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Declaration of Covenants, Conditions and Restrictions

for the

Buffalo Sage Townhomes Addition to the Town of Alpine, Wyoming

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Declaration of Covenants, Conditions and Restrictions

for the

Buffalo Sage Townhomes Addition to the Town of Alpine, Wyoming

This Declaration of Covenants, Conditions and Restrictions for Buffalo Sage Townhomes Addition to the Town of Alpine is made the date affixed below by SSDA, LLC, a Wyoming limited liability company (the "Declarant").

RECITALS

WHEREAS, the Declarant, together with its successors and assigns, including any person or entity acquiring all, but not less than all, of the interest of the Declarant in the real property, whether by purchase, or pursuant to foreclosure proceedings or otherwise, is the owner of that certain real property located in the Town of Alpine, County of Lincoln, and State of Wyoming, legally described as Buffalo Sage Townhomes Addition to the Town of Alpine according to Plat 288A recorded on November 21, 2006 under Receiving # 924670 in the Office of the Lincoln County Clerk (the "Plat"), together with all buildings and improvements constructed or located thereon, and all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real property (collectively the "Property"); and

WHEREAS, this Declaration is the "Declaration of Covenants, Conditions and Restrictions for Buffalo Sage Townhomes" that is referred to in the Certificate of Owners on the Plat, no such Declaration having been recorded previously; and

WHEREAS, Declarant desires to preserve the value and desirability of the Property and all Townhomes located upon them, and to create of a tranquil and satisfying community of compatible uses which results in a high level of stability and harmonious relationships among its residents, through the covenants, conditions, restrictions and provisions as hereinafter set forth;

NOW THEREFORE, Declarant hereby declares that the Property shall be held, conveyed, leased, used, improved and occupied subject to the following easements, restrictions, covenants, and conditions. The acceptance of a deed or conveyance or the entering into of a lease or the entering into occupancy of a Unit shall constitute agreement that the provisions of this Declaration and any amendment thereto, and the Articles of Incorporation, Bylaws and Rules and Regulations of the Association (as hereinafter defined), as same may be amended or supplemented from time to time, are accepted and ratified by such Unit Owner, tenant, occupant, or mortgagee; and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such Unit as though such provisions were recited and stipulated at length in each and every deed or conveyance or lease thereof.

ARTICLE I - DEFINITIONS

Section 1. "Articles of Incorporation" shall mean and refer to the document required by

Wyoming law to be filed with the Wyoming Secretary of State to create the Association as a legal entity, and any duly authorized amendments thereto.

Section 2. "Association" shall mean and refer to the Buffalo Sage Townhomes Owners Association, a nonprofit mutual benefit corporation organized under Wyoming statute § 17-19-101 et. seq.

Section 3. "Board" or "Board of Directors" shall mean the Board of Directors of the Association, elected or appointed as hereinafter stated.

Section 4. "Bylaws" shall mean and refer to the written Bylaws of the Association adopted by the Board, and any duly authorized amendments thereto.

Section 5. "Common Area" shall mean all real property and improvements and common utilities located thereon shown on the Plat with the designation "Common Area" (excluding therefrom the Limited Common Areas which are reserved for exclusive use of designated Unit Owners). The Common Area shall be owned by the Association and managed for the common use and enjoyment of the Owners.

Section 6. "Common Services" shall generally mean maintaining and repairing the exterior portions of the building improvements located upon the Units, the lawns, landscaping, parking areas, roads or drives located in both the General and Limited Common Areas; trash and snow removal, and maintenance, repair or replacement of all Association property; providing common mailbox areas and all common utility facilities and utility services to Units; purchasing and maintaining casualty or liability insurance on and for the Association property, the Common and Limited Common Areas, and the improvements upon the Units, and liability or other insurance for the Association's officers, directors and employees; enforcement of the Declaration, the Bylaws and the Rules and Regulations, and other duties, rights and responsibilities stated herein or reasonably inferred from the Declaration in order to carry out the purposes of the Declaration.

Section 7. "Declaration" or "the Declaration" or "this Declaration" shall mean this document, and any duly authorized amendments thereto.

Section 8. "Declarant" shall mean and refer to SSDA, LLC, a Wyoming limited liability company, its successors and assigns if such successors or assigns should acquire more than an undeveloped Unit from the Declarant.

Section 9. "Design Committee" shall mean the committee of persons appointed by the Association Board with the powers enumerated in Article XIII of this Declaration.

Section 10. "Limited Common Areas" means those portions of the Common Area which are shown on the Plat with the designation "LCA" followed by the same identifying number or other designation by which a Unit is identified. Limited Common Areas are owned by the Association but limited to and reserved for the exclusive use of the Unit Owner whose Unit number is designated together with "LCA" on the Plat. Such LCA may include, but may not be limited to car ports, parking spaces, porches, deck/patio areas, stairways, walkways, storage facilities, yard areas or other elements, all as identified on the Plat.

Section 11. "Member" shall mean and refer to members of the Association.

Section 12. "Owner" shall mean and refer to the owner, whether one or more persons or entities, of fee simple title to any Unit which is a part of or situated upon the Property, including contract purchasers, but excluding those having such interest merely as security for the performance of an obligation, as such ownership may appear from the public records maintained in the Office of the Lincoln County, Wyoming Clerk.

Section 13. "Property" shall mean and refer to the real property identified on the Plat and all improvements located thereon, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 14. "Rules and Regulations" shall mean those rules and regulations adopted by the Board of Directors of the Association at its organizational meeting and modified from time to time.

Section 15. "Townhome" means a building constructed upon a Unit and owned by an Owner, as shown on the Plat.

Section 16. "Plat" shall mean the plat of Buffalo Sage Townhomes Addition to the Town of Alpine, recorded as Plat 288A on November 21, 2006 under Receiving # 924670 in the Office of the Lincoln County Clerk, consisting of a plat of real property, showing a survey and legal description thereof, and legally establishing the division of the real property into Units, as same may be amended from time to time.

Section 17. "Unit" shall mean and refer to any separately designated plot of land shown on the Plat and referred to as a "Unit" followed by a number.

In addition to the foregoing definitions, other terms used in this Declaration may be defined within specific sections throughout the Declaration.

ARTICLE II - OTHER COVENANTS AND RESTRICTIONS APPLICABLE TO THE PROPERTY AND UNITS; OWNER PROPERTY RIGHTS AND EASEMENTS

Section 1. Other Restrictions of Record. In addition to the provisions of this Declaration and any Rules and Regulations that may hereafter be adopted by the Association, the Property and each Unit are subject to:

- a. That certain "Declaration of Covenants, Conditions and Restrictions for River View Meadows in Alpine Wyoming," recorded in the Lincoln County, Wyoming Clerk's Office on June 22, 1993 at Book 331PR, Page 26, and any amendments thereto; and
- b. Those certain "Site Committee Architectural Rules and Regulations for Riverview Meadows, Alpine, Wyoming" recorded in the Lincoln County, Wyoming Clerk's Office on November 14, 2000 at Book 455, Page 631; and
- c. Those certain "Site Committee Architectural Rules and Regulations for Riverview Meadows, Alpine, Wyoming" recorded in the Lincoln County, Wyoming Clerk's Office on June 22, 2001 at Book 467, Page 171; and

- d. All easements and restrictions shown or noted on the Plat.

