insurance collected or insurance maintained by the Association shall be available to the Association for the purpose of repair or reconstruction. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair or reconstruction, the Association may levy in advance a special assessment sufficient to provide funds to pay such estimated or actual costs of repair or reconstruction. Such assessments shall be allocated and collected as provided in the paragraphs hereof relating to assessments, except that the vote therein specified shall not be necessary. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair or reconstruction.

II.6. Disbursement of Funds for Repair or Reconstruction. The insurance proceeds held by the Association and any amounts received from assessments pursuant to the previous

subparagraph hereof shall constitute a fund for the payment of costs of repair and reconstruction of the Buildings and for replacement of the Common Elements after casualty.

11.7. Partition and Distribution. In the event that seventy-five percent (75%) of the Owners agree within one hundred (100) days after destruction or damage to three-fourths (3/4) of the Property not to repair or rebuild, the Association shall file with the County Clerk of Teton County, Wyoming, a notice setting forth such facts. Upon filing such notice, the following shall occur:

- (a) The Property shall be deemed to be owned in common by the Owners;
- (b) The undivided interest in the Property owned in common which shall appertain to each Owner shall be the percentage of undivided interest previously owned by such Owner in the Common Areas;
- (c) Any mortgages or liens affecting any of the Condominium Units shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the Owner in the Property;
- (d) The Property shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of any sale resulting from such suit or partition, together with the net proceeds of the insurance on the Property, if any, shall be considered as one fund and shall be divided among all the Owners in a percentage equal to the percentage of undivided interest owned by each Owner in the Common Elements in accordance with Exhibit "B" hereto, after first paying out of the respective share of each Owner, to the extent sufficient for the purposes, all sums due to mortgages, as well as other holders of liens on the undivided interest in the Property owned by such Owner.

12. CONDEMNATION. If at any time or times during the continuance of the condominium ownership pursuant to this Declaration, all or any part of the Property shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions shall apply:

12.1. Proceeds. All compensation, damages, or other proceeds therefrom, the sum of which is hereinafter called the "condemnation award," shall be payable to the Association. The condemnation award shall be divided among all Owners and their mortgage holders in a percentage equal to the percentage of undivided interest owned by each Owner in the Common Areas in accordance with Exhibit "B" hereto.

12.3. Partial Taking. In the event that less than the entire Project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership hereunder shall not terminate. Each Owner and his mortgagee shall be entitled to a share of the condemnation award to be determined in the following manner: as soon as practicable, the Association shall, reasonably and in good faith, allocate the condemnation award between compensation, severance damages, or other proceeds, and shall apportion the amounts so allocated among and pay the same to the Owners and their mortgagees as follows:

(a) The total amount allocated to taking of or injury to the Common Elements shall be apportioned among all Owners in proportion to their respective undivided interest in the Common Elements;

(b) The total amount allocated to severance damages shall be apportioned to those Condominium Units which were not taken or condemned;

(c) The respective amounts allocated to the taking of or injury to a particular Unit shall be apportioned to the particular Unit involved;

(d) The total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances. If an allocation of the condemnation award is already established in negotiation, judicial victory, or otherwise, then in allocating the condemnation award the Association shall employ such allocation to the extent it is relevant and applicable; and

(e) Distribution of apportioned proceeds shall be made by checks payable jointly to the respective Owners and to their respective mortgagees, as applicable.

12.4. Reorganization. In the event a partial taking results in the taking of a complete Unit, the Owner thereof automatically shall cease to be a member of the Association. Thereafter the Association shall reallocate the ownership, voting rights, and assessment ratio in accordance with the Condominium Act.

12.5. Reconstruction and Repair. Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified herein in case of damage or destruction.

