

**Declaration of Covenants, Conditions, and Restrictions  
For  
The Metro Plateau Addition to the Town of Jackson, Wyoming**

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ABSTRACTED	
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This DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made this 13<sup>th</sup> day of November 2009, by KOJAK, LLC, a Wyoming limited liability company (the "Declarant").

**PART ONE: INTRODUCTION TO THE COMMUNITY**

*Kojak, LLC, as the developer of The Metro Plateau Addition to the Town of Jackson has established this Declaration to provide a governance structure and a flexible system of standards and procedures for the overall development, administration, maintenance and preservation of the community as a master planned residential townhouse live-work community.*

**ARTICLE I - CREATION OF THE COMMUNITY**

**1.1 Purpose and Intent.** The Declarant, as the owner of the real property described on Exhibit "A" intends by the recording of this Declaration to create a general plan of development for the planned live-work community known as The Metro Plateau Addition to the Town of Jackson, Wyoming. This Declaration provides for the overall development, administration, maintenance and preservation of the real property now or hereafter comprising the properties at The Metro Plateau Addition to the Town of Jackson, Wyoming. An integral part of the development plan is the creation of The Metro Plateau Addition to the Town of Jackson, Wyoming Homeowners' Association, an association comprised of all owners of Units in The Metro Plateau Addition to the Town of Jackson, Wyoming, to own, operate and/or maintain various common areas and community improvements and to administer and enforce this Declaration and the other Governing Documents referred to in this Declaration.

**1.2 Binding Effect.** All property described on Exhibit "A" shall be owned, conveyed and used subject to all of the provisions of this Declaration, which shall run with the title to such property. This Declaration shall be binding upon all Persons having any right, title, or interest in any portion of the Properties and the Units, their heirs, successors, successors-in-title, and assigns.

This Declaration 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 create a general plan of development for The Metro Plateau Addition to the Town of Jackson, Wyoming which may be supplemented as set forth herein. In the event of a conflict between or among the Governing Documents and any such additional covenants or restrictions, the Governing Documents shall control. Nothing in this Section shall preclude 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 this Declaration. The Association may, but shall not be required to, enforce any such covenants, restrictions or other instruments.

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

If any provisions of this Declaration 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 other provisions or applications of this Declaration which shall remain in full force and effect.

GRANTOR: KOJAK LLC  
GRANTEE: THE PUBLIC  
Doc 0763437 bk 744 pg 624-654 Filed At 15:21 ON 11/18/09  
Sherry L. Daigle Teton County Clerk fees 98.00  
By Michele Fairhurst Deputy



## 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 Metro Plateau Addition to the Town of Jackson, Wyoming 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 body responsible to the membership for operations of the Association, selected as provided in the By-Laws and generally serving the same role as the board of directors under Wyoming corporate law.

2.4 **"Common Area"**. All real and personal property located within Lot 10 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 **"Community-Wide Standard"**. The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard shall be established initially by the Declarant and may be more specifically defined in the Design Guidelines, the Master Rules and Regulations, and in Board resolutions.

2.7 **"Covenant to Share Costs"**. Any Declaration of Easements and Covenant to Share Costs to be executed by Declarant and recorded in the Public Records which creates certain easements for the benefit of the Association and the present and future owners of the real property subject to such Covenant to Share Costs and which obligates the Association and such owners to share the costs of maintaining certain property described in such Covenant to Share Costs.

2.8 **"Declarant"**. The Kojak, LLC, 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.

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

2.10 **"Final Plat"**. The final subdivision plat 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) the nine (9) Lots consisting of three building pads for construction of Units designated thereon, as shown on the Final Plat.

2.11 **"Governing Documents"**. A collective term referring to this Declaration and any applicable Supplemental Declaration, the By-Laws, the Articles, the Design Guidelines, and the Use Restrictions and Master Rules and Regulations as they may be amended.

- 2.12 **"Lot"**. A portion of the Properties designated on the Final Plat as a "Lot".
- 2.13 **"Master Landscape Plan"**. The Master Landscape Plan shall be that plan original to Final Development Plan approval by the Town of Jackson in association with the Properties.
- 2.14 **"Rules and Regulations"**. The Rules and Regulations are the Rules and Regulations adopted by the Board pursuant to Section 3.2 hereof and attached hereto as **Exhibit "B"**.
- 2.15 **"Member"**. A Person subject to membership in the Association pursuant to Section 6.2.
- 2.16 **"Mortgage"**. A mortgage, a deed 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.
- 2.17 **"Owner"**. One or more Persons who owns a Unit and a Lot. The definition of "Owner" specifically excludes any party holding an interest merely as security for the performance of an obligation.
- 2.18 **"Person"**. A natural person, a corporation, a partnership, a trustee, or any other legal entity.
- 2.19 **"Properties"**. The real property described on **Exhibit "A"**. The Properties shall consist of one Common Area Lot and three townhome building pads as designated on the Final Plat.
- 2.20 **"Public Records"**. The Official Records of the County Recorder of Teton County, Wyoming.
- 2.21 **"Special Assessment"**. Assessments levied in accordance with Section 8.3.
- 2.22 **"Specific Assessment"**. Assessments levied in accordance with Section 8.4.
- 2.23 **"Supplemental Declaration"**. An instrument filed in the Public Records pursuant to Article IX which subjects additional property to this Declaration, designates Neighborhoods, and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.
- 2.24 **"Townhouse" or "Unit or Lot"**. The building improvements affixed to and situated upon a Lot within the subdivision together which 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.