Section 2. Owner's Easements of Enjoyment. Every Owner shall have a non-exclusive easement of use and enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Unit, subject to the following:

- a. Rights reserved by the Declarant and its successors and assigns as stated in this Declaration;
- b. Rights of the Association as stated in this Declaration;
- c. Easements, encumbrances and other information shown on or contained in the Plat;
- d. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Association and the Declarant;
- e. The right of individual Owners to the exclusive use of areas designated on the Plat as Limited Common Area for the Unit in question;
- f. The provisions of the Articles of Incorporation, Bylaws and the Rules and Regulations.
- g. All applicable Federal, State and local laws, rules and regulations.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the Owner's Unit.

Section 3. Roads and Drives. Each Owner of a Unit, as well as the Declarant shall have a non-exclusive easement appurtenant to his property of ingress and egress over and on all roads or drives shown on the Plat. Each Owner as well as the Declarant may delegate his right under said non-exclusive easement for the benefit of his family, his tenants, servants, employees, agents, guests and invitees, and any transferee by way of lease assignment or contract for purchase of the Unit to which said non-exclusive easement is appurtenant.

Section 4. Parking. Parking for each Unit shall be as shown or designated on the Plat or as further designated in a deed for a Unit from Declarant to the initial buyer of said Unit.

Section 5. Limited Common Areas. Subject to prior approval by the Design Committee, each Owner of a Unit shall have the right to landscape and beautify the Limited Common Area permanently assigned to each Unit according to the designations shown on the Plat.

ARTICLE III - DECLARANT RESERVED EASEMENTS

Section 1. Reserved Easements. In addition to easements shown on the Plat, Declarant hereby reserves to Declarant, its successors and assigns and to the Association, the following easements over and across the Property, which easements shall be deemed to be perpetual and to

run with the land and pass with the title to every Unit or other land within the Property:

- a. Easements for Surface Water Drainage. Easements for drainage of surface waters from portions of the Property across other portions of the Property; said drainage to conform to the development plan for the Property approved by the applicable governmental authority. The drainage as established shall not be altered, modified or changed by any Owner as to any part of the Property without the consent of the applicable governmental authority.
- b. Easements for Utilities. Easements anywhere within the Property for the purpose of installing, using, testing, repairing and maintaining water and sewer lines, hydrants, pump stations, electrical and other utilities and related equipment and facilities as may be necessary to serve Units or to provide Common Services.
- c. Easements for General Association Operations. Easements of access to all Common Areas and Limited Common Areas and to all portions of each Unit (including the interior of all buildings or structures) from time to time during reasonable hours as may be necessary to perform the duties and functions which the Declarant or the Association is required or permitted to perform pursuant to this Declaration.

ARTICLE IV - PARTY WALLS

Section 1. General Rules of Law to Apply. The components of each wall constructed as part of a Townhome upon any Unit and located on the dividing line between Units shall constitute a party wall. To the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. No Alteration and Perpetual Easement. Neither Owner shall alter or change a party wall in any manner, interior decoration excepted, and said party wall shall always remain in the same location as when erected, and each Owner shall have a perpetual easement in that part of the Unit of the other on which said party wall is located, for party wall purposes.

Section 3. Sharing of Repair and Maintenance. The cost of maintaining each party wall shall be borne equally by the Owners on either side of said wall; provided however, that routine maintenance and repair of the gypsum board (i.e. drywall) portion of a party wall located within each Townhome shall be the sole responsibility of the Owner of that Townhome.

Section 4. Damage to Party Wall. In the event of damage or destruction of a party wall from any cause, other than the negligence of either party thereto, the then owners shall, at joint expense, repair or rebuild said wall, and each party, his successors and assigns, shall have the right to the full use of said wall so repaired or rebuilt. If either party's negligence shall cause damage to or destruction of said wall, such negligent party shall bear the entire cost of repair or reconstruction. If either party shall neglect or refuse to pay his share, or all of such cost in case of negligence, the other party may have such wall repaired or restored and shall be entitled to have a mechanic's lien on the Unit of the party so failing to pay, for the amount of such defaulting party's share of the repair or replacement cost.

Section 4. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the ownership of each Unit, and shall pass to such Owner's successors in title.

ARTICLE V - USE AND DEVELOPMENT RESTRICTIONS & REQUIREMENTS

Section 1. Limitation to Residential Use. Units shall be used only for single family residential purposes by an Owner or his lessees. The term "family" shall mean one or more persons related by blood, adoption or marriage living together as a single housekeeping unit. Two unrelated adults (and any number of children of either of them) shall also be deemed a family for purposes of these covenants. Notwithstanding this provision, Owners and lessees may have house-guests provided they do not occupy the premises for more than thirty (30) days. In no event may any Owner or lessee permit any dwelling to be occupied on a regular basis by persons failing to meet the definition of "family" stated above. It is the intention of this clause to maintain a single-family residential atmosphere and these provisions shall be interpreted in light of such intention.

Section 2. Prohibition of Commercial Uses. No business or profession of any nature shall be conducted on any Unit; provided however, that this Section shall not preclude cultural activities in the home, such as painting, sculpturing, writing, music, art and craft work, and similar cultural activities, even if such activities may bring remuneration to the person or persons participating therein; provided that such use is permitted by all necessary governmental authorities and does not create a nuisance to other Owners, as determined in the Board's sole discretion.

Section 3. Limitation on Fencing. No Owner or occupant of any Unit shall construct any fence or other barrier within the Property or along the exterior property line of the Property; provided however, that an Owner of a Unit may fence the LCA associated with their Unit. Any such fence shall conform to the Rules and Regulations prescribed by the Design Committee. The Declarant, or the Association may, at their sole discretion, erect such fencing as deemed necessary or desirable to maintain or enhance the value of the Property or the Property, or protect property owned by the Association, or to protect the health, safety or welfare of Owners or occupants of the Property.

Section 4. Control of Pets.

- a. No animals shall be kept or maintained on any Unit except as provided herein.
- b. No animals may be kept or maintained on any Unit by any person occupying or residing in a Unit who is not an Owner. Tenants of Owners shall not be allowed to have pets.
- c. The occupants of each Unit shall be entitled to keep no more than two (2) Household Pets (the term "Household Pet" means a dog or cat,); provided that such Household Pets (i) shall not be kept for any commercial purpose; (ii) shall not cause an unreasonable amount of noise, odor or other disturbance; and (iii) shall not otherwise be a nuisance to other Owners or occupants of Units.
- d. Any Household Pet permitted to be kept in a Unit under this Declaration shall be

physically restrained (by way of leashes or portable kennels or other containment approved by the Design Committee) and controlled at all times on the Property so that they do not cause a nuisance to others, destroy property, or harass or endanger people or wildlife. Household Pets may be exercised (i.e. by walking) on the Property but shall be restrained on a leash at all times during such activity. Any person exercising a Household Pet on the Property shall carry with them appropriate means to remove and dispose of any feces deposited by such Household Pet on the Property during such exercise activity, and each such person shall promptly pick up and properly dispose of such feces in the trash can of the respective Owner associated with such Household Pet or, if provided by the Association, a refuse dumpster provided for common trash collection purposes.

- e. If any animal shall be identified by the Board, in its sole discretion, as being a nuisance to others as a result of, among other behaviors, excessive noise or odors, threatening behavior towards people or other animals, destruction of property, or chasing or otherwise harassing wildlife, the Board shall have the authority to, for the first such offense have such animal or animals impounded at any available location, and shall assess a penalty against the owner of such animal or animals of not more than \$100.00, plus all costs of impoundment. If in the discretion of the Board, any such animal is deemed to be a chronic nuisance due more than one incident of any such behaviors, the Board shall have the authority to have such animal or animals permanently removed from the Property, or impounded or destroyed, and shall assess a penalty against the owner of such animal or animals of not more than \$500.00, plus all costs of impoundment or destruction.