13. ENFORCEMENT AND REMEDIES. The obligations, provisions, covenants, restrictions, and conditions contained in this Declaration or any Supplemental or Amended Declaration with respect to the Association or Units within the Property shall be enforceable by Declarant or by any Owner of a Unit within the Property, by any proceeding, including but not limited to a proceeding for a prohibitive or mandatory injunction. The obligations, covenants, restrictions, and conditions contained in this Declaration or any Supplemental or Amended Declaration with respect to a person or entity or property of a person or entity other than the Association or Declarant shall be enforceable by Declarant or the Association by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages or to recover any amount due or unpaid. All expenses of the Board in connection with any such actions or proceedings, including court costs and attorney's fees and other fees and expenses and all damages, liquidated or otherwise, together with interest thereon at the maximum legal rate, may be charged to and assessed against the person proceeded against. In the event of any such default by any Unit Owner, the Board of Directors of the Association may authorize the Manager or Managing Agent of the Association to proceed on behalf of the Association.

In addition to the foregoing, if any Unit Owner shall violate any of the obligations, provisions, covenants, restrictions and conditions contained in this Declaration or any Supplemental or Amended Declaration or the Bylaws or the Rules and Regulations of the

Association, the Association may, after reasonable notice and an opportunity for said Owner to be heard, levy such reasonable fines or penalties as it may establish from time to time.

14. AMENDMENT OR REVOCATION. At any time while any provision, covenant, condition or restriction contained in this Declaration or any Supplemental or Amended Declaration is in force and effect, it may be amended or repealed by the recording of a written instrument specifying the amendment or repeal executed by the Owners of not less than seventy-five percent (75%) of the total votes in the Association and consented to by the holders of first Mortgages on the Units; provided, however, that the same may not be amended or revoked if otherwise prohibited herein, and further provided that during the Declarant's control established in paragraph 7.2 period no Declarant-related amendment shall be made to this Declaration or to any Bylaw or document, nor shall any Declarant-related document be executed, adopted or promulgated by the Association or the Board unless such Declarant-related amendment or document shall be specifically approved in writing by Declarant.

For purposes of this section, an amendment or document which does any of the following shall be considered to be Declarant-related:

- (a) Discriminates or tends to discriminate against a Declarant or any successor Declarant as an Owner or otherwise;
- (b) Directly or indirectly by its provisions or in practical application relates to any Declarant or any successor Declarant in a manner different from the manner in which it relates to other Owners;
- (c) Modifies the definitions provided for in this Declaration in a manner which alters Declarant's or any successor Declarant's rights or status;
- (d) Alters the character and rights of membership as provided for in this Declaration or affects or modifies in any manner whatsoever the rights of Declarant or any successor Declarant as a member of the Association;
- (e) Alters any previously recorded or written agreement with any public or quasi-public agencies, utility, political subdivisions, public authorities or other similar agencies or bodies, respecting zoning suspension, streets, roads, drives, easements or facilities;
- (f) Modifies the basis or manner of assessment, as applicable to the Declarant or any successor Declarant;
- (g) Limits or restricts the authority of the Declarant to nominate members of the Board of Directors;
- (h) Alters or repeals any of Declarant's or any successor Declarant's rights or any provisions applicable to Declarant's or any successor Declarant's rights, as provided for by any provision of this Declaration or any other document applicable to Declarant.

14.1. Declarant's Reserved Right to Amend. During Declarant's control period, Declarant may, without the consent or concurrence of the Board, the Owners, or any other party, amend, modify or revoke this Declaration if reasonably necessary, in the sole discretion of Declarant, to conform to any requirement, law, ordinance, regulation or policy of any governmental agency, department or body of the United States or the State of Wyoming or local governmental authority or district, or in order to obtain water and sewer service or qualify for financing or insurance for mortgages. In addition, Declarant is hereby vested with the right to amend and supplement this Declaration and the Plat as may be reasonably necessary or desirable to facilitate the practical, technical, administrative, or functional integration of any subsequent phase or the addition of additional land into the Project.

15. ANNEXATION.

15.1 Addition of New Buildings and Land. Additional land or buildings within Lot 5 of the Valley View Subdivision may be annexed by the Declarant without the consent of members by recording with the Teton County Clerk a Supplementary Declaration describing the property so annexed.

