

**Declaration of Covenants, Conditions, and Restrictions  
For  
The Twelve Pines Addition to the Town of Jackson**

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

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made this 8<sup>th</sup> day of September, 2004, by the JACKSON HOLE COMMUNITY HOUSING TRUST, a Wyoming nonprofit corporation (the "Declarant").

**ARTICLE I - DECLARATION, PURPOSE AND INTENT**

Grantor: JACKSON HOLE COMMUNITY  
 Grantee: THE PUBLIC  
 Doc 0633575 bk 564 pg 1143-1174 Filed at 10:59 on 09/23/04  
 Sherry L Daigle, Teton County Clerk fees: 108.00  
 By ANN SCHROEDER Deputy

**1.1 Purpose and Intent.** The Declarant, as the owner of the real property described on **Exhibit "A"** intends by the recording of these Covenants to create a general plan of development for the planned community known as The Twelve Pines Addition to the Town of Jackson. These Covenants provide for the overall development, administration, maintenance and preservation of the real property now or hereafter comprising the properties at The Twelve Pines Addition to the Town of Jackson. An integral part of the development plan is the creation of The Twelve Pines Homeowners' Association, an association comprised of all owners of Units in The Twelve Pines Addition to the Town of Jackson, to own, operate and/or maintain various common areas and community improvements and to administer and enforce these Covenants and the other Governing Documents referred to in these Covenants. The Declarant shall retain ownership in the Lots and shall convey a leasehold interest in each Lot to an Owner separate and apart from the conveyance by the Declarant in fee of the Unit to such Owner.

**1.2 Declaration and Adoption of Covenants.** Declarant hereby declares that the property described in **Exhibit "A"** attached hereto, and any part thereof, shall be owned, sold, conveyed, encumbered, used, occupied and developed subject to the following covenants, conditions and restrictions (the "Covenants"). The Covenants shall run with the title to the Property and any lot thereof, and shall be binding upon all parties having or acquiring any legal or equitable interest in the Property or any part thereof, and shall insure to the benefit of every owner of any part of the Property, and shall also be enforceable as equitable servitudes.

The Covenants shall be enforceable in perpetuity by the Declarant, The Association, any Owner, and their respective legal representatives, heirs, successors, and assigns.

**1.3 Governing Documents.** The Governing Documents, as defined hereafter, create a general plan of development and use for The Twelve Pines Addition to the Town of Jackson which may be supplemented as set forth herein. Nothing in this Section shall preclude the adoption of any Supplemental Declaration or other recorded covenants applicable to any portion of the Properties from containing additional restrictions or provisions that are more restrictive than the provisions of these Covenants. The Association shall enforce this Declaration and any Supplemental Declaration.

All provisions of the Governing Documents shall apply to all Owners as well as their respective family members, tenants, guests and invitees.

If any provision of these Covenants is determined by judgment or court order to be invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of the remaining provisions of these Covenants which shall remain in full force and effect.

## ARTICLE II - DEFINITIONS

The terms used in Governing Documents shall generally be given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms shall be defined as set forth below.

**2.1 “Association”.** The Twelve Pines Homeowners’ Association, a Wyoming non-profit corporation, its successors or assigns.

**2.2 “Base Assessment”.** Assessments levied on all Units subject to assessment under Article VIII to fund Common Expenses, as determined in accordance with Section 8.1.

**2.3 “Board of Directors”.** (Or “Board”) The Board of Directors of the Association, responsible for the administration and enforcement of the terms and conditions of this Declaration and any Supplemental Declaration.

**2.4 “Common Area”.** All real and personal property located within Lot 17 as designated on the Final Plat, including easements, which the Association owns, leases or in which it otherwise holds possessory or use rights for the common use and enjoyment of the Owners.

**2.5 “Common Expenses”.** The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Units including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents.

**2.6 “Declarant”.** The Jackson Hole Community Housing Trust, or: (i) any successor or assign who takes title to any portion of the property described on Exhibit “A” for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant.

**2.7 “Design Guidelines”.** The architectural, design and construction guidelines and review procedures adopted pursuant to Article IV, as they may be amended.

**2.8 “Final Plat”.** The final subdivision plat of The Twelve Pines Addition to the Town of Jackson as approved by the applicable governmental agency or agencies of Town of Jackson, Wyoming and as recorded or to be recorded in the applicable real property records of Teton County, Wyoming and which creates the following: (i) one (1) Lot out of the Properties

designated as the Common Area, and (ii) twelve (12) Lots out of the Properties designated for single family residential purposes, together with the twelve (12) Units designated thereon,

**2.9 “Governing Documents”.** A collective term referring to these Covenants and any applicable Supplemental Declaration, the By-Laws, the Articles, the Design Guidelines, and any Rules and Regulations adopted by Declarant or the Board as they may be amended, and the Ground Lease.

**2.10 “Ground Lease”.** The ground lease whereupon the Declarant, as owner of the Lots, leases to an Owner a Lot for a period of ninety-nine (99) years with option to renew.

**2.11 “Lot”.** A portion of the Properties designated on the Final Plat of The Twelve Pines Addition to the Town of Jackson as a “Lot”, which shall: (i) be owned by Declarant, and (ii) be leased by Declarant to an Owner for ninety-nine (99) years with option to renew. The definition of “Lot” specifically excludes the following: (i) the Unit situated upon and affixed to a Lot; and (ii) Lot 17 as designated on the Final Plat.

**2.12 “Master Landscape Plan”.** The Master Landscape Plan shall be that landscaping plan approval by the Town of Jackson as part of the Town’s approval of The Twelve Pines Addition to the Town of Jackson.

**2.13 “Rules and Regulations”.** The Rules and Regulations are the Rules and Regulations adopted by the Declarant and/or the Board pursuant to Section 3.2 hereof.

**2.14 “Member”.** A member of the Association as defined and described in this Declaration.

**2.15 “Permitted Mortgage”.** A mortgage, a deed of trust to secure debt, or any other form of security instrument affecting title to any Unit or all or any portion of the Properties “Mortgagee” shall refer to a beneficiary of a deed of trust or holder of a Mortgage.

**2.16 “Owner”.** One or more Persons who hold the following two real property interests with respect to the same Lot: (i) a record leasehold interest to the Lot; and (ii) a record fee title interest to the Unit affixed to and situated upon such Lot. The definition of “Owner” specifically excludes any party holding an interest merely as security for the performance of an obligation.

**2.17 “Person”** A natural person, a corporation, a partnership, a trustee, or any other legal entity.

**2.18 “Property”** The real property described on Exhibit “A”.

**2.19 “Public Records”.** The Official Records of the County Clerk of Teton County, Wyoming.

**2.20 “Special Assessment”.** Assessments levied in accordance with Section 8.3.

**2.21** **“Specific Assessment”**. Assessments levied in accordance with Section 8.4.

**2.22** **“Supplemental Declaration”**. An instrument filed in the Public Records pursuant to Article IX which subjects additional property to these Covenants, designates Neighborhoods, and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.

**2.23** **“Townhouse” or “Unit”**. The building improvements affixed to and situated upon a Lot within The Twelve Pines Addition to the Town of Jackson which shall be sold separately from the Lot and shall be owned in fee by an Owner. Each Unit’s vertical perimeter boundary on the party wall located between two Units extends to the middle of the party wall. The foundation and basement of each unit are included within the parameters of the Unit and are part of the ownership of the Unit. The definition of “Unit” expressly excludes any pipe, flue, duct, wire, or conduit running through a Unit for the purpose of furnishing utility and similar services to other Units. Each Unit shall be subject to the rights and obligations of the Ground Lease and these Covenants.