Section 5 Open Storage. Other than two (2) automobiles or two (2) motorcycles primarily designed for street use (i.e. dirt bikes excluded), or a combination of the foregoing not exceeding two (2) in number, no Owner nor any occupant of a Unit shall store or have located on any Unit or any Common Area or Limited Common Area for more than 48 consecutive hours any personal property not approved in writing by the Design Committee, including but not limited to the following: watercraft, tents, trailers, campers, snow machines, all terrain recreational vehicles, off-road motorcycles. All such items or other possessions shall either be kept or stored in locations off of the Property or, if practical, within the Owner's Townhome building located on a Unit.

Section 6. Illegal, Noxious or Offensive Activities. No illegal, noxious or offensive activity shall be permitted on any Unit. No light shall be emitted from any Unit which, in the sole discretion of the Board upon advice of the Design Committee, is unreasonably bright or causes unreasonable glare with respect to any other Unit. No unreasonably loud or annoying noises, or noxious or offensive odors shall be emitted beyond the Unit lines of any Unit. No motorized vehicle on the Property shall be allowed to run at idle for more than 5 consecutive minutes.

Section 7. Wildlife Protection. Wildlife species may live on or wander through portions of the Property during various times of the year. No Owner or occupant of any Unit shall feed any wildlife nor place any salt-lick or similar attractant upon the Property so as to attract or habituate wildlife to an unnatural food source; provided however, song bird feeders shall be allowed on a Unit or on the Limited Common Area associated with a Unit so long as such feeder is hung from a tree or the Townhome building at a height of more than twelve feet above any surface that could

be stood upon and so long as the feeder is designed to prevent bird seed from spilling on the ground below.

Section 8. Trash. All garbage and trash shall be placed and kept in covered containers stored in the enclosed garage associated with each Unit or, if provided by the Association, one or more central bear-resistant trash collection receptacles. Notwithstanding the foregoing, the collection and disposal of garbage and trash shall be in strict compliance with such rules as may be adopted by the Association, which may provide for common collection points. The maintenance of accumulated waste plant materials is prohibited. All trash cans shall be promptly returned to the designated storage area after trash removal.

Section 9. Parking, Roads and Drives.

- a. The Board, through its Rules and Regulations shall have full power and authority to regulate the use of roadways, drives and common use parking areas by imposing and enforcing speed limits, traffic control signs and devices and other restrictions, all with full power and authority to impose and enforce (by special assessments hereunder or otherwise) fines and other penalties for violations of such regulations.
- b. No Owner shall keep or allow to be kept on the Property more than the number of authorized motorized vehicles for which the Owner has parking spaces assigned to such Owner's Unit on the Plat or any an initial deed issued to a buyer from the Declarant. An Owner or any tenant of the Owner shall park their authorized motorized vehicles in the parking spaces assigned to their respective Unit, and shall not use or permit to be used such assigned parking spaces for purposes other than to park authorized motor vehicles.
- c. Owners shall not themselves, and shall not permit their tenants, visitors or contractors to park anywhere on the Property except the parking spaces assigned to them or designated on the Plat for guest parking. Owners shall not and shall not permit their tenants, visitors or contractors to obstruct any access drives within the Property, or obstruct access to any other Unit.

Section 10. Outdoors Hot Tubs and Spas. Installation of outdoor hot tubs or spas within the the Limited Common Areas assigned to any Unit shall be a Change in the Existing State of Property requiring approval of the Design Committee as discussed in a separate Article elsewhere in this Declaration.

Section 11. Subdivision. No Unit may be divided or subdivided or a fractional portion thereof sold or conveyed so as to be held undivided ownership.

Section 12. Combining Units. Provided that the Owner elects to do so in writing and duly records same in the Office of the Lincoln County, Wyoming Clerk, two or more adjoining Units owned by a single Owner may be combined and developed as one Unit but shall thereafter be deemed one Unit, and may not thereafter be split and developed separately.

Section 13. Commercial Lodging. Unless otherwise specifically permitted by applicable law and any supplemental declaration hereto, no Unit shall be used for residential rental purposes for periods of less than one thirty (30) consecutive days.

Section 14. Maintenance. Subject to any obligation of the Association to provide Common Services, each Owner shall keep the Owner's Unit and Limited Common Area in good order and repair, and in a clean, safe, attractive and sightly condition.

Section 15. No Temporary Structures. No structure of a temporary character, vehicle, mobile home, trailer, tent, shack, garage, barn or other outbuilding shall be used on any Unit for dwelling purposes either temporarily or permanently.

Section 16. Drainage. The established drainage pattern from, on or over any Unit shall not be obstructed, altered or in any way modified, unless previous written consent is obtained from the Design Committee.

Section 17. Unsightliness. No unsightliness, as determined by the Board upon the advice of the Design Committee, shall be permitted to exist on any Unit or on the exterior or other portions of a Townhome visible from elsewhere on the Property, the Limited Common Area, or the Common Area. Without limiting the generality of the foregoing: (1) all unsightly structures, facilities, equipment, objects and conditions shall be enclosed within an enclosed structure or appropriately screened from view, as determined by the Design Committee; (2) snow removal equipment and garden or maintenance equipment shall be kept at all times within an enclosed structure, except when in actual use; (3) refuse, garbage and trash shall be kept at all times in covered, noiseless containers and any such container shall be kept within an enclosed structure or appropriately screened from view; (4) no lumber, grass, shrub or tree clippings or plant waste, metals, bulk materials or scrap or refuse or trash shall be kept, stored or allowed to accumulate.

Section 18. Signs. No signs or advertising devices of any nature shall be erected or maintained on any Unit except (1) as necessary to identify the ownership thereof and its address; (2) not more than one "for sale" or "for rent" sign, having a maximum face area of three square feet per Unit, (3) as shall be necessary or desirable to give direction, advise of rules and regulations, or caution or warn of danger; and (4) such signs as may be otherwise required by law.

Section 19. No Mining and Drilling. No Unit shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing oil, gas, or other hydrocarbons, minerals, rocks, stones, gravel or earth.

ARTICLE VI - THE ASSOCIATION

Section 1. Formation. The Association shall be created by the Declarant. It shall be governed by a Board of Directors ("Board"). The rights, duties, assessments, and other obligations of the Association and its Members and Board of Directors shall be governed by the Association's Articles of Organization, and by written Bylaws adopted by the Board of Directors as part of the Association's formation, as amended from time to time by the Board of Directors, and by this Declaration. The Owners shall not otherwise constitute an association or entity of any kind, and the sole legal entity that will exercise power and authority with respect to the common interest of

the Owners in the Property shall be the Association.

Section 2. Membership - Owner Information. Every Owner shall be a Member of the Association. Membership in the Association shall be appurtenant to each Unit and shall not be subject to severance from the ownership of such Unit. Each Owner shall have a continuing obligation to provide the Association with their current mailing address, telephone number, fax number and e-mail address (if available).

Section 3. Member Voting. Notwithstanding the foregoing, the combined ownership of each Unit shall constitute one Member for purposes of voting. Specifically, subject to provisions in Article VII pertaining to non-payment of assessments, each Unit shall be entitled to cast one vote to be decided by a vote of the Members entitled to vote on a particular matter, regardless of the actual number of Owners of record title to a Unit. If more than one person or entity owns a Unit, the single vote of such combined Members shall be cast as determined by the Owners of such Unit. In the event of any dispute among joint Owners, the Board shall have the right to disqualify the single vote of such combined Members on an issue unless or until the joint Owners of such Unit have reached agreement as to the single vote of their Unit on the matter.