16. MISCELLANEOUS.

16.1. Duration of Declaration. This Declaration and each provision herein shall remain in full force and effect until revoked or terminated in the manner set forth in this Declaration.

16.2. Limited Liability and Indemnification. Neither Declarant, the Association, the Board of Directors of the Association, nor any officer, agent or employee of any of the same shall be liable to the Association or any Owner for any action or for any failure to act with respect to any matter, so long as such person as entity was not guilty of fraud, gross negligence or bad faith in taking such action or failing to act.

The Association shall indemnify Declarant, each member of the Board of Directors of the Association, and any employee, officer or agent of Declarant or the Association against any loss or threat of loss as a result of any claim or legal proceeding relating to the performance or non performance of any act concerning the activities of the Association; provided, however, that with respect to the subject matter of the claim or legal proceeding, the party against whom the claim is made or legal proceeding is directed was not guilty of fraud, gross negligence or bad faith in such performance or non-performance.

The indemnification authorized by this paragraph shall include payment of: (i) reasonable attorney's fees or other expenses incurred in settling any claim or threatened action or incurred in any finally adjudicated legal proceeding; and (ii) expenses incurred in the removal of any liens affecting any property of the indemnitee. Indemnification shall be made from the assets of the Association, and no Owner shall be personally liable to any indemnitee. This paragraph shall inure to the benefit of the Declarant, the Association, the members of the Board of Directors of the Association, the officers, employees and agents of Declarant and the Association, and their respective heirs, executors, administrators, successors and assigns.

16.3. Registration of Mailing Addresses. Each Owner shall register from time to time with the Association his current mailing address and all notices or demands intended to be served upon any Owner may be sent by first-class U.S. mail, postage prepaid, addressed to the name of the Owner at such registered mailing address or, if no address has been registered, to the Unit of such Owner. All notices or demands intended to be served upon the Association may be sent by first-class U.S. mail, postage prepaid, addressed to the Association at its principal offices, or to such other address as the Association may hereafter furnish to the Owners in writing. Any notice or demand referred to in this Declaration shall be deemed given when deposited in the U.S. mail in the form provided for in this paragraph.

16.4. Availability of Information/ Audited Financial Statement. The Association shall make available to Unit Owners, prospective purchasers, lenders and the holders, insurers and guarantors of the first Mortgage of any Unit current copies of this Declaration and Supplements or Amendments thereto, the Bylaws and the Rules and Regulations governing the Condominium, and other books, records and financial statements (including the most recent audited financial statement) of the Association. As used herein "available" shall mean available for inspection upon request, during normal business hours or under other reasonable circumstances.

Upon written request from any actual or prospective holder, insurer or guarantor of any first Mortgage on a Unit, the Association shall be required to prepare and furnish, within a reasonable time, an audited financial statement for the immediately preceding fiscal year.

16.5. Interpretation and Construction. The provisions of this Declaration and any Supplemental or Amended Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Condominium Project. Failure to enforce any provision, restriction, covenant or condition in this Declaration or in any Supplemental or Amended Declaration shall not operate as a waiver of any such provision, restriction, covenant or condition or of any other provisions, restrictions, covenants or conditions.

The provisions of this Declaration shall be in addition and supplemental to the Condominium Act and to all other provisions of law. Wherever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders. The heading appearing at the beginning of the paragraphs of this Declaration are only for convenience of reference and are not intended to describe, interpret, define or otherwise affect the content, meaning or intent of this Declaration or any paragraph, subparagraph or provision hereof. The provisions hereof shall be deemed independent and severable, and the invalidity, partial invalidity, or enforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof.

16.6. Compliance with Declaration and Bylaws. Each Owner shall comply with the provisions of this Declaration, the Articles of Incorporation and the Bylaws of the Association, the Rules and Regulations promulgated by the Association, and the decisions and resolutions of the Association adopted pursuant hereto, as the same may be lawfully amended from time to time.

Failure to comply with any of the same shall be grounds for an action to recover fines, sums due and for damages for injunctive relief or both.