**ARTICLE III**  
**RULES AND REGULATIONS / PERMITTED AND PROHIBITED USES**

**3.1** **Framework for Regulation**. The Governing Documents establish, as part of the general plan of development for the Properties, a framework of covenants, easements and restrictions which govern the Properties and the Units. However, within that framework, the Board and the Members must have the ability to respond to unforeseen problems and changes in circumstances, conditions, needs, desires, trends and technology which inevitably will affect The Twelve Pines Addition to the Town of Jackson, its Owners and residents. The Declarant and the Board has the authority to adopt rules and regulations for the use of the Property and any lot thereof.

**3.2** **Rule Making Authority**.

(a) Subject to the terms of this Article and the Board’s duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board may modify, cancel, limit, create exceptions to, or expand any Rules and Regulations adopted by the Board, subject to this Section 3.2(a). The Board shall send notice by mail to all Owners and Declarant concerning any such proposed action at least five (5) business days prior to the Board meeting at which such action is to be considered. Members and Declarant shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken. Such action shall become effective after compliance with Section 3.2(c) below if: (i) approved at a meeting of the Members by more than fifty percent (50%) of the total votes entitled to vote on the matter; and (ii) approved by the Declarant pursuant to Section 10.4.

(b) At least thirty (30) days prior to the effective date of any action taken under subsection (a) of this Section, the Board shall send a copy of the new rule or explanation of any changes to the Rules and Regulations to Declarant specifying the effective date.

(c) At least thirty (30) days prior to the effective date of any action taken under subsection (a) of this Section, the Board shall send a copy of the new rule or explanation of any changes to the Rules and Regulations to each Owner specifying the effective date. The Association shall provide, without cost, a copy of the Rules and Regulations then in effect to any requesting Member or Mortgagee.

(d) Nothing in this Article shall authorize the Board or the Members to modify, repeal or expand the Design Guidelines without the written consent of Declarant. In the event of a conflict between the Design Guidelines and the Rules and Regulations, the Design Guidelines shall control.

**3.3 Owners' Acknowledgement and Notice to Purchasers.** All owners are given notice that their Unit is subject to a Ground Lease that contains limitations on the resale value of the Unit, it being the express intent of the Declarant that The Twelve Pines Addition to the Town of Jackson remain a permanently affordable residential community for income-qualified individuals into the future. All Owners are given further notice that use of their Unit is limited by the Rules and Regulations as they may be adopted, amended, expanded and otherwise modified hereunder. Each Owner, by acceptance of a deed of conveyance for their Unit, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected by these Covenants and Ground Lease and that the Rules and Regulations may change from time to time. All purchasers of Units are on notice that that the Rules and Regulations are not recorded in the Public Records. Copies of the Rules and Regulations may be obtained from the Association.

**3.4 Limitation of Rule Making Authority / Protection of Owners and Others.** No rule shall be adopted in violation of the following provisions, some of which define permitted and prohibited uses, except as may be specifically set forth in these Covenants (either initially or by amendment) or in the Rules and Regulations.

(a) **Equal Treatment.** Similarly situated Owners shall be treated similarly by the Board and the Association.

(b) **Displays.** The rights of Owners to display religious and holiday signs, symbols, and decorations inside structures on their Unit(s) of the kinds normally displayed in dwellings located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt reasonable time, place, and manner restrictions with respect to displays visible from outside the dwelling.

No rules shall regulate the content of political signs; however, rules may regulate the time, place and manner of posting such signs (including design criteria).

(c) **Household Compositions.** An Owner shall occupy the Property as its sole residence and shall reside there on a full-time basis; provided, however, that an Owner may reside elsewhere for up to two (2) months of each year. Units are for single-family, owner-occupied use and may be occupied by an Owner, the children of an Owner, other immediate

family members of an Owner, and dependents of an Owner on the basis of not more than two persons per bedroom in each Unit, subject to the provisions of the Ground Lease. Any individual who does not meet the requirements of the previous sentence may not be a guest in a Unit for more than thirty days in any one calendar year.

(d) **Activities Within Dwellings.** No rule shall interfere with the activities carried on within the confines of dwellings, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Units, that generate excessive noise or traffic or parking, that create unsightly conditions visible outside the dwelling, or that create an unreasonable source of annoyance or regular foot-traffic through the Properties. This provision is specifically intended to prohibit any home office use that has regular comings and goings by customers of the Owner. Home daycare operations are specifically prohibited in any Unit.

(e) **Insurance Rates.** Nothing shall be done or kept on the Property which would increase the rate of insurance or cause the cancellation of insurance on any Lot or any of the Improvements located upon any Lot or the Common Area without prior written approval of the Board.

(f) **Allocation of Burdens and Benefits.** No rule shall alter the allocation of financial burdens among the various Units to the detriment of any Owner over that Owner's objection expressed in writing to the Association. This provision does not affect the right to increase the amount of assessments or to levy Specific Assessments as provided by Article VIII.

(g) **Alienations.** No Unit may be rented or leased in whole or in part except with the prior written consent of the Declarant, as necessary. The sale of any Unit is subject to the terms, including resale value restrictions, of the Ground Lease.

(h) **Abridging Existing Rights.** If any rule would otherwise require Owners to dispose of personal property which they maintained in or on the Unit prior to the effective date of such rule, or to vacate a Unit in which they resided prior to the effective date of such rule, and such property was maintained or such occupancy was in compliance with these Covenants and all rules previously in force, such rule shall not apply to any such Owners without their written consent.

(i) **Rights to Develop.** No rule or action by the Association or Board shall impede the Declarant's right to develop the Properties.

The limitations in subsections (a) through (h) of this Section 3.4 shall only limit rulemaking authority exercised under Section 3.2; they shall not apply to amendments to these Covenants adopted in accordance with Article X.

## USES

**3.5 Permitted Uses.** The Units shall be used only for single family, owner occupied residential use as defined in 3.4 (c) above, and incidental activities related to residential use as are permitted by applicable zoning and land use regulations, and home occupation uses as are permitted by local zoning regulations.

**3.6 Prohibited Uses.** The following uses are prohibited on the Common Area and the Lots:

(a) Non residential uses, except for home occupation uses permitted by applicable zoning regulations.

(b) The construction or location of any buildings, structures or accessory structures except for the Units.

(c) Dredging, mining, excavation, or the exploration for, extraction or processing of oil and gas or minerals, or the removal or processing of rock, sand and gravel.

(d) Off-road use of vehicles and off-trail use of any form of motorized transportation, except for the use of vehicles to respond to emergencies.

(e) The construction of any roads, driveways, and parking areas not depicted on the Final Plat.

(f) The storage of recreational vehicles (including, but not limited to boats, campers, and motor homes), furniture, and any other items or structures, and the dumping or storing of ashes, trash, garbage, junk, or other unsightly or offensive materials.

(g) Clearing, grading or other movement of the natural topography of the land except such clearing for safety purposes (e.g. deadfall along roads, or next to other structures), or clearing for the fire safety based on an improved fire management plan.

(h) The maintenance or storage of garbage except in screened garbage areas as designated on the Final Plat or by a Rule or Regulation adopted by the Board.

(i) Vehicle Parking, Storage, Operation and Repair.