Section 4. Cooperation with Other Associations. Management of the business and affairs of the Association, and the management and maintenance of the Property and Common Areas, and the providing of Common Services shall be the sole responsibility of the Board, which may act in its sole discretion in cooperation or in conjunction with any other associations administering commonly used facilities or services, such as associations of owners of other commercial or residential properties in the surrounding area.

Section 5. Authority and Duties. Pursuant to the powers and authority vested in it by Wyoming law, the Declaration, and by the Articles of Organization and Bylaws of the Association, the Board shall have the full power and authority to manage the business and affairs of the Association, and shall be responsible for the enforcement and administration of the requirements of the Declaration, the Rules and Regulations, and any other covenants for which the Board is legally responsible. The Board may contract for and supervise the operation, maintenance and repair of all common facilities and property owned by the Association, contract for and supervise the providing of all Common Services; enforce the Rules and Regulations, provide for necessary insurance, and take all other actions necessary to administer and enforce the Association's discretionary powers or its obligations.

Section 6. Election of the Board. The Board shall be composed of three (3) persons. Initially, the Declarant shall appoint the Board. However, not later than sixty (60) days after conveyance of 50% of the Units to Owners other than the Declarant or anyone affiliated with the Declarant by virtue of ownership of an ownership interest in the Declarant, one member of the Board shall be elected by vote of the Unit Owners and shall replace a Board member previously appointed by the Declarant. Not later than either sixty (60) days after conveyance of 75% of the Units to Owners other than the Declarant or anyone affiliated with the Declarant by virtue of ownership of an ownership interest in the Declarant, an additional one member of the Board of Directors shall be elected by vote of the Owners and shall replace a Board member previously

appointed by the Declarant. Within sixty (60) days after the earlier of (i) the conveyance of 95% of the Units to Owners other than the Declarant or anyone affiliated with the Declarant by virtue of ownership of an ownership interest in the Declarant, the Owners shall elect a third member of the Board who shall replace the last remaining Board member previously appointed by the Declarant. Thereafter, all Board members shall be elected by the Owners as described in the Bylaws.

Section 7. Limited Liability of Board of Directors. Members of the Board and their officers, assistant officers, agents and employees acting in good faith on behalf of the Association, in their individual capacities:

- a. Shall not be liable to the Owners as a result of their activities for any mistake of judgment, negligence or otherwise, except for their own criminal or willful misconduct resulting in injury or damage to one or more Owners;
- b. Shall have no personal liability in contract to an Owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the Association in their capacity as such;
- c. Shall have no personal liability in tort to any Owner or any person or entity, except for their own criminal or willful misconduct resulting in injury or damage to one or more Owners;
- d. Shall have no personal liability arising out of the design, improvement, maintenance, use, misuse or condition of the Property which might in any way be assessed against or imputed to them as a result of or by virtue of their capacity as such.

Section 8. Budget. The Association shall prepare an annual budget. Within thirty (30) days after adoption of any proposed budget for the Association, the Board of Directors shall mail, by ordinary first-class mail or otherwise deliver a summary of the budget to all members.

Section 9. Duties of the Board. The Board shall, in addition to such obligations, duties and functions as are assigned to it by other provisions of this Declaration, have the obligations, duties and functions to do and perform each of the following for the benefit of the Owners, and for the maintenance, administration and improvement of the Property and the Common Areas and providing the Common Services, as may be required or is reasonably appropriate:

- a. **Receive, Hold and Maintain Property.** The Board shall be obligated to and shall accept title to any real property or interest therein, including improvements thereon (such as any common areas or easements), or to any personal property or equipment existing on the Property when, as and if granted or furnished by Declarant. The Association shall also be obligated to and shall accept the benefits and burdens associated with any water rights, licenses, easements or other instruments conveying rights in and to real property made by Declarant. In each and every instance, the Association shall hold the title, interest or rights granted, furnished or conveyed for the benefit of its Members and shall maintain and preserve the same for the benefit of its Members. With respect to any such property or rights, and any other property or rights acquired or held by the Association, the Board shall be obligated insofar as

applicable in the particular circumstance to pay all rents, fees, taxes and assessments relating to, and necessary to preserve therein, and provide for the best and highest quality care, operation, management, insurance, maintenance, repair and placement of the same.

- b. Provide Common Services. The Board shall provide or procure all of the Common Services benefiting the Property, and any of the Owners, as generally described herein. It may engage the services of a manager or other contractors, and enter into agreements with any party, as it deems appropriate, including any association of owners of surrounding properties, to provide such Common Services, and may agree to sharing such costs on such equitable basis as the Board may agree. Specifically, in addition to maintenance of the Common Area, the Board shall cause to be provided:
- i. Routine exterior maintenance of each Townhome Building located upon each Unit as follows: paint, repair, replacement and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass (including Limited Common Areas), walks, and other exterior improvements. Such exterior maintenance shall not include glass surfaces or foundations.
 - ii. 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 an Owner or an Owner's 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 Unit is subject. Notwithstanding anything herein contained to the contrary each Unit Owner, at such Unit Owner's expense, shall have the responsibility to maintain, repair, and replace any portion of their Unit that is not the responsibility of the Association, and to keep their Unit in a clean, safe and sanitary condition. Each Unit Owner shall also keep clean and in a safe and sanitary condition all Limited Common Areas assigned to such Unit Owner.

- c. Assessments. The Board shall establish a budget for providing the Common Services and otherwise administering these Covenants and carrying out the functions and duties specified or reasonably implied herein and shall assess the Owners their appropriate and equitable share of such amounts and bill and collect such amounts.
- d. Insurance Function. The Board shall be obligated to and shall obtain and keep in full force and effect at all times at least the following insurance coverage. The Board shall obtain casualty insurance with respect to all insurable property of the Association insuring the full replacement value thereof, including coverage for fire and extended coverage, vandalism and malicious mischief. The Board shall obtain broad form comprehensive liability insurance coverage, covering both public liability and automobile liability, with limits of not less than \$1,000,000 for each person and not less than \$2,000,000 for each occurrence and with property damage limits of not less than \$500,000 for each accident. The Board shall provide errors and omissions

insurance for the Board members. All insurance may contain such deductible provisions as determined by the Board in its sole discretion. All liability insurance shall name the Association and Declarant as insureds. The Board shall provide Declarant, upon request, with certificates evidencing such insurance and copies of the insurance policies.

- e. Taxes. To the extent not directly assessed to Owners by the applicable governmental taxing authority, the Board shall pay all real property taxes and assessments levied on property owned by the Association.
- f. Refuse Disposal. Unless provided by a municipal, county or other governmental body and unless the cost thereof is assessed directly or indirectly against the Owners by such body, the Association shall contract for, employ and otherwise provide for refuse disposal services and may provide one or more common trash storage and pick-up areas for that purpose.
- g. Adopt Rules and Regulations. The Board may adopt and, from time to time in its sole discretion amend Rules and Regulations pertaining to the use of Common Areas and Limited Common Areas, the enforcement of the covenants contained in the Declaration, or the exercise of its powers and authority under the Declaration, the Articles of Incorporation or Bylaws.

Section 10. Meetings. The members of the Association and the Board of Directors of the Association shall hold meetings at least annually, and at other times as set forth in the Bylaws. All matters pertaining to all such meetings, including notices thereof, quorums, and provisions for voting in person or by proxy, shall be set forth in the Bylaws.