16.7. Effective Date. This Declaration shall take effect upon recording.

16.8. Agent for Service of Process. For so long as Declarant owns Units with appurtenant votes exceeding fifty-one percent (51%) of the total votes of the Association, the agent for service of process under the Condominium Act shall be Paul O. Vaughn, whose address is 235 E. Broadway Street, Jackson, Wyoming. Thereafter the agent of service of process shall be the President of the Association; provided that an appropriate filing shall be made with the Secretary of State's office.

16.9. Successors and Assigns. This Declaration shall be binding upon and shall inure to the benefit of the Association and each Owner, and the heirs, personal representatives, successors and assigns of each of them.

IN WITNESS WHEREOF, the undersigned has executed this instrument this 30<sup>th</sup> day of November, 2001.

DECLARANT: H & I DEVELOPMENT, LLC  
*A Wyoming limited liability company*

By: [Signature]  
Presiding Member

STATE OF WYOMING     )  
  ) ss.  
COUNTY OF TETON     )

The foregoing instrument was acknowledged before me by Gannett Horn, Presiding Member of and for and on behalf of H & I Development, LLC this 30<sup>th</sup> day of November, 2001.

(Seal) [Notary Seal] [Signature]  
Notary Public

My commission expires:  
10/5/2002

## EXHIBIT "A"

Legal Description  
for  
Phase One Hillside Business Complex

That portion of Lot 5 of the Valley View Subdivision, a subdivision of record in the Office of the Clerk of Teton County as Plat No. 167 located within the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 17, T40N, R116W, 6th P.M., Teton County Wyoming, further described as follows:

**BEGINNING** at a point on the north line of said Lot 5 marked by a 5/8 inch diameter steel re-bar with cap inscribed "PIERSON LAND SURVEYS PLS 3831" which bears S89°45'50"W, 159.38 feet from the S1/16 corner on the east line of said Section 17;

**THENCE** S 00°03'26"E, 386.71 feet along a line parallel with the north line of said Lot 5 to the intersection with the south line of said Lot 5 at a Point marked by a 5/8 inch diameter steel re-bar with cap inscribed "PIERSON LAND SURVEYS PLS 3831";

**THENCE** S 89°50'59"W, 100.47 feet along the south line of said Lot 5 to a point marked by a 5/8 inch diameter steel re-bar with cap inscribed "PIERSON LAND SURVEYS PLS 3831";

**THENCE** along a curve to the left having a radius of 50.00 feet and an arc length of 46.24 feet, being subtended by a chord of N 63°30'53"W, 44.61 feet to a point marked by a 5/8 inch diameter steel re-bar with cap inscribed "PIERSON LAND SURVEYS PLS 3831";

**THENCE** N 00°00'33"W, 366.66 feet along the west line of Said Lot 5 to the intersection with the north line of said SE $\frac{1}{4}$ SE $\frac{1}{4}$  marked by a 5/8 inch diameter steel re-bar with cap inscribed "PIERSON LAND SURVEYS PLS 3831";

**THENCE** N 89°49'50"E, 140.08 feet along said north line to the **POINT OF BEGINNING**.

Said tract contains 1.24 acres more or less.

**EXHIBIT "B"**

*(Each Unit's Percentage of Undivided Interest  
in the Common Area and Voting Rights)*

<u>Unit Number</u>	<u>Floor Area (sq.ft.)</u>	<u>Undivided Interest In The Common Area</u>	<u>Vote</u>
101	2363	7%	2
102	1981	6%	2
103	971	3%	1
104	975	3%	1
105	975	3%	1
106	975	3%	1
107	975	3%	1
108	971	3%	1
109	971	3%	1
110	975	3%	1
111	1959	6%	2
201	2371	7.2%	2
202	1991	6%	2
203	1991	6%	2
204	1991	6%	2
205	1991	6%	2
206	1991	6%	2
207	1966	6%	2
301	755	2.3%	1
302	755	2.3%	1
303	755	2.3%	1
304	755	2.3%	1
305	755	2.3%	1
306	745	2.3%	1