(1) No boats, trailers, buses, motor homes, campers (on or off supporting vehicles), trucks, snowmobiles, recreational vehicles, golf carts, abandoned or inoperable vehicles (as defined below), or any other similar vehicles (excepting operating passenger automobiles and one ton or smaller trucks) shall be stored in or upon the driveways within the Properties, and no vehicle of any kind shall be maintained, repaired, repainted, serviced or rebuilt on any driveway. This restriction shall not prevent the non-commercial washing and polishing of vehicles and boats, together with activities normally incidental thereto

(2) Notwithstanding the foregoing, vehicles may be temporarily parked on driveways of Units for loading, delivery or emergency purposes, but only for the time

required to accomplish such purpose, and as necessary for the construction or maintenance of the Properties upon compliance with the Master Rules and Regulations.

(3) An "abandoned or inoperable vehicle" shall mean any motorized vehicle which does not display a current valid motor vehicle license and registration tag or which has not been driven under its own propulsion for a period of two (2) weeks or longer (excepting otherwise permitted vehicles parked by Unit Owners or occupants on their Unit driveways while on vacation or during a period of illness), or which does not have an operable propulsion system within the vehicle.

(4) In the event that the Board shall determine that a vehicle is abandoned or inoperable, or is otherwise in violation of the provisions of this Section, a written notice of violation describing said vehicle shall be personally delivered to the vehicle owner (if such owner can be reasonably ascertained) or shall be conspicuously placed upon the vehicle (if the owner cannot be reasonably ascertained), and if the offending vehicle is not removed within seventy-two (72) hours thereafter, the Board shall have the right to have the offending vehicle removed and stored, at the sole expense of the Owner of the Unit driveway on which the vehicle is located and to enter upon an Owner's Unit for such purpose, all without liability on the part of the Board.

(5) Parking of vehicles in designated parking areas shall be permitted.

**3.7 Domestic Animals.** Except as specifically permitted below or by the Rules and Regulations, no animals, reptiles, primates, fish, fowl or insects of any kind shall be kept, raised, bred, maintained or boarded within or upon any part of the Properties or a Unit situated thereon.

Notwithstanding the foregoing, each Unit shall be entitled to a maximum of no more than a total of two Household Pets, of which no more than one (1) may be a dog. The term Household Pet(s) means generally recognized Household Pets such as dogs, cats, fish, birds, rodents, and non-poisonous reptiles. Pets may not be kept for any commercial purpose, may not be kept in unreasonable numbers, may not cause an unreasonable amount of noise or odor, and may not otherwise become a nuisance to other Unit Owners. All Owners or Occupants with Household Pets shall keep the animals restrained and controlled at all times so they do not cause a nuisance to others and do not harass or endanger others. "Nuisance" means any noisy animal, any vicious animal, or any animal which chews, tears, digs in or scratches, litters or soils, destroys, or in any other manner injures clothing, garbage containers, gardens, flower beds, lawns, trees, shrubbery, or any other property within the Properties. Excessive, continued, or untimely barking, 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 disturbs the sleep, peace, or quiet of any person. The Board or its designee shall have the right to enter the property and remove any Noisy Animal and any such action shall not be deemed a trespass. If the Board removes a Noisy Animal, the Noisy Animal shall be kenneled and the cost therefore shall be levied against the offending Owner as a Specific Assessment.

No owner or keeper of any animal who is visiting or working on the Properties shall be permitted to allow such animals to run free. Also, no pet or animal shall be restrained by leash, cord, chain, rope, or other attachment fixed to any vehicle, post, tree, or other structure or object within the Properties thereby allowing such animal to become a nuisance or interfere with pedestrian or vehicular traffic in and around any public area within the Properties. Contractors, sub-contractors and any other person providing services to a Unit may not bring dogs onto the Properties.

Food for Household Pets shall be stored in a secure area that cannot be accessed by wildlife.

The Owner of a Unit where a Household Pet is kept, as well as the legal owner of the Household Pet (if not such Owner), shall be jointly and severally liable for any and all damage and destruction caused by the Household Pet, and for any clean-up of driveways, walkways, Common Area or other Units necessitated by such Household Pet.

The Board shall have, and is hereby given, the right and authority to determine in its sole discretion that Household Pets are being kept for commercial purposes, or are otherwise a nuisance to other Unit Owners or occupants, or that a Unit Owner is otherwise in violation of this Section, and to take such action or actions as it deems reasonably necessary to remedy the violation. Without limiting the generality of the foregoing, the Association may require the owner or custodian of a dog that barks or howls excessively, or of a Household Pet with other offensive habits, to confine such animal indoors. Further, the Association may require an Owner, as its own expense, to remove the Household Pet determined by the Association to be a Nuisance and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the Unit and remove the Household Pet determined to be a Nuisance and any such action shall not be deemed a trespass.

#### ARTICLE IV - DEVELOPMENT

**4.1 General.** No structure shall be placed, erected, or installed upon any Lot and, no improvements (including staking, clearing, excavation, grading and other site work, exterior alterations of existing Units, and planting or removal of landscaping materials) shall take place except in compliance with this Article and the Town of Jackson, Wyoming Land Development Regulations.

Except for the conversion of the unfinished basement in each Unit to habitable space in accordance with these Covenants and the Ground Lease, any increase in habitable space of a Unit (regardless of whether such increase changes or alters the physical structure of a Unit or is visible from the exterior of a Unit) is strictly prohibited.

This Article shall not apply to the development activities of the Declarant in accordance with these Covenants.

#### **4.2 Guidelines and Procedures.**

(a) **Design Guidelines.** The Declarant may prepare and adopt Design Guidelines, which may contain general provisions applicable to all of the Units, including minimum guidelines applicable to the Conversion Improvement and Other Work. The Design Guidelines are the exclusive basis for approval of Other Work by the Board, although compliance with the Design Guidelines does not guarantee approval of any application.

The Declarant shall have sole and full authority to amend the Design Guidelines, unless the Declarant delegates the power to amend to the Board. Any amendments to the Design Guidelines shall not require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Design Guidelines less restrictive.

The Declarant shall make the Design Guidelines available to Owners who seek to engage in Conversion Improvement or Other Work. In the Declarant's discretion, such Design Guidelines may be recorded in the Public Records, in which event the recorded version, as it may unilaterally be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

#### 4.3 Conversion Improvement and Other Work

(a) **Conversion Improvement.** The unfinished basement in each Unit may be converted to habitable space in accordance with these Covenants and the Ground Lease. Prior to commencing any conversion work to an unfinished basement in a Unit within the scope of this Section 4.3(a) ("Conversion Improvement"), an Owner shall submit to the Declarant an application for approval by the Declarant of the proposed Conversion Improvement in such form as the Declarant may specify. Such application may include the submission of any additional information as may be reasonably required by the Declarant. No work on any Conversion Improvement shall commence until the Declarant has given written approval for the Conversion Improvement. An approved Conversion Improvement shall be performed in accordance with the Design Guidelines.

(b) **Other Work.** Any modifications to the structure of a Unit, patios, and similar portions of a Unit visible from the exterior and any other modification that would change or alter the physical structure of a Unit, other than the conversion of the unfinished basement to habitable space, shall be subject to Board approval and Declarant approval. Prior to commencing any work to a Unit within the scope of this Section 4.3(b) ("Other Work"), an Owner shall submit to the Board an application for approval of the proposed Other Work in such form as the Board may specify. Such application shall include plans and specifications ("Plans") showing site layout, grading, structural design, drainage, irrigation, and other features of proposed construction, as applicable. The Declarant and the Board may require the submission of such additional information as may be reasonably necessary to consider any application. In reviewing each submission, the Board may consider any factors it deems relevant, including without limitation, harmony of external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the

desirability and/or attractiveness of particular improvements. The Board and the Declarant shall have the right, in the discretion of the Board and/or the Declarant, to disapprove any deny and proposed Other Work.