Section 11. Association as Agent for Members. Every Owner by purchase of a Unit and acceptance of a deed of conveyance therefore agrees that, if the Board determines that it is in the best interest of the Property, or the Association and the Owners to do so, the Association acting through the Board may enter into certain agreements and undertakings and grant approvals for and on behalf of the Owners individually and as a group. Such agreements and undertakings include approval of and signatures upon any applications for approval of any amendment to re-plat of any portion of the Plat, or the granting of easements over the Property. Each Owner individually grants the Association, and any duly authorized representative of the Board an irrevocable power of attorney to approve, vote for, enter into and to sign as agent on their behalf and to deliver any application, instrument, petition, plat or other document necessary to effect any of the foregoing as if it had been done by the Owner.

Section 12. Declarant as Agent for Members. Until such time as the Declarant has conveyed 75% of the Units to Owners other than the Declarant or anyone affiliated with the Declarant by virtue of ownership of an ownership interest in the Declarant, every Owner by purchase of a Unit and acceptance of a deed of conveyance therefore agrees that the Declarant may, for and on behalf of each Owner individually and as a group, make such modifications, additions or deletions to the Plat, this Declaration, the Association's Articles of Incorporation, Bylaws or Rules and Regulations as may be deemed necessary or desirable by the Declarant, or approved or required by the lending institution financing the improvement and infrastructure of

the Property or the Units, or by the applicable governmental authorities; provided that none of the same shall:

- a. Materially increase the proportion of the common expenses to be borne by any one Owner relative to other Owners;
- b. Result in a material physical modification of the area or location of a Unit;
- c. Result in a material, adverse effect on the normal use, value or development of a Unit.

For the time period so stated above, each Owner grants the Declarant an irrevocable power of attorney to accomplish the foregoing as agent on their behalf and to deliver any application, instrument, petition, plat or other document necessary to affect any of the foregoing as if it had been done by the Owner.

Section 13. Association Action. If any Owner is obligated to pay for or perform some act in accordance with the terms of the Declaration, or with the terms of the Association's Bylaws or Rules and Regulations promulgated pursuant to the Declaration, and such Owner fails to do so, the Association may cure such failure (but in no event whatsoever shall be obligated to do so) and may recover from the Owner all costs of such cure in addition to any other rights or remedies it may have hereunder. In no event, however, shall the Association or any of its officers, employees be liable in any way for its decision to cure same or not to cure same or for the partial or faulty cure of same.

ARTICLE VII - ASSESSMENTS

Section 1. Operating Fund. The Association, acting by and through the Board, shall collect and deposit to an account in the name of the Association all moneys paid to it by way of assessment or by way of fees or charges assessed, levied and collected, from which the Association shall make disbursements in performing the functions which the Association performs under this Declaration.

Section 2. Date of Commencement of Assessments. The assessments provided for herein shall commence as to all Owners subject to assessment on the first day of the month following the conveyance of the first Unit from Declarant to a third party; provided however, that with respect to any Unit owned by Declarant, Declarant shall be exempt for assessments made with respect to such Unit under Sections 3 and 5 of this Article except to the extent of Declarant's share of real property taxes levied on the Common Area.

Section 3. General Assessment. Within sixty (60) days after creation of the Association as a non-profit corporation, and then not later than thirty (30) days prior to the commencement of each calendar year thereafter, the Association shall estimate the costs and expenses to be incurred by it during, as applicable (i) the remainder of the calendar year in the year the Association is created or (ii) the upcoming calendar year, in performing the Association's function, including reasonable provisions for defraying expenses attributable to ownership, maintenance, repair, or operation of property owned by the Association, the furnishing of Common Services, and for contingencies, reconstruction and replacements and for alterations, modifications and

improvements to the Common Area, Limited Common Areas or any Unit. Such expenses shall include, but are not hereby intended to be limited to the payment of taxes of owed by the Association, the payment of utility charges, maintenance or repair expenses for utility installations, roads and parking areas, and snow removal; expenses of enforcement of this Declaration and professional fees. In so estimating, the Association shall take into consideration the anticipated balance in the operating fund as of the start of such year and the estimated receipts of all assessments, charges, fees, and other payments to be collected during the year. Except as otherwise provided in this Declaration, with respect to each calendar year after the year in which the Association is first created, the net estimate determined by the Association as being necessary and required shall be divided and assessed by it as of January 1st of each year as an assessment for such year against all Owners of Units (each Unit being treated the same as all other Units regardless of differences in size, regardless of whether improved or unimproved, and regardless of differences in size, degree or nature of the Improvements) in proportion to the number of Units owned by each Owner.

Section 4. Payment of General Assessment. General assessments shall be due and payable by the Owners to the Association in equal quarterly installments in advance on or before the thirtieth (30th) day of each January, April, July and October, or in such other manner as the Board shall designate, but not in advance in an amount in excess of the estimate for the full year.

Section 5. Supplemental Assessment. If at any time and from time to time during any calendar year it shall be determined by the Board that the general assessment is or will be inadequate for any reason, including nonpayment by any Owner of his share, the Association may levy a further, special assessment to all Owners in the amount of such actual or estimated inadequacy. Payment of such supplemental assessment shall be made as directed by the Board, but in no event shall it become due with respect to a Unit owner prior to the expiration of thirty (30) days after written notice of the supplemental assessment has been delivered to that Unit owner.

Section 6. Special Assessments. The Association may also levy a special assessment against any Owner where, as a direct result of said Owner's acts or failure or refusal to act or otherwise to comply with this Declaration, the Rules and Regulations, or the By-Laws, money has been or will have to be expended by the Association from the operating fund in performing the Association's functions or enforcing the Declaration, the Rules and Regulations or the By-Laws. Such special assessment shall be in the amount to be expended or so expended therefor and shall be due and payable to the Association when levied and shall include without limitation, the fees of any professionals (i.e. engineers, architects, attorneys and accountants) reasonably incurred by the Association.

Section 7. Special Assessments for Capital Improvements - Development Fund.

- a. In addition to the foregoing assessments, the Association may levy a special assessment for the purpose of paying part or all of the costs of construction, reconstruction or replacement of any capital improvements located upon the Common Area or Limited Common Areas, including necessary fixtures or personal property related thereto.
- b. Any special assessments shall require the prior approval of two-thirds (2/3) of the

Members; provided that should two-thirds (2/3) of the Members result in something other than a whole number, then the vote required shall be the sum of two-thirds (2/3) of the Members plus the vote of one additional Unit. Written notice of any meeting called for the purpose of taking any action authorized under this paragraph shall be sent to the Members not less than thirty (30) days or no more than sixty (60) days in advance of the meeting. At the first such meeting, the presence of Members or of proxies entitled to cast a majority of all the votes of the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one half (1/2) of the required quorum at the preceding meeting.

- c. The Association shall establish a development fund in its name into which it shall deposit all monies paid to it as special or capital development assessments and income and profits attributable to investment of the development fund, and from which the Association shall make disbursements in performing the functions for which such assessments are levied.

Section 8. Obligation of Payment; Result of Failure to Pay.