## **PART TWO: CREATION AND MAINTENANCE OF COMMUNITY STANDARDS**

### **ARTICLE III - USE AND CONDUCT**

- 3.1 **Framework for Regulation**. The Governing Documents establish, as part of the general plan of development for the Properties, a framework of affirmative and negative 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 Metro Plateau Addition to the Town of Jackson, Wyoming, its Owners and residents. Toward that end, this Article establishes procedures for modifying and expanding the initial Master Rules and Regulations as set forth on **Exhibit "B"**.

### **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 the Master Rules and Regulations. The Board shall send notice by mail to all Owners concerning any such proposed action as least five (5) business days prior to the Board meeting at which such action is to be considered. Members 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 unless disapproved at a meeting of the Members by at least fifty-eight percent (58%) of the total votes entitled to vote on the matter. The Board shall have no obligation to call a meeting of the Members to consider disapproval except upon receipt of a petition of the Members as required for special meetings in the By-Laws. Upon such petition of the Members prior to the effective date of any Board action under this Section 3.2(a), the proposed action shall not become effective until after such meeting is held, and then subject to the outcome of such meeting.

(b) Alternatively, the Members, at an Association meeting duly called for such purpose, may adopt rules which modify, cancel, limit, create exceptions to, or expand the Master Rules and Regulations by a vote of more than fifty percent (58%) of the total votes entitled to vote on the matter.

(c) At least thirty (30) days prior to the effective date of any action taken under subsections (a) or (b) of this Section, the Board shall send a copy of the new rule or explanation of any changes to the Master Rules and Regulations to each Owner specifying the effective date. The Association shall provide, without cost, a copy of the Master 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. In the event of a conflict between the Design Guidelines and the Master Rules and Regulations, the Design Guidelines shall control.

**3.3 Owners' Acknowledgement and Notice to Purchasers.** Each Owner, by acceptance of a deed for their Unit, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected by this Declaration and that the Master Rules and Regulations may change from time to time. All purchasers of Units are on notice that changes may have been adopted by the Association that are not recorded in the Public Records. Copies of the current Master Rules and Regulations may be obtained from the Association.

**3.4 No Mining, Excavating or Drilling.** No property within The Metro Plateau Addition to the Town of Jackson, Wyoming shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing geothermal resources, oil, gas, or other hydrocarbons, minerals, rocks, stones, gravel, sand, top soil, or earth. Nothing contained herein shall be construed to limit the rights of the owner of mineral interest severed from the surface of any portion of the Properties prior to the recording of this Declaration and nothing herein shall prevent the Declarant or an Owner from moving dirt, gravel rocks and other soils necessary for the development of their respective properties.



**3.5 Protection of Owners and Others.** No rule shall be adopted in violation of the following provisions, except as may be specifically set forth in this Declaration (either initially or by amendment) or in the initial Master Rules and Regulations set forth on **Exhibit "B"**:

(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.** Units are for commercial and single-family, owner-occupied use and may be occupied by individuals related by birth, adoption or marriage on the basis of not more than two persons per bedroom in each Unit. An unrelated adult individual(s) over the age of eighteen years may occupy a Unit as a guest for a period of less than thirty days.

(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) **Abriding 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 this Declaration and all rules previously in force, such rule shall not apply to any such Owners without their written consent.

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

(i) **Unsightliness.** The exterior areas of all Units, including porches, driveways, walkways, patios and yards, shall be kept in a neat and orderly fashion at all times. No exterior area may be used for the storage of recreational equipment, furniture or other goods or merchandise.



**3.6 Domestic Animals.** Except as specifically permitted below or by the Master 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. 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. A fee of \$10.00/animal may be charged by the HOA and may be increased or decreased in the future.

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, at 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.

**3.7 Vehicle Parking, Storage, Operation and Repair.**



(a) Any vehicles not prohibited in subsection (b) below shall be permitted vehicles and may be parked on the Properties in the space or spaces designated for each Unit or in guest parking.