The Board shall, within thirty (30) days after receipt of a completed application and all required information, respond in writing to the applicant at the address specified in the application. The response may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application. The Board may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections.

In the event that the Board fails to respond in writing within sixty (60) days of submission, approval by the Board shall be deemed to have been given. However, no Board approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted pursuant to Section 4 5. Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the U.S. Postal Service. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the applicant.

The Board shall notify the Declarant in writing within three (3) business days after the Board has approved any applications relating to proposed Other Work. The notice shall be accompanied by a copy of the application and any additional information which the Declarant may require. The Declarant shall have thirty (30) days after receipt of such notice to approve or deny the proposed Work, in its sole discretion, by written notice to the Board and the applicant. If the Declarant fails to respond in writing to the applicant within sixty (60) days of receipt of notice from the Board, approval by the Declarant shall be deemed to have been given. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted pursuant to Section 4 5

If construction does not commence on a project for which Plans have been approved within two years after the date of approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to reapply for approval before commencing the proposed Other Work.

(c) **Obligation to Complete Construction.** Once construction of a Conversion Improvement or Other Work has commenced, it must be completed within six (6) months from the date construction commenced unless otherwise specified in the notice of approval or unless the Board and Declarant grants an extension in writing, which it shall not be obligated to do. Completion of improvements shall mean that a certificate of occupancy has been issued by the local governing body empowered to do so and that they are in a condition suitable for immediate occupancy by the Owner or its occupant.

**4.4 No Waiver of Future Approvals.** Each Owner acknowledges that the persons reviewing applications under this Article will change from time to time and that opinions on

aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features of proposed work until the work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the Board and Declarant may refuse to approve similar proposals in the future. Approval of applications or Plans for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, Plans, or other matters subsequently or additionally submitted for approval.

**4.5 Variances.** The Board and Declarant may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless approved in writing by the Board and the Declarant; (b) be contrary to these Covenants; or (c) estop the Board and the Declarant from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance

**4.6 Limitation of Liability.** The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Properties but shall not create any duty to any Person. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only, and the Board and Declarant shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements or compliance with plans and specifications, nor for ensuring that all dwellings are of comparable quality, value or size or of similar design. Neither the Declarant, the Association, the Board, any committee, nor member of any of the foregoing shall be held liable for soil conditions, drainage or other general site work, or for any defects in plans revised or approved hereunder, or for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Unit. In all matters, the Board and all persons comprising the Board shall be defended and indemnified by the Association as provided in Section 7.6.

**4.7 Estoppel Certificate.** Any Owner may request that the Board and the Declarant issue an estoppel certificate certifying that there are no known violations of this Article or the Design Guidelines. Following review and approval of the request by the Board and the Declarant, the Board shall either grant or deny such request within thirty (30) days after receipt of a written request and may charge a reasonable administrative fee for issuing such certificates. Issuance of such an estoppel certificate shall estop the Association and the Declarant from taking enforcement action with respect to any condition as to which the Association and the Declarant gave approval as of the date of such certificate.

**4.8 Standard of Construction.** All improvements to the Properties made by an Owner have been or will be constructed in accordance with the Design Guidelines and all applicable city, county, state and federal building codes and shall meet or exceed the

construction standard set by the Declarant in the original construction of the above grade floors of the Units.

**4.9 Enforcement.** Any structure or improvement placed or made in violation of this Article or the Design Guidelines shall be deemed to be nonconforming. Upon written request from the Declarant or the Board, Owners shall, at their own cost and expense, remove such structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Declarant, the Association or its designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with interest at the maximum rate then allowed by law, may be assessed against the benefited Unit and collected as a Specific Assessment.

All approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved Conversion Improvement or Other Work and all Conversion Improvement or Other Work previously approved with respect to the same Unit, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved Conversion Improvement or Other Work, the Declarant or the Association shall be authorized, after notice to the Owner of the Unit and an opportunity to be heard in accordance with any procedures adopted by the Board, to enter upon the Unit and remove or complete any incomplete Conversion Improvement or Other Work and to assess all costs incurred against the Unit and the Owner thereof as a Specific Assessment.

Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded from the Properties, subject to the notice and hearing procedures adopted by the Board. In such event, neither the Declarant, the Association its officers, or directors shall be held liable to any Person for exercising the rights granted by this paragraph.

In addition to the foregoing, the Association and the Declarant shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article.

## ARTICLE V – MAINTENANCE

**5.1 Maintenance of Lots.** Each Owner shall maintain his or her Lot and any and all improvements thereon and any and all landscaping situated on the Lot within in a manner consistent with the Governing Documents. Landscaping originally provided by the Declarant, pursuant to the approved Final Development Permit for the Properties, shall be maintained by the Owner, and as determined necessary by the Board, replaced by such Owner.

**5.2 Maintenance of Foundations.** Each Owner is solely responsible for the maintenance and repair of the foundations of its Unit. However, if a licensed structural engineer determines that failure to repair the foundation under one Unit may adversely affect one other Unit in the building, then the cost of the foundation repair will be equally divided by the two Owners of the Units. If an Owner fails or refuses to pay his share of costs of repair of the foundation, the Owner advancing monies has a right to file a claim of lien for the monies

advances in the county's real property records, and has the right to foreclose upon the lien as if it were a mechanic's lien. The right of an Owner to contribute from one owner to another Owner under this subsection (c) is appurtenant to the delinquent Owner's Unit and passes to the delinquent Owner's successors in title.

## ARTICLE VI – THE ASSOCIATION AND ITS MEMBERS

**6.1 Function of Association.** The Association shall be the entity responsible for management, maintenance, operation and control of the homeowners association created herein. The Association also shall be the primary entity responsible for enforcement of the Governing Documents. The Association shall perform its functions in accordance with the Governing Documents and the laws of the State of Wyoming.

**6.2 Membership.** Every Owner of a Unit shall be a Member of the Association. There shall be only one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 6.3(c) and in the By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners.

**6.3 Voting.** The Association shall have two-classes of membership. Members shall be Class A and shall have one equal vote for each Unit in which they hold the interest required for membership under Section 6.2. The Declarant shall be a Class B Member and shall have one vote on all matters requiring a vote hereunder. All votes shall be cast as provided in Section 6.3(a). The Declarant's Class B membership shall expire on the sale of the last Unit to an owner not affiliated with the Declarant.

(a) **Exercise of Voting Rights.** The vote for each Unit owned by a Member shall be exercised by the Owner of the Unit. In any situation where there is more than one Owner of such Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it

(b) **Commencement of Voting Rights.** Voting rights as to each Unit shall vest upon transfer of a deed of conveyance of a Unit to an Owner.

## ARTICLE VII – ASSOCIATION POWERS AND RESPONSIBILITIES

### 7.1 Authority of Board.

(a) The Board shall have full power and authority to manage the business and affairs of the Association, and to enforce the provisions of these Covenants.

(b) The Board may acquire, hold, and dispose of tangible and intangible personal property, and the Board shall hold, manage, maintain and preserve the Common Area.