- a. Each assessment described herein shall be a separate, distinct and personal debt and obligation of the Owner against whom it is assessed, at the time the assessment is made, and each Owner of any Unit, by acceptance of a deed therefor, whether or not it be so expressed in such deed, is deemed to covenant and agree to timely pay the same to the Association. Each assessment described herein shall also be a continuing charge on and lien against the title to the Owner's Unit.
- b. If the Owner does not pay such assessment, or any installment thereof, when due, the Owner shall be deemed in default, and the amount of the assessment not paid, plus interest at one and one-half percent (1.5%) per month (not to exceed, however, the highest rate permitted under the law of the State in which the Property is located) and all costs of collection, including reasonable attorneys' fees, shall be and become a lien upon the Unit or Units of such Owner, effective upon the recordation of a notice of default in the land records of the applicable County. Such notice of default shall set forth the amount of the delinquent assessment and other charges, a description of the Unit against which the same has been assessed and the name of the record holder thereof, and shall be signed by any officer of the Association, and shall be mailed to Owner at least ten (10) days prior to the recording of a lien.
- c. Such lien shall be prior to all other liens filed except that it shall be subject and subordinate to the lien of any previously filed Mortgage on such Unit of such Owner, and the sale or transfer of any Unit in foreclosure of such Mortgage, whether by judicial proceedings or pursuant to a power of sale contained in such Mortgage.
- d. The Association's lien may be foreclosed by the Association in like manner as a mortgage of real property, including by way of advertisement and sale, and the Association shall have the power to bid on the Unit at a foreclosure sale and to acquire and thereafter hold, lease, mortgage and convey the same.

- e. Upon payment of any such delinquent assessment, interest and charges in connection with which such notice of default has been so filed, or other satisfaction thereof, the Association shall cause to be filed a further notice stating the satisfaction and release of the lien thereof.
- f. In addition to the lien described above, failure of an Owner to pay any assessment when due will automatically result in forfeiture by said Owner to the right vote as a Member of the Association, until such assessment and any interests and costs associated therewith have been paid in full.
- g. The foregoing remedies shall be in addition to any other remedies provided by law for the enforcement of such assessment obligation.

Section 9. Estoppel Certificate. On request by any proposed purchaser, Mortgagee or transferee of a Unit, the Association shall execute and acknowledge a certificate stating the amount of the assessment secured by any lien upon such Unit, or that there is no outstanding assessment, as the case may be. Such certificate shall be conclusive upon the Association and the Owners in favor of all persons who rely thereon in good faith as of the amount of such indebtedness or the absence of any indebtedness as of the date of the certificate. The Association may charge a reasonable fee for the issuance of such certificate.

Section 10. No Implied Release from Obligation. No Owner subject to assessment, charges, fines, or penalties hereunder may exempt himself from personal liability for same, nor release his Unit or any portion thereof from the liens thereof, by waivers of the use and enjoyment of the property and facilities promoted by such assessments, charges, fines and penalties or by abandonment of his Unit or any portion thereof.

ARTICLE VIII - DESIGN COMMITTEE

Section 1. Members. A three-person Design Committee shall be established to perform the duties stated herein. The Declarant appoint the Design Committee until 95% of the Units have been. Thereafter the Board shall appoint the Design Committee members, at least two of whom shall be Owners. Subject to the foregoing limitations:

- a. at the discretion of the Board, the duly elected members of the Board may comprise the Design Committee; and
- b. Members of the Design Committee shall be appointed by, may be removed upon notice by, and shall serve at the pleasure of the Board; and
- c. upon the removal, resignation or other unavailability of a Design Committee member, the Board shall promptly appoint a new member.

The Association shall promptly furnish the names and addresses of the current members of the Design Committee to any Unit Owner and the address to which all notices and communications to the Design Committee should be directed. All members of the Design Committee shall be indemnified and held harmless by the Association from liability, damage and expenses for any decision or action they may make while acting within the scope and course of their duties.

Section 2. Term. Each of the persons designated as a member of the Design Committee shall serve until such time as he has resigned by giving written notice of his resignation to the Board, or until he has been removed or his successor has been appointed.

Section 3. Duties. It shall be the duty of the Design Committee to consider and act upon any proposed Change in the Existing State of Property, to formulate Design Committee Criteria, to enforce the negative covenants set forth in this Declaration, to cooperate with the Declarant, and to perform such other duties as are delegated to it hereunder or under any supplemental Declaration.

Section 4. Meeting. The Design Committee shall meet from time to time as necessary to perform its duties properly in such place and according to rules from time to time established by the Board.

Section 5. Action by Design Committee. The vote or written consent of any two members of the Design Committee shall constitute action of the Design Committee. The Design Committee shall report to the Board in writing on all approvals and disapprovals of any changes in the existing state of the Property, and the Board shall keep a permanent record of all such reported action.

Section 6. Limitation on Liability. Neither the Design Committee nor any member thereof, nor the Declarant or the Association, nor any partner, director, officer, agent, employee of any of the foregoing shall be liable to any party for any action or for any failure to act under or pursuant to or with respect to any provision of this Declaration provided only that the person or entity sought to be charged with any liability shall have acted in good faith. The Board may obtain insurance for the Design Committee, if available, to insure the members of the Design Committee against errors and omissions.

ARTICLE IX - REQUIRED APPROVAL OF ALL CHANGES TO PROPERTY

Section 1. Change in the Existing State of Property. "Change in the Existing State of Property" shall mean and include, without limitation, the construction, reconstruction or alteration of any building, structure or other improvement, or any portion thereof, including utility facilities, or the making or creation of any excavation, fill or similar disturbance of the surface of land including, without limitation, change of grade, ground level or drainage pattern; the clearing, marring, defacing or damaging of trees, shrubs or other growing things; the landscaping or planting of trees, shrubs, lawns or plants; or any change, alteration or refinishing, including without limitation, any change of color, texture or appearance of the exterior of any building or structure located on any Unit or Limited Common Area assigned to any Unit on the Plat.

Section 2. Approval of Change in Existing State Required. No Change in the Existing State of Property shall be made or permitted without the prior written approval of the Design Committee and without compliance with this Article; provided however, this Article shall not be applicable to any Change in the Existing State of Property undertaken by Declarant, or any duly authorized agent or representative of Declarant, prior to such time as the Declarant has conveyed 75% of the Units to Owners other than the Declarant or anyone affiliated with the Declarant by virtue of ownership of an ownership interest in the Declarant

Section 3. Design Committee Approval. Except as limited by provisions granting the Declarant certain rights, the Design Committee shall have complete discretion to approve or disapprove any Change in the Existing State of Property. The Design Committee shall exercise such discretion with the following objectives in mind: (i) to carry out the general purposes expressed in this Declaration and the Rules and Regulations; (ii) to prevent violation of any specific provision of this Declaration and the Rules and Regulations; (iii) to prevent any change which would be unsafe or hazardous to any persons or property; (iv) to minimize, as in the sole discretion of the Design Committee is reasonable under circumstances, obstruction or diminution of the view of others; (v) to preserve visual continuity of the area and to prevent a marked or unnecessary transition between improved and unimproved areas and any sharp definition of boundaries of property ownership; (vi) to assure that any change will be of good and attractive design, in harmony with the setting of the area, and will serve to preserve and enhance existing features of natural beauty; (vii) to avoid duplication; (viii) to assure that materials and workmanship for all improvements are of high quality comparable to other improvements in the area; and (ix) to assure that any change will require as little maintenance as possible so as to assure a better appearing area under all conditions.

Section 4. Design Committee Criteria. The Design Committee shall adopt criteria consistent with Section 3 of this Article by which it intends to exercise its discretion with regard to approval or disapproval of any change in the existing state of property. The Design Committee Criteria as formulated by the Design Committee from time to time shall be set forth in writing which shall be made available to Owners of Units.

Section 5. Conditions Precedent to Approval.