(b) No boats, trailers, buses, motor homes, campers (on or off supporting vehicles), motorcycles, snowmobiles, recreational vehicles, golf carts, trucks, industrial or commercial vehicles (both cabs or trailers), abandoned or inoperable vehicles (as defined below), or any other similar vehicles (excepting passenger automobiles and one ton or smaller pick-up trucks) shall be parked or 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.

(c) Notwithstanding the foregoing, vehicles shall be parked in designated parking spaces in compliance with the Master Rules and Regulations.

(d) 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.

(e) 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 3.7, 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 remove and store the offending vehicle, or cause the vehicle to be 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.

**3.8 Use Restrictions.** The Common Area is defined and described on the Final Plat and shall be owned by and reserved for the benefit of the Association and its Members, their guests and invitees subject to the restrictions set forth in this Declaration. The following uses are prohibited on the Common Area and the Lots:

(a) The construction or location of any buildings, structures or accessory structures.

(b) 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 not associated with a wildlife or fisheries habitat improvement project, or the other industrial use of the Common Area.

(c) Off-road use of vehicles and off-trail use of any form of motorized transportation, except where needed for maintenance and upkeep of the Open Area, including bona fide agricultural purposes, excepting for the use of vehicles to respond to emergencies.

(d) The construction of roads, driveways, and parking areas without consent of the Homeowner's Association.

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

(f) Clearing, grading or other movement of the natural topography of the land except such activities in connection with fisheries habitat improvement, wildlife habitat improvement, 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.

#### **ARTICLE IV - ARCHITECTURE AND LANDSCAPING**

**4.1 General.** No structure shall be placed, erected, or installed upon any Lot and, and no improvements (including staking, clearing, excavation, grading and other site work, exterior alterations of existing Units, and planning or removal of landscaping materials) shall take place except in compliance with this Article, the Design Guidelines promulgated pursuant to Section 4.3 and the Town of Jackson, Wyoming Land Development Regulations.

Any Owner may paint or redecorate the interior of his Unit without approval. However, 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 shall be subject to ARC and Declarant's approval. ARC approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

All modifications to a Unit shall be approved an architect or engineer licensed in the State of Wyoming. All plans and specifications for modifications to the interior or exterior of any Unit shall be subject to review as provided herein.

This Article shall not apply to the development activities of the Declarant in accordance with this Declaration.

This Article may not be amended without the Declarant's written consent.

#### **4.2 Architectural Review.**

(a) **Architectural Review Committee.** The Declarant shall appoint all three (3) of the original members of the Architectural Review Committee ("ARC") and all replacements until the third anniversary of this Declaration or the sale of fifty eight percent (58%) of the Lots to Owners not affiliated with the Declarant, whichever shall come first. Thereafter, all of the members of the ARC shall be appointed by the Board.

#### **4.3 Guidelines and Procedures.**

(a) **Design Guidelines.** The Declarant may prepare the initial Design Guidelines, which may contain general provisions applicable to all of the Units. The Design Guidelines are intended to provide guidance to Owners regarding matters of particular concern to the ARC in considering applications hereunder. The Design Guidelines are not the exclusive basis for decisions of the ARC, and 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 as long as it owns any portion of the Properties, notwithstanding the reviewing authority of the ARC, unless the Declarant delegates the power to amend to the ARC. Upon termination or delegation of the Declarant's right to amend, the ARC shall have the authority to amend the Design Guidelines with the consent of 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 ARC shall make the Design Guidelines available to Owners and Builders who seek to engage in construction within the Properties. 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.

(b) **Procedures.** Prior to commencing any work within the scope of this Article ("Work"), an Owner shall submit to the ARC an application for approval of the proposed Work in such form as the Design Guidelines or the ARC may specify. Such application shall include plans and specifications ("Plans") showing site layout, grading, structural design (for interior modifications), landscaping, drainage, irrigation, and other features of proposed construction, as applicable. The Design Guidelines and the ARC may require the submission of such additional information as may be reasonably necessary to consider any application. The Plans shall be in such form and shall contain such information as may be reasonably required pursuant to the Design Guidelines.

In reviewing each submission, the ARC 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 ARC 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 ARC 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 ARC fails to respond in writing within sixty (60) days of submission, approval 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. 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.

Until expiration of the Declarant's rights under this Article, the ARC shall notify the Declarant in writing within three (3) business days after the ARC has approved any applications relating to proposed Work within the scope of matters delegated to the ARC by the Declarant. The notice shall be accompanied by a copy of the application and any additional information which the Declarant may require. The Declarant shall have ten (10) days after receipt of such notice to veto any such actions, in its sole discretion, by written notice to the ARC and the applicant.

If construction does not commence on a project for which Plans have been approved within two year 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 Work.

The ARC may, by resolution, exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.