(c) The Board shall be obligated to maintain the Common Area landscaping. As determined necessary by the Declarant, the Association shall be obligated to replace the landscaping originally provided on the Common Area by the Declarant. This provision shall be specifically enforceable by the Declarant so long as these Covenants shall remain in effect and such provision shall not be amended by the Association without the consent of the Declarant. If any Owner fails to maintain and/or replace the landscaping on such Owner's Lot, the Declarant and/or the Association shall be authorized, after providing notice to the Owner of such failure and an opportunity to be heard in accordance with procedures adopted by the Board, to enter upon the Lot to cure such failure and to assess all costs incurred against the Lot and the Owner thereof as a Specific Assessment.

## 7.2 Maintenance.

(a) **Common Area.** The Association shall maintain the Common Area as it is designated on the Final Plat. The costs associated with maintenance, repair and replacement of the Common Area shall be a Common Expense; provided, the Association may seek reimbursement from the owner(s) of, or other Person responsible for, certain portions of the Common Area pursuant to these Covenants, the Covenant to Share Costs, other recorded covenants, or agreements with the owner(s) thereof

(b) **Units.** The Association shall, for purposes of maintaining the appearance of building improvements, provide maintenance upon the exterior of each Unit located upon a Lot, including but not limited to: paint, repair, replace and care for roofs and exterior building surfaces; provided however, that the Association shall not be required to provide any maintenance to structures added by the Owner, including any decks. Such exterior maintenance shall not include the maintenance, repair or replacement of glass surfaces. Owners shall be responsible for and shall be obligated to maintain and repair structures added by such Owners, as well as glass surfaces. Any utility services or other types of elements which are utilized in common, such as, but not limited to, sewer or water lines, shall be maintained, repaired and replaced, as needed, by the Association. In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject. The costs associated with maintenance, repair and replacement of the exterior improvements located on each Unit as provided for in this subsection (b) shall be a Common Expense.

(c) **Sidewalks and Driveways.** The maintenance, repair and replacement of all sidewalks within the Properties shall be the responsibility of the Association and the costs of such maintenance, repair and replacement shall be included in the Common Expenses. Each Owner shall be obligated to maintain, repair and replace the driveways located upon such Owner's Lot. If any Owner fails to maintain, repair and/or replace the driveways on such Owner's Lot, the Declarant and/or the Association shall be authorized, after providing notice to the Owner of such failure and an opportunity to be heard in accordance with procedures adopted by the Board, to enter upon the Lot to cure such failure and to assess all costs incurred against the Lot and the Owner thereof as a Specific Assessment.

### 7.3 **Insurance.**

(a) **Required Coverages.** The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance covering “risks of direct physical loss” on a “special form” basis (or comparable coverage by whatever name denominated) for all Units and insurable improvements within the Properties. If such coverage is not generally available at reasonable cost, then “broad form” coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement costs of the insured improvements (including all Units) under current building ordinance and codes. The Declarant shall be named as an additional insured on all policies of insurance covering direct physical loss to any Unit;

(ii) Commercial general liability insurance on the Common Area and Lots, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage (including primary and any umbrella coverage) shall have a limit of at least three hundred thousand dollars (\$300,000.00) per occurrence with respect to bodily injury and personal injury, and fifty thousand dollars (\$50,000.00) for property damage; provided, should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits. If the policy does not contain “severability of interest” in its terms, the Association shall acquire an endorsement to preclude the insurer’s denial of a Unit Owner’s claim because of negligent acts of the Association or of other Unit Owners; and

(iii) Such additional insurance as the Board, in its best business judgment, determines advisable.

Premiums for all insurance on the Common Area and the Lots shall be assessed by the Board as a Common Expenses. Premiums for all insurance on the Units shall be assessed against the Unit owners as a Specific Assessment the cost of which shall be divided pro-rata among the Unit Owners according to the square-footage size of each Unit.

(b) **Policy Requirements.** The Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Town of Jackson Wyoming area. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member insured.

The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 7.3(a). In the event of an insured loss, the deductible

shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage except for the deductible attributable to the insured loss of an insured Unit the cost of which shall be a Specific Assessment as provided for in Section 7.3(a)(iii). However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with procedures adopted by the Board, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Unit as a Specific Assessment.

All insurance coverage obtained by the Board shall:

- (i) Be written with a company authorized to do business in the State of Wyoming;
- (ii) Be written in the name of the Association as trustee for the benefited parties, including the Declarant.
- (iii) Not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;
- (iv) Contain an inflation guard endorsement;
- (v) Include an agreed amount endorsement if the policy contains a co-insurance clause;
- (vi) Provide a waiver of subrogation under the policy against any Owner or family member of an Owner;
- (vii) Include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;
- (viii) Include an endorsement precluding cancellation, invalidation, or condition to recovery under the policy on account of any act or omission of any one or more individual Owners, unless such Owner is acting within the scope of its authority on behalf of the Association;
- (ix) Provide that the policy will be primary, even if a Unit Owner has other insurance that covers the same loss.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

(i) A waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, its attorneys, the Owners and their tenants, servants, agents, and guests;

(ii) A waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(iii) An endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(iv) An endorsement requiring at least thirty (30) days prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(v) A provision vesting in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any related to the loss.

(c) **Restoring Damaged Improvements.** In the event of damage to or destruction of property which the Association is obligated to insure, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Damaged improvements on the property shall be repaired or reconstructed unless the Board, using reasonable judgment and in reliance upon professional estimates and advice, determines either that i) such full repair and/or restoration is physically impossible; or ii) available insurance proceeds are less than eighty percent (80%) of the cost of such repair and/or restoration, and at least seventy-five percent (75%) of the Owners of damaged or destroyed Unit decide, within sixty (60) days after the determinations set forth in i) and ii) above have been made, not to repair or reconstruct. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the insured improvements shall be repaired or reconstructed.

If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized as provided in paragraph 9.4 d) of the Ground Lease, then the insurance proceeds shall be paid to the Owners and Permitted Mortgagees as their interests are determined based upon the square footage size of each Unit and the insurance proceeds available. All mortgages, liens and other charges against the Units and Lots shall be paid out of the insurance proceeds before any proceeds are released to an Owner(s). In the event an Owner accepts insurance proceeds in lieu of replacing his/her Unit, such Owner shall then, upon receipt of such insurance proceeds, quit claim and convey any interest Owner has in the Unit and Lot to the Declarant.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by the

Association for the benefit of its Members or the Owners of Units, as appropriate, and placed in a capital improvements account.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Members, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 7.3(a).

**7.4 Compliance and Enforcement.** Every Owner and occupant of a Unit shall comply with the Governing Documents. The Board shall have the right to require compliance with the Governing Documents, or may impose sanctions for violation of the Governing Documents after notice and a hearing in accordance with the procedures adopted by the Board. The Board shall have the right to require compliance with the Governing Documents by legal proceedings as provided hereafter. The Board shall also have the right to impose sanctions which may include, without limitation:

(a) Imposing reasonable monetary fines (which shall not, except in the case of nonpayment of assessments, constitute a lien upon the violator's Unit). In the event that any occupant, guest or invitee of a Unit violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator; provided however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board;

(b) Suspending an Owner's right to vote;

(c) Suspending any Person's right to use any Common Area; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit;

(d) Suspending any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than thirty (30) days delinquent in paying any assessment or other charge owed to the Association;

(e) Exercising self-help or taking action to abate any violation of the Governing Documents in a non-emergency situation;

(f) Requiring an Owner, as its own expense, to remove any structure or improvements on such Owner's Unit in violation of Article IV and to restore the Unit to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the Unit, remove the violation and restore the Unit to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

(g) Without liability to any Person, precluding any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of Article IV and the Design Guidelines from continuing or performing any further activities in the Properties; and

(h) Levying Specific Assessments to cover costs incurred by the Association to bring a Unit into compliance with Governing Documents.