- a. Prior to expenditures of any substantial time or funds in the planning of any proposed Change in the Existing State of Property, the Owner proposing to make the change shall (i) advise the Design Committee in writing of the general nature of the proposed change; (ii) if requested by the Design Committee, meet with a member or members of the Design Committee to discuss the proposed Change in the Existing State of Property; (iii) read or become familiar with the Design Committee Criteria formulated by the Design Committee; and (iv) if requested by the Design Committee, furnish the Design Committee with preliminary plans and specifications for comment and review.
- b. After the nature and scope of a proposed Change in Existing State of Property is determined and prior to the commencement of work to accomplish it, the Owner or Owner's agent shall provide the Design Committee three copies of a complete description of the proposed change in the existing state of property, in writing and with a plot plan or architectural drawing showing the particular area proposed to be changed drawn to such scale as may be reasonably required by the Design Committee, showing all boundaries, showing existing and proposed contour lines and elevations at reasonably detailed intervals, showing all existing and proposed improvements, showing the existing and proposed drainage pattern, showing the existing and proposed utility and sanitation facilities, showing the existing or proposed substantial trees or shrubs, and setting forth the proposed schedule for completion. There shall also be furnished to the Design Committee any and all

further information with respect to the Proposed Change in the Existing State of the Property which the Design Committee may reasonably require to permit it to make an informed decision on whether or not to grant approval to the change in the existing state of property. If any groundwater drainage pattern will be affected by any change in the existing state of property, the Design Committee may require submission, at the Owner's sole cost, of a report on the effect by a qualified engineer or geologist. With respect to all structures, the Design Committee may require submission, in duplicate, of floor plans, elevation drawings, and final working drawings, all drawn to scale as may be reasonably required by the Design Committee; descriptions of exterior materials and colors and samples of the same; and final construction specifications. Where buildings or structures or other improvements which reasonably require plans and specifications are proposed to be constructed or built, the Design Committee may require that the plans and specifications be prepared by a practicing licensed architect and that a fee of up to \$300.00 be paid to the Association or authorized agent to cover costs and expenses of review.

- c. No Proposed Change in the Existing State of Property shall be deemed to have been approved by the Design Committee unless its approval is in writing executed by at least two members of the Design Committee; provided that approval shall be deemed given if the Design Committee fails to approve or disapprove a proposed change in the existing state of property or to make additional requirements or request additional information within forty-five (45) days after a full and complete description of the Proposed Change in the Existing State of Property has been furnished in writing to the Design Committee with a written and specific request for approval.

Section 6. Prosecution of Work After Approval.

- a. After approval by the Design Committee, any Proposed Change in the Existing State of Property shall be accomplished as promptly and diligently as possible and in substantial conformity with the description of the proposed Change in the Existing State of Property and with any plans and specifications therefor given to the Design Committee.
- b. Failure to commence the Change in the Existing State of Property within sixty (60) days after the date of approval or to complete the proposed Change in the Existing State of Property (including completion of the landscaping) substantially in conformity with the description thereof and plans and specifications therefore within a reasonable period of time (not to exceed one (1) year after commencement of construction) shall operate to automatically revoke the approval of the proposed Change in the Existing State of Property, and, upon demand by the Design Committee, the Property shall be restored as nearly as possible to its state existing prior to any work in connection with the proposed Change in the Existing State of Property.
- c. If an Improvement under construction is destroyed (whether totally or partially), the debris shall be removed promptly and the remainder of the Improvement shall either be removed within ninety (90) days or restoration commenced within said ninety (90)

day period commencing on the date the destruction occurred.

- d. The Design Committee and its duly appointed agents may enter upon any property at any reasonable time or times to inspect the progress or status of any Change in the Existing State of Property being made or which may have been made.

Section 7. Failure to Comply.

- a. If the Design Committee determines that a Change in the Existing State of Property has been undertaken without the approval of the Design Committee in violation of the provisions of this Article, it shall immediately notify the Board, which shall have the right to remove or cause to be removed any such Change in the Existing State of Property at the sole cost and expense of the Owner or Owners of the Unit who implemented such change without Design Committee approval.
- b. If the Design Committee shall determine that a Change in the Existing State of Property was not completed in substantial conformity with the description thereof and any plans and specifications therefor as approved by the Design Committee, the Design Committee shall notify the Owner or Owners of such noncompliance and require remedy of such noncompliance. If within sixty (60) days from the date of such notification, the Owner or Owners shall have failed to remedy the noncompliance, the Design Committee shall notify the Board, which shall have the right, at its option, to remove the Change in the Existing State of Property or to remedy the noncompliance, in either case at the sole cost and expense of the Owner or Owners of the Unit.

Section 8. Certificates and Notices. Upon request of the Owner, the Design Committee shall record a certificate of completion and compliance upon completion of the Change in Existing State of Property after having inspected the Change in the Existing State of Property and satisfied itself that the Change in Existing State of Property was completed strictly in accordance with the description thereof and the plans and specifications therefor. The Design Committee shall have the right and authority to record a notice to show that any particular Change in the Existing State of Property has not been approved or that any approval given has been automatically revoked as provided in this Article.

Section 9. Waiver. The approval of the Design Committee of the plans and specifications for any Change in the Existing State of Property shall not be deemed to be a waiver by the Design Committee of its rights to object to any of the features or elements embodied in any other plans and specifications for another change in the Existing State of Property, nor shall such approval be construed as in any manner modifying, altering or waiving any of the Covenants of this Declaration or in any amendment thereto.

Section 10. Presumption of Compliance. All of the Changes in the Existing State of Property heretofore or hereafter undertaken by Declarant or its agents or representatives on any Unit shall be conclusively presumed in compliance with the provisions of this Article.

ARTICLE X - VARIANCE

Section 1. Variances by Design Committee. The Board, after consultation with the Design Committee, may authorize variance from compliance with any of the covenants contained in this Declaration or any amendment to this Declaration when circumstances such as topography, natural obstructions or hardship may require; provided, however, that such variances shall be authorized in conformity with the intent and purposes of this Declaration and provided further that in every instance such variance will not be materially detrimental or injurious to the other property covered by this Declaration. Such variations shall be evidenced in the form of a written resolution of the Board.

Section 2. Effect of Variances. If a variance is granted by the Board, no violation of the covenants contained in this Declaration or the provisions, covenants, conditions and restrictions contained in any amendment to this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted if the action or improvement complies with the variance. The granting of such a variance shall not operate to waive any of the covenants contained in this Declaration or the provision, covenants, conditions and restrictions contained in any amendment to this Declaration for any purpose except as to the particular property and particular provision covered by the variance.

ARTICLE XI - MORTGAGEE PROTECTIVE PROVISIONS

Section 1. Mortgagee. The term "Mortgagee" shall mean the holder and owner of a mortgage and shall include a beneficiary under a deed of trust, as well as any insurer, re-insurer, or guarantor of the mortgage, such as but not limited to WCDA, FHA, VA, FNMA, or FHLMC. The term "eligible holder, insurer or guarantor" shall mean a mortgagee who has requested notice, in accordance with later provisions hereof.

Section 2. Roster. The Board of Directors shall maintain a roster of Unit Owners, including their mailing addresses, and, if the Board has been given sufficient information by Unit Owners or their mortgagees, it shall maintain another roster which shall contain the name and address of each mortgagee of a Unit.

Section 3. Relief from Lien. A mortgagee of any Unit who comes into possession of a Unit pursuant to the remedies provided in the mortgage, foreclosure of mortgage, or deed (or assignment) in lieu of foreclosure, shall take the property free of any claims for unpaid assessment or charges against the mortgaged Unit which occurred prior to the time such mortgagee comes into possession of the Unit and the sale or transfer of a Unit pursuant to a foreclosure of a first mortgage shall extinguish a subordinate lien for Association assessments and charges which became payable prior to such sale or transfer.