(c) **Obligation to Complete Construction.** Regardless of the type of improvement being constructed on a Lot or within a Unit, once construction 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 ARC 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 ARC 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 ARC 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 ARC; (b) be contrary to this Declaration; or (c) estop the ARC 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 ARC 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 on or modifications to any Unit. In all matters, the ARC and all persons comprising the ARC shall be defended and indemnified by the Association as provided in Section 7.6

**4.7 Certificate of Compliance.** Any Owner may request that the ARC to issue a certificate of architectural compliance certifying that there are no known violations of this Article or the Design Guidelines. Following review and approval of the request by the Declarant, the Association 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 a certificate shall estop the Association from taking enforcement action with respect to any condition as to which the Association had notice as of the date of such certificate.

**4.8 Standard of Construction.** All improvements to the Properties made by the Declarant have been or will be constructed in accordance with all applicable city, county, state and federal building codes. Declarant does not warrant that its improvements to the Properties



exceed, in any manner, the minimum building standards required by applicable county, state and federal laws.

**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, the ARC 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 Work and all 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 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 the By-Laws, to enter upon the Unit and remove or complete any incomplete 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 contained in the By-Laws. 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 and the decisions of the ARC.

**4.10 Development and Use Restrictions.** All development of the Properties shall conform to the following requirements:

(a) **Provisions in Addition to Town of Jackson Land Use Regulations** Conformity with any and all applicable land use regulations and Municipal Ordinances of the Town of Jackson, Wyoming shall be required, in addition to the requirements of this Declaration

(b) **Use Restrictions.** Use of the main floor and second floor is specifically restricted to live/work use as prescribed by the Town of Jackson Land Development Regulations

## **ARTICLE V – MAINTENANCE AND REPAIR**

**5.1 Maintenance of Units.** The Association shall maintain the exterior of all Units and any and all landscaping situated within the community within in a manner consistent with the Governing Documents, the Community-Wide Standard and all applicable covenants 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 contribution from another Owner under this subsection (c) is appurtenant to the delinquent Owner's Unit and passes to the delinquent Owner's successors in title.

### **PART THREE: COMMUNITY GOVERNANCE AND ADMINISTRATION**

#### **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 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.

**6.4 Obligation to Maintain Common Area Landscaping.** The Association, acting through 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 6.4 shall be specifically enforceable by the Declarant so long as this Declaration shall remain in effect and such provision shall not be amended by the Association without the consent of the Declarant.

#### **ARTICLE VII – ASSOCIATION POWERS AND RESPONSIBILITIES**

##### **7.1 Acceptance and Control of Association Property.**

(a) The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and the Common Area.



(b) The Declarant and its designees may convey real or personal property to the Association.

## **7.2 Maintenance.**

(a) Common Area. The Association shall maintain, in accordance with the Community-Wide Standard, the Common Area as it is designated on the 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 this Declaration, 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, gutters, downspouts and exterior building surfaces; provided however, that the Association shall not be required to provide any maintenance to structures added by the Owner. Such exterior maintenance shall not include the maintenance, repair or replacement of 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 driveways and 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.

## **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 to the extent that the Association has assumed responsibility in the event of a casualty, regardless of ownership. 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 one-million dollars (\$1,000,000.00) per occurrence with respect to bodily injury, personal injury, and 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 By-Laws, 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 household 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;
- (vii) 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 at least fifty eight percent (58%) of Members decide within sixty (60) days after the loss not to repair or reconstruct. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such sixty (60) day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed sixty (60) additional days. 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, 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 may impose sanctions for violation of the Governing Documents after notice and a hearing in accordance with the procedures set forth in the By-Laws. Such sanctions 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 property, remove the violation and restore the property 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 without the necessity of compliance with the procedures set forth in the By-Laws:

- (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, director, and committee member 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 the 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 and the By-Laws.

**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 concierge services, property management services, landscape maintenance, pest control, caretaker, transportation, 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 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 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 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 twenty percent (20%) 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 fifty eight percent (58%) 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 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)     Subject to the provisions of Section 15.5 hereof:

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. 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 this Declaration 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.

#### **PART FOUR: COMMUNITY DEVELOPMENT**

#### **ARTICLE IX – EXPANSION OF THE COMMUNITY**

**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 this Declaration or in a separate Supplemental Declaration referencing property previously subjected to this Declaration. 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 this Declaration 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 this Declaration shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Declaration

#### **ARTICLE X – ADDITIONAL RIGHTS RESERVED TO DECLARANT**

**10.1 Withdrawal of Property.** Prior to the sale of the first Unit to a person not affiliated with the Declarant, the Declarant reserves the right to amend this Declaration, without prior notice and without the consent of any Person, for the purpose of removing property then owned by the Declarant, its affiliates, or the Association from the coverage of this Declaration, to the extent originally included in error or as a result of any changes in the Declarant's plans for the Properties, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Properties.