In addition, the Board may take the following enforcement procedures to ensure compliance with the Governing Documents.

(a) Exercising self-help in any emergency situation (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations); and

(b) Bringing suit at law or in equity to enjoin any violation or to recover monetary damages to both.

In addition to any other enforcement rights, if an Owner fails to properly perform his or her maintenance responsibility, the Association may record a notice of violation in the Public Records or perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner as a Specific Assessment. Except in an emergency situation, the Association shall provide the Owner reasonable notice and an opportunity to cure the problem prior to taking such enforcement action.

All remedies set forth in the Governing Document shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action.

The Association shall not be obligated to take any action if the Board reasonably determines that the Association's position is not strong enough to justify taking such action. Such a decision shall not be construed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or estop the Association from enforcing any other covenant, restriction or rule.

The Association, by contract or other agreement, may enforce applicable city and county ordinances, if applicable, and permit Town of Jackson, Wyoming to enforce ordinances within the Properties for the benefit of the Association and its Members.

**7.5 Implied Rights; Board Authority.** The Association may exercise any right or privilege given to it expressly by the Governing Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

**7.6 Indemnification of Officers, Directors and Others.** The Association shall indemnify every officer and director against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement or any suit or proceeding, if approved by Then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such

obligation to indemnify shall be limited to those actions for which liability is limited under Wyoming law.

**7.7 Provision of Services.** The Association shall be authorized but not obligated to enter into and terminate, in the Board's discretion, contracts or agreements with other entities, including Declarant, to provide services to and facilities for the Members of the Association and their guests, lessees and invitees and to charge use and consumption fees for such services and facilities. By way of example, some services which might be offered include property management services, landscape maintenance, pest control, utilities, and similar services.

## ARTICLE VIII – ASSOCIATION FINANCES

**8.1 Budgeting and Allocating Common Expenses.** At least sixty (60) days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses and insurance assessed as a Specific Assessment, for the coming year, including any contributions to be made to a reserve fund pursuant to Section 8.4. The budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Units, and the amount to be generated through the levy of Base Assessments, Special Assessments and Specific Assessments against each. The initial Base Assessment for Common Expenses shall be Forty and No/100 Dollars (\$40.00) per month. The initial Base Assessment may be adjusted by the Board as provided for herein.

The Association is hereby authorized to levy Base Assessments pro-rata against all Units subject to assessment under Section 8.7 to fund the Common Expenses. In determining the Base Assessment rate per Unit, the Board may consider any assessment income expected to be generated from any additional Units reasonably anticipated becoming subject to assessment during the fiscal year.

The Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 8 8(b), which may be either a contribution, an advance against future assessments due from the Declarant, or a loan, in the Declarant's discretion. The Declarant shall provide initial pre-funding as a subsidy to the reserve account of the Association. Such subsidy shall be disclosed as a line item in the income portion of the initial budget. The payment of such subsidy in any year shall not obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

The Board shall send a copy of the final budget, together with notice of the amount of the Base Assessment to be levied pursuant to such budget, to each Owner and to the Declarant not less than forty-five (45) nor more than sixty (60) days prior to the effective date of such budget, provided, however, if the Base Assessment is increased from the previous year's Base Assessment, the Board shall send notice of the increase by first class mail to the Owners not less than thirty (30) nor more than sixty (60) days prior to the increased Base Assessment becoming

due. Such budget and assessment shall automatically become effective subject to the limitation on increases of assessments provided for in Section 8.5.

Failure of the members to approve a budget or failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

The Board may revise the budget and adjust the Base Assessment from time to time during the year, subject to the notice requirements and the limitations on increases of assessments provided for in Section 8.6.

**8.2 Budgeting for Reserves.** The Board shall prepare and review at least annually a reserve budget for capital expenses of the Association. The budget shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall include in the Common Expense budget adopted pursuant to Section 8.1, a capital contribution to fund reserves in an amount sufficient to meet the projected need with respect both to amount and timing by annual contributions over the budget period.

**8.3 Special Assessments.** In addition to other authorized assessments, the Association may, subject to the limitations of Section 8.5, levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against the entire membership, if Special Assessment is for Common Expenses or against an individual Unit or Units or if such Special Assessment is for an unbudgeted expense relating to less than all of the Units. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. The Board shall provide notice by first class mail to the Owner(s) of the Unit subject Special Assessment not less than thirty (30) nor more than sixty (60) days prior to the Special Assessment becoming due.

**8.4 Specific Assessments.** The Association shall have the power to levy Specific Assessments against a particular Unit as follows:

(a) To cover the costs, including overhead and administrative costs including property loss insurance, and costs of providing services to a Unit upon request of an Owner pursuant to any menu of special services which may be offered by the Association. Specific Assessments for special services may be levied in advance of the provision of the requested service; and

(b) To cover costs incurred in bringing a nonconforming Unit into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of a nonconforming Unit, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the nonconforming Unit Owner prior written notice and

an opportunity for a hearing, in accordance with Section 7.2(D) of the By-Laws, before levying any Specific Assessment under this subsection (b).

**8.5 Limitation of Increases of Assessments.** Notwithstanding any provision to the contrary, and except for assessment increases necessary for emergency situations or to reimburse the Association pursuant to Section 8.5, the Board may not impose a Base Assessment that is more than ten percent (10%) greater than each of those assessments for the immediately preceding fiscal year, nor impose a Special Assessment which in the aggregate exceeds five percent (5%) of the budgeted Common Expenses for the current fiscal year, without a majority vote of a quorum of the Members which are subject to the applicable assessment at a meeting of the Association, or action without meeting by written ballot in lieu thereof signed by all of the Members of the Association.

For purposes of this Section, "quorum" means at least seventy-five percent (75%) of the total voting power of the Association subject to the applicable assessment. For purposes of this Section, the term "Base Assessment" shall be deemed to include the amount assessed against each Unit plus a pro rata allocation of any amounts the Association received through any subsidy or maintenance agreement, if any, in effect for the year immediately preceding the year for which the assessment is to be increased.

An emergency situation is any one of the following:

- (a) An extraordinary expense required by an order of a court;
- (b) An extraordinary expense necessary to repair or maintain the Properties or any part of them for which the Association is responsible where a threat to personal safety on the Properties is discovered; or
- (c) An extraordinary expense necessary to repair or maintain the Properties or any part of them for which the Association is responsible which could not have been reasonably foreseen by the Board in preparing and distributing the pro forma budget pursuant to Section 8.1. However, prior to the imposition or collection of such an assessment, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. Such resolution shall be distributed to the Members with the notice of such assessment. In no event shall such resolution become effective against the Declarant so long as the Declarant owns any Unit(s) within the Properties unless the Declarant consents in writing by executing any such resolution.

**8.6 Authority to Assess Owners; Date of Commencement of Assessments; Time of Payment.** The Declarant hereby establishes and the Association is authorized to levy and collect assessments as provided for in this Article and elsewhere in the Governing Documents. Subject to Section 8.1 and 8.8, the obligation to pay the assessments provided for herein shall commence as to all Units on the first day of the month following the first conveyance of a Unit to an Owner. The first annual assessment shall be adjusted according to the number of days remaining in the fiscal year at the time assessments commence on the Unit.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his or her Unit, the Board may require the outstanding balance on all assessments to be paid in full immediately.

#### **8.7 Personal Obligation.**

(a) Each Owner, by accepting a deed of conveyance or entering into a recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a rate of eighteen percent (18%) per annum or such other rate as the Board may establish, subject to the limitations of Wyoming law), late charges as determined by Board resolution, costs, and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Unit until paid in full. Upon a transfer of title to a Unit, the grantee shall not be personally liable for any assessments and other charges due at the time of conveyance unless expressly assumed by him/her, but such transferred Unit shall remain subject to any liens imposed upon it pursuant to Section 8.9 herein. No first Mortgagee who obtains title to a Unit by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

No Owner may exempt himself from liability for assessments by non-use of the Common Area by abandonment of his Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

The Association shall, upon request, furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

(b) **Declarant's Obligations for Assessments.** The Declarant is subject to the payment of assessments against Units which it owns. The Declarant shall also be exempt from the payment of that portion of any assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of the Common Area and any Unit owned by the Declarant.

**8.8 Lien for Assessments.** Each Owner, by his or her acceptance of a deed of conveyance to a Unit, hereby vests in the Association and its agents the right and power to bring all appropriate actions against such Owner personally for the collection as a debt of any unpaid and delinquent billings for Base Assessments, Common Assessments, Special Assessments, interest, late fees, enforcement costs and other charges owing by such Owner in accordance with the terms hereof. Additionally, in order to secure payment of any billings for Base Assessments, Common Assessments, as well as Special Assessments, interest, late fees, enforcement costs and other charges due hereunder, Declarant hereby retains, and each Owner by his or her acceptance of a deed to a Unit, hereby grants the Association and its agents a lien for such Base Assessments, Common Assessments, Specific Assessments, as well as Special Assessments, interest, late fees, enforcement costs and other charges for which such Owner is responsible under the terms hereof. The Board, acting on behalf of the Association, is authorized to record a notice of any unpaid amounts secured by such lien in the office of the County Clerk of Teton County, Wyoming, which shall include a description of the applicable Unit and the name of the Owner thereof and the basis for the amount of the lien. Said lien shall be enforceable by the Association or its agents through all appropriate methods available under applicable Wyoming law for the enforcement of such liens, including without limitation, non-judicial foreclosure pursuant to Wyoming Statutes (as amended from time to time), and the Declarant and each such Owner hereby expressly grant to the Association a power of sale in connection with said lien. The Association may designate a trustee in writing from time to time to post or cause to be posted the required notices and to conduct such foreclosure sale. The trustee may be changed at any time and from time to time by an instrument in writing and signed by the President or a Vice President of the Association and attested by the Secretary or any Assistant Secretary of the Association and filed for record in the Public Records. The lien herein retained and granted is and shall be expressly subordinate in all respects to any Mortgage predating the charge in question (as evidenced by the recording date of a notice of unpaid assessments in the Public Records) except that no lien shall interfere with the rights of a Permitted Mortgagee under the Ground Lease. Any holder of a Mortgage that predates the date of the charge in question and who acquires title to a Unit through foreclosure of its Mortgage or acceptance of a deed in lieu of foreclosure thereunder, shall not be liable for the unpaid portion of any such charges relating to the Unit in question that arose prior to such acquisition. Additionally, after any such foreclosure or deed in lieu of foreclosure, such Unit shall remain subject to these Covenants and the above-described lien and the new Owner of such Unit shall thereafter be personally liable for all charges of the type described above which relate to such Unit and which become due after such new Owner acquires title to said Unit by foreclosure or by acceptance of a deed in lieu of foreclosure. Except as otherwise provided above as to holders of Mortgages or by applicable law, no sale or transfer of any Unit shall (a) relieve any Owner thereof from personal liability for any of such unpaid charges attributable to the applicable Unit which become due prior to the date of such sale or transfer or (b) satisfy or extinguish the above-described lien in respect of such unpaid charges.

## IX -ADDITIONAL COVENANTS

**9.1 Additional Covenants and Easements.** The Declarant may subject any portion of the Properties to additional covenants and easements, including covenants obligating the Association to maintain and insure such property and authorizing the Association to recover its costs through the various Assessments as provided for herein. Such additional covenants and easements may be set forth either in a Supplemental Declaration subjecting such property to these Covenants or in a separate Supplemental Declaration referencing property previously subjected to these Covenants. If the property is owned by someone other than Declarant, then the consent of the Owner(s) shall be necessary and shall be evidenced by their execution of the Supplemental Declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of these Covenants as it applies to the subject property in order to reflect the different character and intended use of such property.

**9.2 Effect of Filing Supplemental Declarations.** Any Supplemental Declaration filed pursuant to this Article shall be effective upon recording in the Public Records unless otherwise specified in such Supplemental Declaration. On the effective date of the Supplemental Declaration, any additional property subjected to these Covenants shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of these Covenants

### ARTICLE X – ADDITIONAL RIGHTS RESERVED TO DECLARANT

**10.1 Withdrawal of Property.** Prior to the sale of seventy-five percent (75%) of the Units to persons not affiliated with the Declarant, the Declarant reserves the right to amend these Covenants, without prior notice and without the consent of any Person.

**10.3 Right to Approve Additional Covenants.** No Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Public Records.

**10.4 Right to Approve Changes in Community Standards.** No amendment to or modification of any Master Rules and Regulations or Design Guidelines shall be effective without prior notice to and the written approval of Declarant.

**10.5 Right to Transfer or Assign Declarant Rights.** Any or all of the special rights and obligations of the Declarant set forth in these Covenants may be transferred in whole or in part to other Persons; provided, the transfer shall not reduce an obligation or enlarge a right beyond that which the Declarant has under these Covenants. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records. The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one-time or limited basis, any right reserved to Declarant in these Covenants where Declarant does not intend to transfer such right in its entirety, and in such case

it shall not be necessary to record any written assignment unless necessary to evidence Declarant's consent to such exercise.

## ARTICLE XI - EASEMENTS

**11.1 Easements in Common.** The Declarant grants to each Owner a non-exclusive right and easement of use (subject to the rights of other Owners, Members and the Association), access, and enjoyment in and to the Common Area, subject to:

- (a) The Governing Documents and any other applicable covenants;
- (b) Any restrictions or limitation contained in any deed conveying such property to an Owner Association; and
- (c) The right of the Board to adopt rules regulating the use and enjoyment of the area of the Common Area.

Any Owner may extend his or her right of use and enjoyment of the Common Area to the members of his or her family, and social invitees, as applicable, subject to reasonable regulation by the Board.

### **11.2 Easements for Drainage, Utilities.**

(a) All dedications, limitations, restrictions and reservations of easements, including those for drainage, shown on any final plat of the Properties are incorporated herein by reference and made a part of these Covenants for all purposes as if fully set forth in these Covenants.

(b) The Declarant reserves for itself, so long as the Declarant owns any property described on Exhibit "A" of these Covenants, and grants to the Association and all utility providers, perpetual non-exclusive easements throughout all of the Properties (but not through a Unit) to the extent reasonably necessary for the purpose of:

(i) Installing utilities and infrastructure, including without limitation, cable and other systems for sending and receiving data and/or other electronic signals; security and similar systems; walkways, pathways and trails; drainage systems and signage; to serve the Properties;

(ii) Inspecting, maintaining, repairing and replacing such utilities and infrastructure to serve the Properties; and

(iii) Access to read utility meters.

(c) Declarant also reserves for itself the non-exclusive right and power to grant and record in the Public Records such specific easements as may be necessary, in the sole

discretion of Declarant, in connection with the orderly development of any property described on Exhibit "A".

(d) All work associated with the exercise of the easements described in subsections (b) and (c) of this Section shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

**11.3 Easements for Maintenance, Emergency and Enforcement.** The Declarant grants to the Association easements over the Common Area and Units as necessary to enable the Association to fulfill its maintenance responsibilities under Section 7.2. The Association shall also have the right, but not the obligation, to enter upon any Unit, but not to enter any structure thereon, for emergency, security, and safety reasons and to inspect for the purpose of ensuring compliance with and to enforce the Governing Documents. Such right may be exercised by any member of the Board and its duly authorized agents and assignees, and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

**11.4 Easements for Cross-Drainage.** Every Unit shall be burdened with easements for natural drainage of storm water runoff from other portions of the Properties; provided, no Person shall alter the natural drainage on any Lot to increase materially the drainage of storm water onto adjacent portions of the Properties without the consent of the Owner(s) of the affected property and the Board.

**11.5 Easement for Emergency Vehicles.** The Properties are hereby burdened with an easement allowing all policemen, firemen, ambulance personnel, and similar emergency personnel entry to perform their duties, including the enforcement of traffic regulations.

**11.6 Easement for Encroachments.** Every Lot shall be burdened with an easement for roof and eave overhangs, foundation, footer and wall encroachments and any and all other structural encroachments created by the platting of the Properties as a townhouse subdivision.

## ARTICLE XII – ENFORCEMENT

**12.1 Enforcement by Board and Owners.** The limitations and requirements set forth in these Covenants shall be specifically enforceable by the Board and by any Owner of a lot. Every Owner of a Unit hereby consents to the entry of an injunction against him, her or them to terminate and restrain any violation of these Covenants. Every Owner who uses or allows such Owner's Unit to be used in violation of these Covenants further agrees to pay all costs incurred by the Board or other enforcing Owner in enforcing these Covenants, including reasonable attorneys fees, whether suit is brought or not.

**12.2 Enforcement by Declarant.** The Declarant shall have the right to enforce the limitations and requirements set forth in these Covenants, including but not limited to the right to specifically enforce these Covenants by legal proceedings. Every Owner of a Unit hereby consents to enforcement by Declarant, including the entry of an injunction against him, her or them to terminate and restrain any violation of these Covenants. Every Owner who uses or allows such Owner's Unit to be used in violation of these Covenants further agrees to pay all costs incurred by the Declarant in enforcing these Covenants, including reasonable attorneys fees, whether suit is brought or not.

### **ARTICLE XIII – AMENDMENT OF DECLARATION**

**13.1 By Declarant.** In addition to specific amendment rights granted elsewhere in these Covenants, until conveyance of the first Unit to an Owner unaffiliated with Declarant, Declarant may unilaterally amend or repeal these Covenants for any purpose. Thereafter, the Declarant may unilaterally amend these Covenants if such amendment is necessary to (i) bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) enable any institutional or Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make purchase, insure or guarantee mortgage loans on the Units; or (iv) to satisfy the requirements of any local, state or federal governmental agency. However, any such amendment shall not adversely affect the title to any Unit unless the Owner thereof shall consent in writing.

**13.2 By Members.** Except as otherwise specifically provided above and elsewhere in these Covenants, these Covenants may be amended only by the affirmative vote or written consent, or any combination thereof, of at least seventy-five percent (75%) of the Members and the written consent of Declarant.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

**13.3 Validity and Effective Date.** No amendment may remove, revoke, or modify any right or privilege of the Declarant without the written consent of the Declarant.

If an Owner consents to any amendment to these Covenants or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within thirty (30) days of its recordation, or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these Covenants.

13.4 **Exhibits.** Exhibit "A" attached to these Covenants is incorporated by this reference and amendment of such exhibit shall be governed by this Article. All other exhibits are attached for informational purposes any may be amended as provided herein or in the provisions of these Covenants which refer to such exhibits.


**ARTICLE IVX – MISCELLANEOUS**


14.1 **DURATION OF DECLARATION.** All of the Covenants, Conditions and Restrictions set forth in these Covenants, as amended as provided herein, shall continue and remain in full force and effect at all times against the Property. If required by law these Covenants shall automatically renew every twenty (20) years unless the Declarant and Seventy Five Percent (75%) or more of the record owners of Units and lessees of Lots agree otherwise in a written instrument recorded in the Teton County Clerk's Office.

14.2 **ACCEPTANCE OF DECLARATION.** Every Owner shall be bound by and subject to all of the provisions of these Covenants, and every purchaser of a Unit express accepts and consent to the operation and enforcement of all of the provisions of these Covenants.

IN WITNESS WHEREOF, the undersigned Declarant has executed and adopted these Covenants the date and year first written above.

JACKSON HOLE COMMUNITY HOUSING TRUST,  
a Wyoming nonprofit corporation,

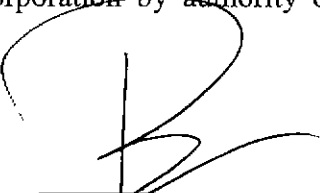
By:   
Name: TONY WALL  
Title: Pres.

By:   
Name: T. Bryant  
Title: V. President

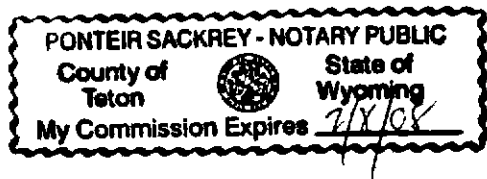
STATE OF WYOMING )  
 ) ss.  
COUNTY OF TETON )

On this 0th day of September, 2004, before me personally appeared Tony Wall and H. Amber Ryan, to me personally known, who, being by me duly sworn, did say that they are the President and Vice-President of Jackson Hole Community Housing Trust, a Wyoming nonprofit corporation, and that the foregoing instrument was signed on behalf of said corporation by authority of its Board of Directors as the free act and deed of the corporation.

WITNESS my hand and official seal.

  
\_\_\_\_\_  
Notary Public

My commission expires:

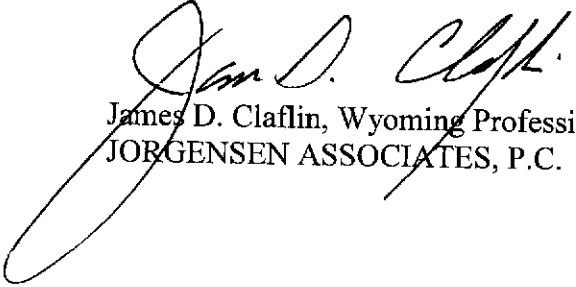


***EXHIBIT A***

**DESCRIPTION OF PROPERTY  
TO BE SUBDIVIDED AS  
THE TWELVE PINES ADDITION TO THE TOWN OF JACKSON**

**TO WIT:**

Lots 17, 18, 19, and 20, Block 3 of the John D. Hall Plat No. 2 of record in the Office of the Clerk of Teton County, Wyoming as Plat No. 135, and being located within the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 34, T41N, R116W, Sixth Principal Meridian, Teton County, Wyoming.



James D. Clafin, Wyoming Professional Land Surveyor No. 5463  
JORGENSEN ASSOCIATES, P.C.

***EXHIBIT A***  
**DESCRIPTION OF**  
**PROPERTY TO BE SUBDIVIDED AS**  
**THE TWELVE PINES ADDITION TO THE TOWN OF JACKSON**