Section 4. Insurance Coverage. The following provisions shall apply regarding insurance requirements:

- a. **Policy Coverage.** The Board shall secure and maintain in effect a policy of fire and extended coverage insurance in an amount equal to the full replacement value of all improvements made to Common Areas (i.e. 100% of the current "replacement cost" exclusive of land, excavation, and other items normally excluded from coverage of

Common Area improvements situated in similar developments, including all buildings, service equipment and the like).

- b. Location of Policies. The Association shall retain the original or conformed copies of all insurance policies specified herein in a place of safe keeping, such as a safe or safety deposit box, and shall provide copies of such policies to mortgagees requesting such copies.
- c. Mortgagee's Ability to Place Coverage. All first mortgagees of any Units may, jointly or singly, pay any overdue premiums on the aforesaid hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Area improvements, and such first mortgagees making such payment shall be owed immediate reimbursement therefor from the Association. The Board shall take appropriate action to assure such immediate payment and shall provide all necessary parties with an original or certified copy of this provision as evidence of the obligation of the Association to make such reimbursement.
- d. Priority Rights and Insurance Proceeds or Condemnation Awards. The Association agrees, and the Board shall require, that all insurance policies shall provide that no Unit Owner or any other party shall have priority over the rights of the first mortgagees in the case of distribution of insurance proceeds or condemnation awards for loss to or the taking of the Common Area or the Association's improvements located thereon.

Section 5. Management Requirements.

- a. Reserve Fund. The Association agrees that the uniform regular assessments or charges assessed on the Owners shall be sufficient to provide an adequate reserve fund for the maintenance, repair, and replacement of those elements of the Common Area that must be replaced, maintained or repaired on a periodic basis.
- b. Other Contracts. The Association and Declarant agree that any agreement for professional management of the Property or any other contract providing for the services of the Declarant, the developer, sponsor or builder, may not exceed three (3) years. Any such agreement shall provide for termination by either party without cause and without payment of a termination fee upon 90 days or less written notice.

Section 6. Notices. The Association agrees that a first mortgagee, upon written request delivered to the Association, is entitled to and shall receive a written notification from the Association of any default in the performance by an individual Unit Owner/borrower of any assessment obligation under this Declaration which is not cured within 60 days.

Section 7. Enforcement. This Article may be relied upon and enforced by WCDA, FHA/VA, FHLMC, or FNMA and any lending institution or mortgagee financing any Unit in the Property or insuring or purchasing any mortgage of such Unit.

ARTICLE XII - MISCELLANEOUS PROVISIONS

Section 1. Duration of Declaration. Any provision, covenant, condition or restriction contained in this Declaration or any Supplemental Declaration shall be Covenants running with the land for the use and benefit of the Property, the Units, the Common Area and all other property owned by the Association, and shall continue and remain in full force and effect for the period of forty (40) years following the date of recording after which time they shall continue automatically for successive periods of ten (10) years, unless, at least one year prior to the expiration of any such period, this Declaration is terminated by recorded instrument directing termination signed by the Owners of not less than two-thirds (2/3) of the aggregate number of Units.

Section 2. Effect of Provisions of Declaration. Each provision, covenant, condition and restriction contained in this Declaration:

- a. Shall be deemed incorporated in each deed or other instrument by which any right, title or interest in any real property subject to this Declaration is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument;
- b. Shall, by virtue of any person's or entity's acceptance of any right, title or interest in any parcel of property subject to this Declaration, be deemed accepted, ratified, adopted and declared as a personal covenant of such person or entity and, as a personal covenant of such person or entity shall be binding on such person or entity and such person's or entity's heirs, personal representatives, successors and assigns and, if a personal covenant of a person or entity other than the Association or Declarant shall be deemed a personal covenant to, with and for the benefit of Declarant and to, with and for the benefit of the Association and, if a personal covenant of the Association, shall be deemed a personal covenant to, with and for the benefit of Declarant and to, with and for the benefit of each Owner of property subject to this Declaration;
- c. Shall be deemed a real covenant by Declarant, for itself, its successors and assigns, and also an equitable servitude running, in each case, as a burden with the title to each parcel of property now or hereafter subject to this Declaration and, both as a real covenant and an equitable servitude, shall be a burden upon and binding on each such parcel of property and upon each person or entity owning any right, title or interest in such parcel of property for so long as such person or entity owns any such right, title or interest, and, with respect to any property of a person or entity other than the Association, or Declarant, shall, both as a real covenant and an equitable servitude, be deemed a covenant and servitude for the benefit of any property now or hereafter owned by Declarant subject to this Declaration, and for the benefit of any property now or hereafter owned by the Association which is subject to this Declaration and for the benefit of any and all property which is subject to this Declaration;
- d. Shall be deemed a covenant, secured by a lien binding, burdening and encumbering the title to each parcel of property which is subject to this Declaration and, with respect to any property or entity other than the Association of Declarant, shall, as a lien, be deemed a lien in favor of Declarant and the Association and, with respect to

any property owned by the Association, shall, as a lien, be deemed a lien in favor of Declarant; and

- e. Shall be deemed a condition subject to which title to each parcel of property which is subject to this Declaration is and shall at all times be held.

Section 3. Enforcement and Remedies. The covenants contained in this Declaration shall be enforceable by Declarant, by the Association, or by any Owner of property subject to this Declaration by a proceeding for a prohibitive or mandatory injunction. In addition the covenants contained in this Declaration shall be enforceable by the Declarant or the Association by suit or action to recover money damages or to recover any amount due or unpaid or, in the discretion of the Association or the Declarant, for so long as any person or entity fails to comply with any such provision, covenant, condition or restriction in the Declaration, or by exclusion of such person or entity and such person's or entity's guests or invitees from use of any property or facility owned or held by the Association and from enjoyment of any function undertaken by the Association.

Section 4. Limited Liability. Neither Declarant, the Association, the Board of Directors of the Association, the Design Committee nor any member, agent or employee of any of the same shall be liable to any party for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith.

Section 5. Successors and Assigns. This Declaration and any Supplemental Declaration shall be binding upon and inure to the benefit of the heirs, successors, assigns, and personal representatives of the, Declarant, Association, Owners, lessees, guests, invitees, and all other persons or entities deriving rights therefrom, whether voluntary or involuntary by operation of law or otherwise.

Section 6. Severability. The invalidity or unenforceability of any provision of the Declaration in whole or in part shall not affect the validity or enforceability of any other provision or valid and enforceable part of a provision of the Declaration.

Section 7. Captions. The captions and headings in this instrument are for convenience only and shall not be considered in construing any covenant contained in this Declaration.

Section 8. Waiver of Homestead Rights. Each Owner hereby waives any and all homestead rights which he may have with respect to his property covered by the Declaration.

Section 9. No Waiver. Failure to enforce any covenant in this Declaration or in any Supplemental Declaration shall not operate as a waiver of any such covenant or of any other provision, restriction, covenant or condition.

Section 10. Notice. Each Owner shall have a continuing obligation to provide the Association with their current mailing address, telephone number, fax number and e-mail address (if available). Except as otherwise provided, any notice permitted or required to be delivered may be done so either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered four (4) days after a copy of same has been deposited in the United States Mail, postage prepaid, addressed to the person at the address given by such person to the Board of Directors of the Association. If delivery is made by personal service, it shall be deemed to have