**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 so long as the Declarant owns Units subject to this Declaration or which may become subject to this Declaration in accordance with Section 9 1

**10.5 Right to Transfer or Assign Declarant Rights.** Any or all of the special rights and obligations of the Declarant set forth in this Declaration 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 this Declaration. 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 this Declaration 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.

#### **PART FIVE: PROPERTY RIGHTS WITHIN THE COMMUNITY**

*The nature of living in a planned community requires the creation of special property rights and provisions to address the needs and responsibilities of the Owners, the developer, the Association, and others within or adjacent to the community.*

#### **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 map of the Properties are incorporated herein by reference and made a part of this Declaration for all purposes as if fully set forth in this Declaration.

(b) The Declarant reserves for itself, so long as the Declarant owns any property described on **Exhibit "A"** of this Declaration, 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 Unit 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.

**11.7 Reservation for Future Easements and Assessments.** The Declarant hereby reserves the right to grant a future easement to reconfigure current access to the property in conjunction with future development of adjacent properties. Each Owner, by accepting a deed for their Lot, agrees to be bound to pay their proportionate share of any special assessment necessary to pay the costs of improving any such easement and reconfiguration of access to the Properties.

## **PART SIX: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY**

*The growth and success of The Metro Plateau Addition to the Town of Jackson, Wyoming as a community in which people enjoy living, working, and playing requires good faith efforts to resolve disputes amicably, attention to and understanding of relationship within the community and with our neighbors, and protections of the rights of others who have an interest in the community.*

## **ARTICLE XII – DISPUTE RESOLUTION AND LIMITATION ON LITIGATION**

**12.1 Consents for Association Litigation.** Except as provided in this Section, the Association shall not commence a judicial or administrative proceeding without the approval of a majority of a quorum of the Members. This Section shall not apply, however, to (a) actions brought by the Association to enforce the Governing Documents (including, without limitation, the foreclosure of liens); (b) the collection of assessments; or (c) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

**12.2 Alternative Method for Resolving Disputes.** The Declarant, the Association, its officers, directors, and committee members, if any, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that those claims, grievances or disputes described in Section 13.3 shall be resolved using the procedures set forth in Section 13.4 in lieu of filing suit in any court.

**12.3 Claims.** Unless specifically exempted below, all Claims arising out of or relating to the interpretation, application or enforcement of the Governing Documents, or the rights, obligations and duties of any Bound Party under the Governing Documents or relating to the design or construction of improvements on the Properties shall be subject to the provisions of Section 12.4.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 12.4:

(a) Any suit by the Association against a Bound Party to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article III and Article IV;



(b) Any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents, if the amount in controversy exceeds five thousand dollars (\$5,000);

(c) Any suit in which any indispensable party is not a Bound Party;

(d) Any suit as to which the applicable statute of limitations would expire within one-hundred twenty (120) days of the Request for Resolution pursuant to Section 12.4, unless the party or parties against whom the Claim is made agree to toll the statute of limitations for such periods as may be reasonably be necessary to comply with this Article; and

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 12.4.

#### **12.4 Mandatory Procedures.**

(a) **Request for Resolution.** Any Bound Party having a Claim ("Claimant" against any other Bound Party ("Respondent") (collectively, the "Parties") shall notify each Respondent in writing (the "Request for Resolution"), stating plainly and concisely:

1. The nature of the Claim, including the Persons involved and Respondent
2. The legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
3. Claimant's proposed remedy; and
4. That Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim; and
5. That Respondent must respond to the Request for Resolution within thirty (30) days of its receipt or it will be deemed to have been rejected

(b) **Negotiation and Mediation.**

1. The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Request for Resolution, the Board may appoint a representative to assist the Parties in negotiation.

2. If the Respondent rejects the Request for Resolution, or Parties do not resolve the Claim within ninety (90) days of the date of acceptance of the Request for Resolution (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have thirty (30) additional days to submit the Claim to mediation under the auspice of an independent mediation agency providing dispute resolution services in the -Wyoming Hill Country.

3. If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.



4. Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation, or within such time as determined by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

5. Within five (5) days of the Termination of Mediation, the Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent, and the Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Request for Resolution shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer. In this event, the Mediator shall issue a final written binding decision within ten (10) days of the last offer. This decision shall bind the parties and may be reduced to judgment. The judgment may be enforced by a court of law after the procedures described in Section 12.6 have been exhausted.

#### **12.5 Allocation of Costs of Resolving Claims.**

(a) Subject to Section 12.5(b), each Party shall bear its own costs, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator(s) ("Post Mediation Costs").

(b) Any Award which is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add Claimant's Post Mediation Costs to the Award, such costs to be borne equally by all Respondents. Any Award which is equal to or less favorable to Claimant than any Respondent's Settlement Offer shall award to such Respondent its Post Mediation Costs.

**12.6 Enforcement of Resolution.** After resolution of any Claim, if any Party fails to abide by the terms of any agreement or Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 12.4. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) at all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys' fees and court costs

**12.7 Board Authorization.** The Board may perform any act reasonably necessary to institute, defend, settle, or intervene on behalf of the Association in binding arbitration, non-binding arbitration, mediation, litigation, or administrative proceedings in matters pertaining to (a) enforcement of the governing documents, (b) damage to the Common Area, (c) damage to the Units which arises out of, or is integrally related to, damage to the Common Area, or (d) any other civil claim or action.

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

**13.1 By Declarant.** In addition to specific amendment rights granted elsewhere in this Declaration, until conveyance of the fifth Lot to an Owner unaffiliated with Declarant, Declarant may unilaterally amend or repeal this Declaration for any purpose. Thereafter, the Declarant may unilaterally amend this Declaration 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 this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of at least fifty eight percent (58%) of the Members

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 this Declaration 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 this Declaration.

**13.4 Exhibits.** The Exhibits attached to this Declaration 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 this Declaration which refer to such exhibits.



IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration the date and year first written above.

**KOJAK, LLC, a Wyoming limited liability company**

By: [Signature]

Name: STEPHEN DYNIA

Title: MANAGER

STATE OF WYOMING )

ss. )

COUNTY OF TETON )

On 11/13, 2009, before me, Heather Luke, Notary Public, personally appeared Stephen Dynia personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he or she executed the same in his or her authorized capacity, and that by his or her signature on the instrument, the person or entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

10.6.12

My commission expires:

Heather Luke

Notary Public



### **Exhibit "A"**

A Parcel of Land located in the S1/2 NE1/4 of Section 32, Township 41 North, Range 116 West, 6th P.M., Town of Jackson, Teton County, Wyoming, being that parcel described and conveyed in that Warranty Deed recorded in Book 382 page 834, records of Teton County, and being more particularly described as follows

Beginning at the Southwest Corner of Said Parcel described in Said Book 382, the Northwest corner of that parcel described in Book 327 page 952-954, records of Teton County, which corner lies N00°28'42"W, 51.47 feet from the Southwest corner of Said Parcel in Said Book 327, a point on the northerly right-of-way of State Highway 26, 89, 187, 189

Thence along the boundary lines of Said Parcel in Book 382 through the following courses and distances:

N00°10'58"E, 194.48 feet;  
S89°55'14"E, 394.34 feet;  
S00°02'29"W, 156.79 feet;  
N79°02'01"W, 93.77 feet;  
S79°42'35"W, 307.75 feet to the Corner of Beginning

Containing 1.47 acres, more or less, and subject to easements, rights-of-way, reservations, and restrictions, of sight and/or of record



## **Exhibit "B"**

### **RULES AND REGULATIONS OF THE METRO PLATEAU ADDITION HOMEOWNER'S ASSOCIATION**

- 1       Lawns and walkways in front of the Lots and the entrance ways to the Lots shall not be obstructed or used for any purpose other than ingress and egress from the Lot. No activity detrimental to the landscape shall be engaged in.
- 2       No exterior of any Lot shall be decorated by any Owner in any manner without prior consent of the Association.
- 3       No article shall be hung or shaken from the doors or windows or placed upon windowsills of the units.
- 4       No bicycles, scooters, baby carriages, or similar vehicles or toys or other personal articles shall be allowed to stand in any of the General Common Areas.
- 5       No Owner shall make or permit any noise that will disturb or annoy the occupants of any of the units in the community or do or permit anything to be done which will interfere with the rights, comfort or convenience of other Owners.
- 6       Each Owner shall keep each Owner's Lot in a good state of preservation and cleanliness and shall not sweep or throw or permit to be swept or thrown therefrom, or from the doors or windows thereof, any dirt or other substance.
- 7       No shades, awnings, window guards, ventilators, fans or air conditioning devices shall be used in or about the buildings except such as shall have been approved by the Association
- 8       No signs, notice or advertisement shall be inscribed or exposed on or at any window or other part of the units, except such as shall have been approved in writing by the Association, nor shall anything be projected out of any window of the units without a similar approval.
- 9       All garbage and refuse from the units shall be deposited with care in garbage containers provided by the owners and intended for such purpose only at such times and in such manner as the Association may direct. All garbage and refuse shall be placed in closed plastic trash can liners or compactor bags in trash cans located within each Owner's garage.
- 10       Bathrooms and other water apparatus in the buildings shall not be used for any other purposes other than those for which they were constructed nor shall any sweepings, rubbish, rags, paper, ashes, or any other article be thrown into the same. Any damage resulting from misuse of any bathroom or other apparatus shall be paid for by the Owner in whose Lot it shall have been caused.
- 11       No satellite dishes or radio or television aerial or antenna shall be attached to or hung from the exterior of the units without the written approval of the Association.
- 12       The agents of the Association, and any contractor or workman authorized by the Association, may enter any Lot, at any reasonable hour of the day for the purposes permitted under the terms of the Declaration of Covenants, Conditions and Restrictions, By-laws, or any management agreement pursuant thereto. Except in the case of emergency, entry will be made by pre-arrangement with the Owner.

13 No vehicle belonging to an Owner or to a member of the family or guest, tenant, or employee shall be parked in such a manner as to impede or prevent ready access to another Owner's parking stall. The Owners, their employees, servants, agents, visitors, licensees, and the Owner's family will obey the parking regulations, parking areas, and drives and any other traffic regulations promulgated in the future for the safety, comfort and convenience of the Owners.

14 No house trailer, boat trailers, boats, campers, snowmobiles or snowmobile trailers, or other similar vehicles shall be parked for any period greater than forty-eight (48) hours in the parking stalls, common areas, or in the immediately adjacent streets of the project without the written approval of the Association.

15 All damage to units or the Common Area caused by any Owner shall be paid for by the Owner responsible.

16 No Owners shall use or permit to be brought into the Lot any inflammable oils or fluids such as gasoline, kerosene, naptha or benzine, or other explosives or articles deemed extra hazardous to life, limb or property without in each case obtaining written consent of the Association.

17 Any damage to the buildings, or Common Areas or equipment caused by Owner's children or other guests shall be repaired at the expense of the Owner

18 All pet owners must promptly clean up their pet's poop

These community rules may be added to, amended or repealed at any time by an act of the Board of Directors of the Association.



## METRO PLATEAU HOMEOWNERS' ASSOCIATION MASTER RULES AND REGULATIONS

These Master Rules and Regulations shall apply to all of the Lots and Units until such time as they are amended, modified, repealed or limited by rules of the Association adopted pursuant to Declaration of Covenants, Conditions and Restrictions for the Metro Plateau Addition to the Town of Jackson, Wyoming (the "Declaration"). The definitions contained in the Declaration are incorporated by reference herein.

1. General. The Lots and Units shall be used only for single-family residential and commercial use as set forth in the Declaration.

2. Restricted Activities. The following activities are prohibited within the Lots and Units unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board of Directors:

(a) On-site storage of gasoline, heating, or other fuels, except that a reasonable amount of fuel may be stored on each Lot for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment. This provision shall not apply to any underground fuel tank approved by the ARC for reasonable domestic use;

(b) Owners shall be responsible for cleaning up the droppings of such Owner's Household Pets. All Household Pets shall be registered, licensed and inoculated as required by law;

(c) Any activity which emits foul or obnoxious odors on the Lots and Units or creates noise or other conditions which tend to disturb the peace or threaten the safety of any Owners of the Lots and Units;

(d) Any activity which violates local, state or federal laws or regulations; however, the Board shall have no obligation to take enforcement action in the event of a violation;

(e) Pursuit of hobbies or other activities which tend to cause an unclean, unhealthy or untidy condition to exist outside of enclosed structures on a Lot or Unit;

(f) Any noxious or offensive activity which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to an Owner;

(g) Outside burning of trash, leaves, debris or other materials;

(h) Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to an Owner, except alarm devices used exclusively for security purposes;

(i) Use and discharge of firecrackers and other fireworks;

(j) Dumping of grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, or lake, or elsewhere within the Lots and Units, except that fertilizers may be

applied to landscaping on Lots and Units provided care is taken to minimize runoff, and Declarant and its agents may dump and bury rocks and trees removed from a building site;

(k) Accumulation of rubbish, trash, or garbage except between regular garbage pick ups, and then only in approved containers;

(l) Obstruction or rechanneling of drainage flows or waterways after location and installation of drainage swales and waterways except that the Declarant shall have such right, provided the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Lot without the Owner's consent;

(m) Subdivision of a Lot into two or more parcels, or changing the boundary lines of any Lot without the approval of the ARC, except that the Declarant shall be permitted to subdivide or remap Lots which it owns in accordance with the Declaration;

(n) Use of any Lot for operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Lot rotates among participants in the program on a fixed or floating time schedule over a period of years;

(o) Discharge of firearms, provided the Board shall have no obligation to take action to prevent or stop such discharge;

(p) Capturing, trapping or killing of wildlife within the Lots and Units, except in circumstances posing an imminent threat to the safety of persons using the Lots and Units;

(q) Any activities which materially disturb or destroy the vegetation, wildlife, or air quality within the Lots and Units or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution;

(q) Conversion of any garage to finished space for use as an apartment or other integral part of the living area on any Lot without the prior approval of the ARC;

(r) Any construction, erection, or placement of any thing, permanently or temporarily, on the outside portions of any improvements on a Lot whether such portion is improved or unimproved, except in strict compliance with the requirements of the Board, the ARC and the Design Guidelines. This shall include, without limitation, basketball hoops, swing sets and similar sports and play equipment, clotheslines, garbage cans, woodpiles, above-ground swimming pools, hedges, walls, dog runs, animal pens, or fences of any kind and signs of any kind except approved signs for street names, home address numbers and building signs.

3. Prohibited Conditions. The following shall be prohibited within the Lots and Units:

(a) Plants, animals, devices or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Lots and Units;

(b) Structures, equipment or other items on the exterior portions of an improvement on a Lot which have become rusted, dilapidated or otherwise fallen into disrepair;

(c) Exterior antennas, aerials, satellite dishes, or other apparatus for the transmission or reception of television, radio, satellite, or other signals of any kind unless



completely contained within the dwelling structure so as not to be visible from outside the dwelling structure or unless otherwise approved by the ARC or the Board. Declarant and the Association shall have the right, without obligation, to erect or install and maintain such apparatus for the benefit of all or a portion of the Lots and Units.

(d) Non-native invasive plant species shall not be used in landscape plans. Disposal of cuttings of these or any other ornamental plants on the Lots and Units is strictly prohibited.

4. Leasing of Lots and Units. "Leasing," for purposes of this Paragraph, is defined as regular, exclusive occupancy of a Property by any person, other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. All leases shall be in writing. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Owner within ten days of execution of the Lease. The Owner must make available to the lessee copies of the Declaration, Bylaws, and the Master Rules and Regulations.



**First Amendment to Declaration of Covenants, Conditions and Restrictions**  
**For**  
**The Metro Plateau Addition to the Town of Jackson, Wyoming**

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS for the Metro Plateau Addition to the Town of Jackson, Wyoming, is made this 6 day of May, 2010, by 2011, LLC, a Wyoming limited liability company the ("Declarant").

WHEREAS, the Declaration is the owner of the real property described on Plat No. 1279 which was recorded in the Office of the Teton County Clerk on November 18, 2009 (the "Property"); and

WHEREAS, the Declarant established the Declaration of Covenants, Conditions, and Restrictions for the Metro Plateau Addition to the Town of Jackson, Wyoming (the "Declaration") which was recorded in the Office of the Teton County Clerk on November 18, 2009 in Book 744 of Photo at Pages 624 to 654 and which encumbers the Property; and

WHEREAS, pursuant to powers reserved to the Declarant in Section 13.1 of the Declaration, the Declarant desires to amend the Declaration; and

NOW THEREFORE, the Declarant hereby amends the Declaration as follows:

1. Amendment to Section 3.5(c). Section 3.5(c) of the Declaration is deleted in its entirety and replaced with the following language:

(c) Household Compositions. Units are for commercial and single family use only and may be occupied by owners or lessees.

2. Amendment to Article V. Articles 4.1 through 4.9 of the Declaration are hereby deleted in their entirety and replaced with the following language:

**4.1 General.** No structure shall be placed, erected, or installed upon any Lot an, 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 with the approval of the Board of Directors and in compliance with the Town of Jackson, Wyoming Land Development Regulations.

Any Owner may paint or redecorate the interior of their Unit without approval. However, 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 shall be subject to Board of Directors approval.

All modifications to a Unit shall be approved by an architect or engineer licensed in the State of Wyoming.

3. Amendment to Section 8.7(b). The last sentence of Section 8.7(b) shall be deleted in its entirety.

4. Amendment to Section 12.4(b)(2). The words "the - Wyoming Hill Country" shall be deleted and replaced with "Teton County Wyoming".

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

GRANTOR: 2011 LLC ET AL

GRANTEE: THE PUBLIC

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Sherry L. Daigle Teton County Clerk fees: 11.00

By Tracy Gridley Deputy



5. No Further Amendment. Other than as set forth herein, the Declaration shall remain unchanged and in full force and effect.

6. Recordation of Amendment. This instrument shall be recorded in the Office of the Teton County Clerk and abstracted against the title to the Property.

7. Power to Amend. The Declarant hereby certifies that this amendment is adopted in accordance with the powers to amend reserved to the Declaration in Section 13.1 of the Declaration.

IN WITNESS WHEREOF, the undersigned Declarant has executed this amendment the date and year first written above.

**KOJAK, LLC, a Wyoming limited liability company**

By: [Signature]  
Name: STEPHEN DYNIA  
Title: MANAGER

STATE OF WYOMING     )  
                                  ss.     )  
COUNTY OF TETON     )

On May 6<sup>th</sup>, 2011, before me, TERESA GOSINSKI, Notary Public, personally appeared \* personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he or she executed the same in his or her authorized capacity, and that by his or her signature on the instrument, the person or entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

\* Stephen Dynia, Manager of Kojak, LLC a Wyoming limited liability company

[Signature]  
Notary Public

My commission expires:

