

FIRST
AMENDED AND RESTATED
DECLARATION
of
COVENANTS, CONDITIONS, AND RESTRICTIONS
for the
GARDEN HOMES AT TETON PINES

December 31, 2001
Jackson Hole, Wyoming

2004

**FIRST AMENDED AND RESTATED
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for the
GARDEN HOMES AT TETON PINES**

THIS FIRST AMENDED AND RESTATED DECLARATION is a Declaration of Covenants, Conditions and Restrictions regulating and controlling the use of the following described real property, to-wit:

Lot 9 of Jackson Hole Racquet Club Resort Commercial Area
Third Amendment, a subdivision of Teton County, Wyoming,
according to that plat recorded January 23, 1992 as Plat No. 741
(the "Property").

The above-described real property has been duly platted as "**GARDEN HOMES AT TETON PINES**", the Plat thereof being heretofore filed in the Office of the County Clerk and Ex-Officio Register of Deeds for Teton County, Wyoming, in Book NA of Maps Page NA as Plat No. 843. The original Declarant made the following Declaration of Covenants, Conditions and Restrictions, as amended in this First Restated Declaration, to be held, conveyed, hypothecated, encumbered, leased, rented, occupied and improved subject to the following limitations, restrictions, covenants and conditions, all of which are established and agreed upon for the purpose of enhancing and protecting the value and attractiveness of the Property. All of the remedies, covenants, conditions and restrictions shall run with e Property, and shall be binding upon all parties having or acquiring any right, title or interest in the Property, or any part thereof, and shall be for the benefit of each Owner of any portion of the Property, or any interest therein, and shall inure to the benefit of and be binding upon said successors in interest of the Owners thereof.

1. **DEFINITIONS.** As used herein, and unless the context otherwise requires, the following terms shall mean:

1.1 "Duplex Unit" or "Units" shall mean and refer to each of the twelve (12) units crated by the subdivision of the Property in accordance with that certain Plat No. 843 filed in the Office of the Teton County Clerk on the 6th day of June 1995 (the "Plat").

1.2 "Project" means Units 1-1 through 6-2 and the Common area as shown on the Plat.

1.3 "Common Area" means the land and improvements thereon as shown on the Plat. Common Area shall consist of certain limited common elements which shall be for the exclusive use by individual Duplex Unit Owners and general common area which shall be for the general use by all the Owners.

1.4 The "Plat" means that certain Final Plat No. 843 for **The Garden Homes at Teton Pines** recorded with the Teton County Clerk on the 6th day of June, 1995.

1.5 "Party Wall" means the common wall between any two (2) Duplex Units.

1.6 "Owner" means the record owner, or owners if more than one, of a Duplex Unit (including Declarant as long as any Duplex Unit remains unsold).

1.7 "Mortgage" means a mortgage, deed of trust or other security instruments covering all or any part of the Project.

1.8 "Mortgagee" or "Beneficiary" means the holder of a mortgage or trust deed to all or any part of the Project.

1.9 "Association" or "Owners Association" means **Garden Homes at Teton Pines Owners Association**, a Wyoming non-profit corporation, consisting of all Owners of Duplex Units in the Project, including Declarant as long as any Duplex Unit remains unsold.

1.10 "Board of Directors" or "Board" means the management body of the Association.

1.11 "Articles" means the Articles of Incorporation of the Association.

1.12 "By-laws" means the By-laws of the Association.

2. DESCRIPTION OF PROPERTY RIGHTS.

2.1 Duplex Units. The Duplex Units shall consist of fee simple ownership to a lot as depicted on the Plat, the improvements thereon including a shared Party Wall, the exclusive use to certain limited common elements appurtenant to the lot as depicted on the Plat and the common use of the general common elements.

2.2 Exclusive Areas. Each Duplex Unit shall have the exclusive use to portions of the Property for the exclusive use of the Duplex Unit including the following areas: deck, deck with spa option, entry area, and parking area. These portions of the Property shall be appurtenant to and for the benefit of each Duplex Unit while remaining subject to regulation by the Association to maintain uniformity in appearance and use and to prevent a nuisance to the other Owners. Hot tubs, Jacuzzis, spas and decks shall only be located in the designated areas on the Plat and in accordance with written approvals issued by the Association.



2.3 Common Area. The Common Area shall be conveyed to the Association for the general benefit and welfare of the Owners. The Common Area shall consist of the general common area and the limited common elements for the use of the individual Duplex Units as established on the Plat.

2.4 Teton Pines Resort. Ownership in the Project does not include membership in the Teton Pines Country Club. Membership privileges, restrictions and requirements at the Teton Pines country Club may be established from time to time by the Club. The Project is within the Teton Pines Resort and adjacent to the country club and golf course. Each Owner must recognize and acknowledge that certain activities incidental to the resort, country club and golf course may be offensive to their senses. These activities may occur in the early morning, late evening and other times. The Owners covenant not to interfere with or complain concerning the operations of the country club, resort and golf course.

3. COMMON AREA.

3.1 The original Declarant transferred and conveyed to the Association and the Association accepted Declarant's fee interest in the Common Area. Such real property may be subject to any or all of the following exceptions, liens and encumbrances:

- (1) The lien of real property taxes and assessments that are not delinquent;
- (2) Such easements and rights of way on, over or under all or any part thereof as may have been reserved to the original Declarant or granted to any Owner for the use thereof in accordance with the provisions of this Declaration.
- (3) Such easements and rights of way on, over or under all or any part thereof as may have been reserved to Declarant or granted to or for the benefit of the United States of America, the State of Wyoming, or the County of Teton, any other political subdivision or public organization, or any public utility corporation, for the purpose of constructing, erecting, operating and maintaining thereon, therein, and thereunder, at that time or at any time in the future (a) roads, streets, walks, driveways, (b) poles, wires, conduits for the transmission of electricity for lighting, heating, power, telephone, television and other purposes and for the necessary attachments in connection therewith, and (c) public and private sewers, sewage disposal systems, storm water drains, irrigation ditches, land drains and pipes, drainage pipes and ditches, waters systems, sprinkling systems, water, heating and gasolines or pipes and any and all equipment in connection therewith;

- (4) The obligations imposed, directly or indirectly, by virtue of any statute, law, ordinance, resolution or regulation of the United States of America, the State of Wyoming or any other political subdivision or public organization having jurisdiction over such property, or by virtue of any organization or body politic created pursuant to any statute, law, ordinance or regulation; and
- (5) Any other lien, encumbrance or defect of title of any kind whatsoever (other than of the type that would at any time or from time to time create a lien upon such property to secure an obligation to pay money) that would not materially or actually prejudice Owners in their use and enjoyment of the Property.

4. **MANAGEMENT.** The Common Area shall be managed by a Board of Directors composed of not less than three (3) individuals who may or may not be record Owners of Duplex Units in the Project. The Board of Directors shall be elected by vote of the general membership of the Owners' Association at the organizational meeting of Owners, and at each annual meeting of Owners thereafter. The powers and duties of the Owners' Association, as distinguished from those of the Board of Directors, other than those expressly set forth in this paragraph, are set forth in Paragraph 4.4 hereof. The organizational meeting shall be held at a time and place to be designated by Declarant, following consummation of sales escrows of at least a majority of the Duplex Units, and in no event later than six (6) months after the close of the first sales escrow of a Duplex Unit in said Project. The time and place of each annual meeting of the Owners' Association shall be determined by vote of the members at the organizational meeting. Special meetings of the Owners' Association may be called as provided in Paragraph 4.2(2) for special meetings of the Board of Directors. At all meetings of the Owners' Association, a majority of the then record Owners shall constitute a quorum. At all meetings of the Owners' Association, each Duplex Unit shall be entitled to one (1) vote. Where a Duplex Unit is held of record by two or more persons jointly or as tenants in common or as a partnership, or otherwise, said Owners shall designate by written notice addressed to and filed with the Board the person from among their number who shall vote for the Duplex Unit at all meetings of the Owners' Association. Such designation shall be revocable at any time by written notice filed with the Board of Directors signed by at least a majority of the record Owners for the Duplex Units concerned. The rights of a record Owner of any Duplex Unit and such powers of designation and revocation may be exercised by the guardian of the record Owner's estate or by his conservator, or in the case of a minor having no guardian, by the parent entitled to his custody, or during the administration of any record Owner's estate by his executor or administrator where the latter's interest in said property is subject to administration in his or her estate. Where no designation is made, or where a designation has been made, the member representing a Duplex Unit owned by two or more persons shall be the group composed of all the record Owners, who shall act as such member only by majority vote of such record Owners. The Mortgagee under any Mortgage of the interest of an Owner in a Duplex Unit to whom such Owner's voting power has been transferred or to whom such Owner has granted a proxy



shall have the right and option either to serve as a member of the Owners' Association, and to exercise the vote of the Owner as a member thereof, or to designate a person to serve as a member of the Owners' Association, in which event such person shall have the right to exercise the vote of such Owner, all in the place and stead of the actual Owner, but only during such times as such Mortgagee has the right to exercise such Owner's voting power pursuant to the provisions of Paragraph 7 (Mortgage Protection) hereof. Except as provided above, and in Paragraph 7 (Mortgage Protection) hereof, the rights and powers of the record Owner of a Duplex Unit must be exercised by such Owner and no proxy or power of attorney shall be recognized for such purposes.

4.1 *Authority of Board.* The Board, for the benefit of the Duplex Units and Owners thereof, shall enforce the provisions hereof and shall have the following powers and duties, to-wit:

- 4.1(1) To conduct, manage and control the affairs of the Association and the Project, and to make such rules and regulations thereto not inconsistent with law or this Declaration as they may deem in the best interest of the Owners.
- 4.1(2) To appoint an agent or manager for the Project, and to delegate such of its powers to such agent or manager as may be required for its proper functioning, provided, however, that an agent or manager selected prior to the first annual meeting of the Association, after the initial organizational meeting, shall be employed to manage only until the first annual election at which time the continuance of the same or the selection of another agent or manager shall be determined by a majority vote.
- 4.1(3) To contract and pay for out of the maintenance fund hereinafter provided the following:
 - 4.1(3)-1 Water, sewer, garage, electrical, telephone, gas and other necessary utility services for the Common Area and (if not separately metered or charged) for the individual Duplex Units;
 - 4.1(3)-2 Workmen's compensation insurance to the extent necessary to comply with any applicable laws;
 - 4.1(3)-3 Compensation for such agent or manager of the Project, and for other workmen and personnel as may be employed by the Board;
 - 4.1(3)-4 Legal and accounting fees for services necessary or proper in the operation of the Project and Association or enforcement of the



restrictions and covenants herein contained;

- 4.1(3)-5 Charges for maintenance and repair of the Common Area and the exterior of the Duplex Units (the interior of the Duplex Units shall be maintained by the respective Owners thereof);
- 4.1(3)-6 Expenses for any other materials, supplies, labor, services, maintenance, or repairs that the Board is required to secure or pay for pursuant to the terms of this Declaration, or by law, or that, in its opinion, shall be necessary or desirable for the Project or the enforcement of these restrictions;
- 4.1(3)-7 Any amounts necessary to discharge any lien or encumbrance levied against the entire Project or any part thereof that may, in the option of the Board, constitute a lien against the entire Common Area, rather than merely against the interest therein of a particular Owner or Owners, except that where one or more Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it;
- 4.1(3)-8 Expenses for maintenance and repair of any Duplex Unit if such maintenance and repair is necessary, in the opinion of the Board, to protect and preserve the Common Area, and the Owner or Owners of said Duplex Unit have failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair is delivered personally or by certified mail to said Owner or Owners (the Board, its agents, servants and employees, are hereby given the right and license to enter upon and in any Duplex Unit for the purpose of making and effecting such maintenance or repair), provided, that the Board shall levy a special assessment against the Owner or Owners of any such Duplex Unit to pay for the costs or expenses arising out of or incident to said maintenance and repair, and the assessment thereto; and
- 4.1(3)-9 Taxes and special assessments that are or would become a lien on the Common Area.

4.1(4) The Board shall acquire and pay from the maintenance fund insurance as follows:



- 4.1(4)-1 A policy or policies insuring each and all of the Owners and their interests in and to the Duplex Units and other improvements against property damage caused by fire or other casualties in full replacement value of the improvements. The Board shall have discretion to purchase extended coverage or broad form coverage, including earthquake coverage. The policy shall cover the full replacement value of the improvements in accordance with the original plans and specifications. Upgrades from the original and specifications shall be insured by the individual Duplex Unit Owners.
- 4.1(4)-2 A policy or policies insuring the Board and each and all of the Owners against any liability to the public or to the Owners or any other person resulting from or incident to the ownership, management, and use of the Common Area by the Board, Owners, their invitees and tenants., and members of the public, the combined single liability limits under which insurance shall not be less than One Million Dollars (\$1,000,000.00) (such limits to be reviewed at least annually by the Board and increased in its discretion).
- 4.1(4)-3 The premiums for insurance purchased pursuant to this Paragraph 4.1(4) shall be payable out of the maintenance fund. If any additional insurance is required due to extra hazardous use made of any Duplex Unit or because of improvements to any Duplex Unit installed by its Owner, which increases the premiums for the required amount of coverage, the cost thereof shall be assessed to the Owner of such Duplex Unit. In order to facilitate the provisions for maintenance of adequate and proper insurance, it is contemplated that Declarant may contract for insurance coverage as contemplated by this Paragraph 4.1(4) prior to or concurrently with the first sale or sales of Duplex Units in connection with the financing of such sales, and any obligations or commitments for the payment of premiums or expenses otherwise incurred by Declarant under any such policy or coverage, whether or not the same is also a personal obligation of the purchaser or purchasers of any Duplex Unit, shall become an obligation of the Association and shall be paid for out of the maintenance fund as provided herein.
- 4.1(4)-4 An Owner may purchase such liability and personal property "contents" insurance as he or she may deem advisable for his or



her own account and at his or her own expense. Furthermore, an Owner may purchase appropriate insurance to cover upgrades in the Owner's Duplex Unit. The carrying of any insurance individually by any Owner shall not relieve him or her of the obligation to pay such portion of assessments as may be made from time to time for the purpose of paying premiums or other charges on liability insurance carried or contracted for by the Board for the benefit of the entire Project and the Owners.

- 4.1(5) This Board or its agents may enter any Duplex Unit when necessary in the option of such persons in connection with any maintenance or construction for which the Board is responsible. Such entry shall be made with as little inconvenience to the Owner as practicable, and any damage to the Duplex Unit caused thereby shall be repaired by the Board at the expense of its maintenance fund. There is hereby specially reserved an easement for ingress and egress to each Duplex Unit and in, over, and upon each Duplex Unit for such purposes which shall be exercised by or upon the authority of the Board.
- 4.1(6) The Board may authorize capital additions to the Common Area, which shall be paid for out of the Maintenance Fund, except that no such capital addition in excess of Fifteen Thousand Dollars (\$15,000.00) shall be authorized in any one year without the vote or written consent of at least a majority of the Owners.
- 4.1(7) The Board shall have the authority and power to enter into contracts with owners or lessees of lands adjoining or near the Project and with associations having powers with reference to said lands similar to the powers held by the Association. Any contracts so entered into may provide, among other things, for a joint installation, maintenance and repair of facilities benefitting the Project and said other lands, and for the joint retainer of and use of maintenance, professional and management services for the joint discharge of any of the duties of each party to such contract to the extent that the duties so defined shall not be inconsistent with the duties, powers and rights of the Association as herein defined. Without limiting the generality of the foregoing listed contractual purposes, the Board may also contract with such owners, lessees or associations to the end that enforcement of the liens established under Paragraph 6 (Liens) hereof may be exercised by such other owners, lessees or associations in the event that the Board should deem the same to be in the best interest of the Association. The right conferred upon the Board to contract with said other owners, lessees or associations shall include the right to merge with and into such association. The Declarant shall have no power to enter into any contract binding the Board for a period in excess of one (1)



year, or until after the first election of directors of the Board shall have taken place, whichever is the first to occur, unless such contract be authorized or ratified by the Owners of at least fifty-one percent (51%) of the Duplex Units within the Project.

4.1(8) The Board shall have the duty to enforce the provisions of this Declaration, including the duty to seek to enjoin any reach or threatened breach of any of the provisions hereof, and to pay all costs of any such action or other enforcement procedure.

4.1(9) The Board shall have the authority to represent the Owners in matters dealing with the Jackson Hole Racquet Club Resort - Commercial Area (Teton Pines) as contemplated under that certain Declaration recorded December 4, 1984 as amended.

4.2 Meetings of the Board. Action by the Board shall, unless otherwise stated herein or by law, be by majority written consent of the members of the Board or by majority vote of those present taken at meetings held for that purpose at which time a quorum is present. To have a quorum it is necessary there be at least a majority of the Board members present.

4.2(1) Regular meetings of the Board may be held at such time and place as shall be determined from time to time by the Directors. Notice of regular meetings shall be given to each Director, personally or by mail, telephone or telegraph at least seven (7) days prior to the day named for such meeting unless such notice is waived. Such notice shall specify the date and hour of the meeting, and if a special meeting, the general nature of the business to be transacted. The first meeting of the Board shall be held as promptly as practicable following the first meeting of the Owners. All meetings of the Board shall be open to the Owners.

4.2(2) Special meetings of the Directors may be called by the Chairman and must be called at the written request of a majority of the Owners. Not less than seven (7) days' written notice of the meeting shall be given personally or by mail, or telegraph, which notice shall state the time, place and purpose of the meeting. Written notice of the time of special meetings shall be given in the same manner as for a regular meeting.

4.2(3) The transactions of any meeting of the Board, however called and noticed or whatever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present, and if, either before or after the meeting, each of the members not present signs a written waiver of notice, or



a consent to holding such meeting, or approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the records of the Board or made a part of the minutes of the meeting.

- 4.2(4) To constitute a quorum for the transaction of business by the Board, it is necessary that at least a majority of members of the Board be present. Every act or decision done or made by a majority of the members present at a meeting duly held at which a quorum is present at the commencement of such meeting shall be regarded as the act of the Board, except as otherwise provided herein.
- 4.2(5) A quorum of the members of the Board may adjourn any meeting of the Board to meet again at a stated day and hour, provided, however, that in the absence of a quorum, a majority of the members present at any meeting of the Board, either regular or special, may adjourn from time to time until the time fixed for the next regular meeting of the Board.
- 4.2(6) A chairman of the Board shall be elected at the first regular meeting of the Board in every calendar year. The Chairman shall preside at all meetings of the Board and exercise and perform such other powers and duties as may from time to time be assigned to him by the Board. If there shall occur during any calendar year a vacancy in the office of Chairman of the Board because of death, resignation, removal, disqualification or other cause, a new Chairman of the Board shall be appointed by the other Board members to fill the vacancy so created, to serve in such capacity until the first regular meeting of the Board in the following calendar year.

4.3 Committees. The Board may designate an Executive Committee and such other committee or committees as it may from time to time deem desirable to assist it in the management of the Project, and may delegate to any committee so created any of the powers and authority of the Board in the management of the Project. Action taken by any such committee shall be by vote of a majority of the members of such committee taken at a meeting thereof or unanimous written consent of the members of such committee. The appointment of any such committee and the delegation thereto of powers and authorities of the Board shall not relieve the Board from responsibility for any action taken by that committee, nor shall any such delegation of authority prevent the Board from directly exercising any of its powers or authority whether or not so delegated.

4.4 Authority of Association. In addition to any other powers and authority provided in this Declaration, the members of the Association shall have the following authority and control over action by the Board.



- 4.4(1) To effect necessary amendments to this Declaration, in the manner provided in Paragraph 17 (Amendment) hereof.
- 4.4(2) To recall any member of the Board with or without cause being shown, by affirmative vote of the majority of the members, at a duly noticed meeting or the Owners' Association.
- 4.4(3) To subject any action taken by the Board to levy a "further" assessment, as provided in Paragraph 5.1 of this Declaration, to review by the Association. Such review may be had only upon petition to the Board signed by the Owners of at least a majority of the Duplex Units and delivered to the Board within thirty (30) days from the date of notice of any "further" assessment. Upon receipt of such petition, the Board shall call a meeting of the Association as promptly as practical, and in the event that at least a majority of the members of the Association present at such meeting vote to nullify the "further" assessment, such vote shall be binding upon the Board.

4.5 Special Meetings of Association. Owners representing at least a majority of the entire membership in the Association may at any time request in writing that the Board call a special meeting of the members of the Association, and in such event, the Board shall call a meeting of the Association at the earliest practicable date. Such written request shall state the matter or matters that the members desire to discuss at such meeting.

4.6 Meetings of Association. If any meeting of the Association cannot be held because a quorum is not present, said meeting may be adjourned to a time not less than three (3) days nor more than thirty (30) days later. Written notice of such adjournment and the date and place of the continued meeting shall be given to each Owner no later than twenty-four (24) hours following the date of adjournment. At any such continued meeting, members representing at least twenty-five percent (25%) of the total votes shall constitute a quorum.

4.7 Membership in Association. Each Owner, by virtue of being an Owner, and for so long as he is an Owner, shall be a member of the Association. The rights, duties, privileges and obligations of an Owner as a member of the Association shall be those set forth in, and shall be exercised and imposed in accordance with this Declaration and the Association's Articles, Bylaws and Rules.

4.8 Telephonic Meeting. Meetings of the Association or the Board may be held in person or by telephone or other means of communication by which all participants can communicate with each other during the meeting. A person participating in such a meeting by this means shall be deemed to be present in person at such meeting.



4.9 Indemnification of Board Members. The members of the Board of Directors shall serve without compensation provided that they may be reimbursed for out-of-pocket expenses incurred in connection with their duties hereunder. In consideration thereof, the Owners and Association shall indemnify and hold harmless the members of the Board for all actions or omissions of the Board except in cases of willful misconduct or gross negligence.

5. MAINTENANCE FUND; ASSESSMENTS.

5.1 No later than forty-five (45) days prior to the beginning of each calendar year, the Board shall estimate the net charges required to be paid by the Board in performing its function during such calendar year (including a reasonable provision for contingencies and less any surplus from the prior year's fund). Said "estimated cash requirement" shall be assessed to the Owners equally, no later than December 1st of each year for the following year. If said estimated sum proves inadequate for any reason, including non-payment of any Owner's assessment, the Board may at any time levy a further assessment, which shall be assessed to the Owners in the same manner. Each Owner shall be obligated and by accepting a deed to a Duplex Unit agrees to pay assessments levied pursuant to this Paragraph 5.1 to the Board in equal monthly installments commencing upon the first day of January in the calendar year following the assessment, provided, however, that any further assessment shall be paid at such time as may be designated by the Board.

5.2 As promptly as possible following its election, the Board shall determine the "estimated cash requirement" as hereinabove defined for the balance of the calendar year. Assessments shall be levied against the then Owners in the manner provided in Paragraph 5.1. Any such assessments charged or levied and that become payable with respect to the Duplex Unit prior to the initial sale thereof by Declarant shall be the obligation of Declarant as the Owner thereof.

5.3 All funds collected hereunder, together with special assessments or charges as provided for in other sections of this Declaration shall be controlled by the Board and shall constitute the maintenance fund referred to herein.

5.4 Within sixty (60) days after the end of each calendar year, the Board shall prepare and distribute to all Owners a report with respect to the use of the management fund for such year, which shall include a statement of cash income and expenditures and any amount remaining in such fund as of the end of such year.

6. LIENS. The Board shall have the authority to create a lien, with power of sale, on each Duplex Unit of an Owner or Owners to secure payment of the amount of any assessment, whether regular or special, assessed to the Owner or Owners thereof hereunder, provided that no judicial action shall be brought to foreclose such lien or proceed under the



power of sale less than thirty (30) days after a copy of the notice of assessment is mailed to the record Owner of such Duplex Unit at his address appearing on the records of the Association. Such notice of assessment may be filed and an action may be brought to foreclose the same or exercise the power of sale by the Board only. Reasonable attorneys' fees and expenses in connection with collection of the debt secured by such lien or foreclosure thereof shall be paid by the Owner or Owners against whom such notice of assessment is filed. Such lien and rights to foreclosure and sale shall be in addition to and not in substitution for all other rights and remedies that the Owners and the Board may have hereunder and by law. A certificate, executed and acknowledged by a member of the Board confirming the existence of the indebtedness secured by the lien upon any Duplex Unit, shall be conclusive upon the Owners as to the amount of such indebtedness on the date of the certificate, as to all persons who rely thereon in good faith, and such certificate shall be furnished to any Owner upon request at a reasonable fee, not to exceed Fifty Dollars (\$50.00).

7. **MORTGAGE PROTECTION.** Notwithstanding all other provisions hereof:

7.1 The liens authorized to be created hereunder or by law upon the Duplex Unit of any Owner or Owners shall be senior and superior to the rights of the obligee of any indebtedness secured by any recorded Mortgage upon a Duplex Unit.

7.2 No amendment to any part of this Declaration shall affect the rights of the Mortgagee or Beneficiary of any such Mortgage recorded prior to recordation of such amendment who does not join in the execution thereof.

7.3 Nothing in this Declaration shall be construed as limiting in any way the rights of the Mortgagee or Beneficiary of any indebtedness secured by any recorded Mortgage on any Duplex Unit hereunder to require from the mortgagor or trustor thereunder such fire or other insurance as the Mortgagee or Beneficiary thereof in its sole discretion may require.

7.4 The record Owner or Owners of any Duplex Unit hereunder shall have the right to transfer his or her voting power, or to enter into a written agreement to transfer such voting power, or to grant his or her proxy, to the Mortgagee under any Mortgage to which such Duplex Unit is subject in connection with the securing of any monetary obligation of the Owner or Owners of said Duplex Unit. The Board, the manager and/or Owners shall recognize any proxy or transfer of voting rights made and that becomes effective in accordance herewith for so long as it shall be valid, provided that there has been filed with the Board, the Association, or the manager a certified copy of the document transferring an Owner's voting power or granting his power to the Mortgagee recorded in the Books of the Teton County Clerk, and provided the Board or the manager has been notified of the occurrence of the event or events causing the same to become effective. Except as



provided above, the rights and powers of a record Owner of any Duplex Unit hereunder must be exercised personally.

8. **TAXES AND ASSESSMENTS.** Each Owner shall execute such instruments and take such action as may reasonably be requested by the Board to obtain a separate tax assessment of each Duplex Unit. If any taxes and/or assessments may in the opinion of the Board nevertheless be alien on the entire Project, they shall be paid by the Board and shall be assessed by the Board to the Owners. Each Owner shall be obligated to pay an equal portion of any assessment by the Board for the portion of any taxes or assessments assessed by the county Assessor against the entire Project or any part of the Common Area. Such payment shall be made to the Board at least thirty (30) days prior to delinquency of such tax or assessment by the County. Such Board assessments shall be secured by the lien authorized to be created by Paragraph 6 (Liens) hereof.

9. **RESTRICTIONS ON USE AND OCCUPANCY OF DUPLEX UNITS AND COMMON AREA.** In addition to restrictions established by law, and regulations that may from time to time be promulgated by the Board, and subject to the provisions of Paragraph 10 (Architectural Control), the following restrictions shall be observed by Owners of Duplex Units.

9.1 **Duplex Units.** Restrictions relating solely to the use and occupancy of Duplex Units and the associated limited Common Elements are as follows:

9.1(1) Each Duplex Unit shall be used for residential purposes only. Residential purpose may be construed to include lease or rental arrangements of the Unit for residential lodging by third parties. Notwithstanding the foregoing, rentals shall be restricted to leases or rental arrangements no more frequently than one every fourteen (14) consecutive days. A Duplex Unit may be leased or rented for a period of less than fourteen (14) days, but in such event such Owner shall not be allowed to lease or rent said Duplex Unit again until at least the fifteenth day after the commencement date of the immediately preceding lease or rental arrangement. For example, if the lease or rental arrangement is for a period of five (5) days - from the first (1st) through the fifth (5th) of the month - the Owner can not lease or rent the Duplex Unit again until on or after the fifteenth (15th) of that month. All leases and rental arrangements must be writing and filed on or before the start date of the lease or rental arrangement with the Management Company then managing the Garden Homes Homeowners Association. If a violation of the provisions of this Paragraph 9.1(1) occurs, a fine as set forth below shall be levied against the Owner(s) of the applicable Duplex Unit. Such Owner(s) shall be personally liable for the fine, and, to secure payment, such fine shall constitute a lien as provided in Paragraph 6 hereof on the Duplex Unit. The fine shall bear interest at 12% per

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annum. The fine shall be three hundred dollars (\$300) per day for the entire lease or rental arrangement period or one-half (½) the entire rental amount, whichever is greater. An appeal, showing just cause, for the reduction or dismissal of said fine may be made to the Board of Directors. Such an appeal must be made in writing within sixty (60) days of the imposition of the fine. After review of the facts and at the sole discretion of the Board, said fine may be reduced or dismissed by a majority vote.

9.1(2) The Duplex Units shall not be used for industrial, business or commercial purposes. Without limiting the generality of the foregoing, there shall be no on-site rental management or real estate brokerage conducted on the Property provide, however, that the Owners may lease or sell their individual Units.

9.1(3) Each Owner shall have the right at his sole cost and expense to maintain, repair, paint, title, finish, alter, substitute, add, or remove any fixtures attached to the ceiling, floors or interior walls of any residential improvements to a Duplex Unit owned by such Owner, and shall have the obligation to maintain the interior of such improvements so that the same do not deteriorate so as to be dangerous or present a hazard to any other Duplex Unit or to the Project. This Paragraph shall not be construed as permitting any alteration to the structural integrity of residential improvements of a Duplex Unit without the permission required under Paragraph 10 (Architectural Control).

9.1(4) Prior to the commencement of the construction of or repair to a Duplex Unit, the Owner or builder shall comply with the provisions of Paragraph 10 (Architectural Control), and obtain a building permit thereto as required by Teton County.

9.2 Common Area. Restrictions relating solely to the use and occupancy of the Common Area are as follows:

9.2(1) There shall be no obstruction of the Common Area nor shall anything be stored in the Common Area without the prior written consent of the Board except as hereinafter expressly provided.

9.2(2) Nothing shall be altered or constructed in or removed from the Common Area, except upon the written consent of the Board.

9.3 General. Restrictions governing the use of the Project generally and certain obligations of Owners are as follows:

9.3(1) Nothing shall be done or kept on any Duplex Unit or in the Common Area that



will increase the rate of insurance without the prior written consent of the Board. No Owner shall permit anything to be done or kept in his Duplex Unit or in the common Area that will result in the cancellation of insurance referred to in Paragraph 4.1 or any portion thereof or that would be in violation of any law; and no waste will be committed in the Common Area.

9.3(2) No sign of any kind shall be displayed to the public view on or from any Duplex Unit or the Common Area, without the prior written consent of the Board, except that "For Sale or Rent" signs of reasonable size may be displayed on the Duplex Units.

9.3(3) No animals, livestock or poultry of any kind shall be raised, bred, or kept in or on any Duplex Unit or in the Common Area, except that dogs, cats or other household pets may be kept in or on a Duplex Unit, subject to any rules and regulations adopted by the Board provided that they are not kept, bred or maintained for any commercial purpose. Any animals permitted to be kept on the Property shall be restrained and controlled by the Owner at all times so they do not cause a nuisance to other Owners and do not harass wildlife. **THE KEEPING OF ANY DOGS ON THE PROPERTY IS DISCOURAGED AND STRICT DOG CONTROL WILL BE ENFORCED.**

9.3(4) No snowmobiles, or other such motorized recreational vehicles shall be operated in the Project at any time.

9.3(5) No noxious or offensive activity shall be carried on, in or about any Duplex Unit or in the Common Area, nor shall anything be done therein that may be or become an annoyance or nuisance to the other Owners.

9.3(6) Nothing shall be done on any Duplex Unit or in, on or to the Common Area that will impair the structural integrity of any building or that would structurally change any building without the prior written consent of the Architectural Committee as provided for in Paragraph 10 (Architectural Control).

9.3(7) No drilling or mining operations of any kind shall be permitted upon or in any Duplex Unit or the Common Area.

9.3(8) There shall be no violation of the rules for the use of the Common Area adopted by the Board for the purpose of protecting the interests of all Owners or the Common Area and furnished in writing to the Owners.

9.3(9) Each Owner of a Duplex Unit shall be obligated to pay any and all



assessments for water, sewage, electricity, other utilities, taxes and other charges assessed individually against such Duplex Unit.

10. **ARCHITECTURAL CONTROL PARTY WALL AND REPAIR/MAINTENANCE.**

10.1 Architectural Control. Except as may be authorized by the Board in writing, changes to the exterior of the Duplex Units, or the limited common elements appurtenant thereto, are prohibited.


10.2. Party Wall. The common wall built as part of the original construction of the Duplex Unit shall constitute a Party Wall and to the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and liability for property damage due to negligence, willful acts or omissions shall apply thereto. The cost of the reasonable repair and maintenance of the Party Wall shall be shared by the Owners equally. If a Party Wall is damaged or destroyed by fire or other casualty, either Owner may restore it and each Owner shall contribute equally to the cost of restoration thereof provided, however, that should the Party Wall be damaged by the fault, negligence or other act or omission of one of the parties, such party shall rebuild or repair the Party Wall at such party's sole expense and shall compensate the other party for any damages to the property of the other party. The Association shall obtain sufficient fire, casualty and extended coverage insurance to restore the Party Wall in the event of fire or other casualty.

10.3 Repair/Maintenance. Each Owner shall maintain and repair the interior of their Duplex Unit. The Association shall repair and maintain the exterior of the Units and the Common Area.

11. **EASEMENTS.**

11.1 There is reserved for the benefit of each Duplex Unit an easement of maintenance and use to which the entire Project shall be subject for any and all encroachments resulting from roof, balcony, deck, wall overhangs, projections and any other causes attributable to the design and construction of the Duplex Units or other structures, and any and all encroachments resulting from construction errors, lateral shifting or settlement or any other cause, and any and all encroachments resulting from construction of sewer, water, electrical lines, telephone lines and other utilities.

11.2 There is reserved to the Association an easement to which the entire Project shall be subject, of entry and of access for the performance generally of its rights and duties as provided in this Declaration. Entry onto any Duplex Unit pursuant to this easement shall be restricted, to reasonable times and must be preceded by reasonable notice to the Owner, unless entry is required by an emergency.



11.3 There is hereby granted all rights-of-way, licenses, and/or easements that may be requested or required by any public utility, water district, or like body, including, at any time, present or future, for the purpose of providing service to any part of said Project. The grant and/or consent provided for in this subparagraph shall also extend to any contractor acting as agent for Declarant who is engaged in the work of constructing the offsite improvements for this and any contiguous subdivision, and who request such rights-of-way, licenses, and/or easements to reasonably accomplish the work of improvements.

11.4 There is hereby granted an easement under, on, over and through the Common Area for irrigation ditches, drainage pipes, culverts and ditches for irrigation and storm water from adjacent properties.

12. REPAIR AND RESTORATION.

12.1 General. Notwithstanding the provisions for insurance in Paragraph 4 (Management), the Association and the Owners are under the obligation of maintenance, repair and restoration set forth as follows, provided, however, that all expenses to the extent covered by insurance shall be paid from such insurance proceeds.

12.2 Owners. The Owner of each Duplex Unit shall maintain at his sole cost, and in the case of damage or destruction shall repair or restore, the Duplex Unit. All such repair or restoration shall be done substantially in accordance with the original plans and specifications, or in accordance with any modification thereof as approved by the Board as provided in Paragraph 10 (Architectural Control). In the event an Owner shall fail to properly maintain, repair or restore such areas after written demand from the Association, then the Association shall have the right to cause said work to be done with the cost thereof to be assessed against the Owner as provided in Paragraph 6 (Liens).

12.3 Association. The Association shall have the obligation to maintain at its expense, and in case of damage or destruction shall repair or restore at its expense, promptly after such damage or destruction occurs, the Common Area, all improvements thereon, the limited common elements and the Duplex Unit exterior finishes (e.g., paint or stain).

12.4 Total Destruction. If the improvements on the Common Area of the Project are substantially or totally destroyed, the Association shall obtain competitive bids to restore the improvements as nearly as possible to their condition immediately prior to their destruction. As soon as possible thereafter, the Association shall hold a special meeting to consider the bids. Unless Owners holding in aggregate more than a seventy-five percent (75%) interest in the Common Area are opposed to repair or restoration of the Common Area, it shall be restored according to the provisions of this Paragraph.



13. **AUDIT.** Any Owner may at any time and at his own expense cause an audit or inspection to be made of the books and records of the Board or any manager appointed by the Board. The Board shall prepare, or have prepared, an annual report of its activities, including a statement of income and expenditures, which shall be distributed to each Owner.

14. **INTERPRETATION.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Project. Failure to enforce any provision hereof shall not constitute a waiver of the right to subsequently enforce said provision or any other provision hereof.

15. **SEVERANCE OF INTERESTS.** The component interests of a Duplex Unit, including the ownership of the Common Area, and any easements granted, may not be severed, or separately sold, transferred or conveyed or subjected to any lien or encumbrance. Any sale, transfer or conveyance of, or lien or encumbrance or claim against or affecting any Duplex Unit shall cover and include the entire Duplex Unit.

16. **PARTITION.** There shall be no judicial partition or subdivision of the Common Area or any Duplex Unit, nor shall Declarant or any person acquiring any interest in the Project or any part thereof, seek any such judicial partition or subdivision thereof; provided, however, that if any Duplex Unit shall be owned by two or more Owners as tenants in common, or as joint tenants, nothing contained herein shall be deemed to prevent a judicial partition as between such Owners so long as such judicial partition does not result in a physical partition.

17. **AMENDMENT.** Except as otherwise expressly provided herein, the provisions of this document may be amended by an instrument in writing signed and acknowledged by fifty-one percent (51%) of the Owners, which amendment shall be effective upon recordation in the Office of the Teton County Clerk.

18. **INVALIDITY OF ANY PROVISION.** In the event any condition or restriction herein contained be invalid or held invalid or void by any court of competent jurisdiction, such invalidity or nullity shall in no way effect any other condition or restriction herein contained.

19. **BINDING EFFECT OF COVENANTS, CONDITIONS AND RESTRICTIONS.** Each Owner and any successor in interest to said Owner takes his right, title, interest and estate subject to all of the covenants, conditions and restrictions set forth in this Declaration, and agrees to perform and be bound thereby. The covenants, conditions, restrictions and burdens imposed hereby constitute a general scheme for the benefit of each Owner in the Project. Said covenants, conditions and restrictions may be enforced by the Board or by any Owner or any combination of Owners. Said covenants,



conditions and restrictions shall be burden upon and a benefit to not only each of the original purchasers of a Duplex Unit, but also his grantees and all subsequent Owners. All covenants, conditions and restrictions herein are intended to and shall constitute covenants running with the land or equitable servitudes upon the land, as the case may be, and are intended to and shall be binding upon any and all future Owners.

20. **DURATION.** All of the limitations, restrictions, covenants and conditions of this Declaration shall continue and remain in full force and effect at all times with respect to the Property, and each part thereof, included within the Project to the Owners and to the Association, subject to the right to amend as provided for in Paragraph 17 (Amendment), for a period of twenty (20) years; provided, however, that unless within one (1) year prior to the expiration of said twenty (20) years, there shall be recorded an instrument directing the termination of this Declaration signed by Owners of not less than two-thirds (2/3rds) of the Duplex Units, the Declaration for Garden Homes at the Pines in effect immediately prior to the expiration date shall be continued automatically, without any further notice, for an additional period of ten (10) years and thereafter for successive periods of ten (10) years unless within one (1) year prior to the expiration of any such period this Declaration is terminated as herein provided.

21. **NON-WAIVER - BREACH.** The waiver of a breach of any of the covenants, conditions and restrictions hereof shall not be construed as a waiver of any succeeding breach or violation thereof or of any other covenants, conditions or restrictions.

22. **ATTORNEY'S FEES.** In the event the Board or any Owner or Owners shall bring legal action against any other Owner to enforce the terms, covenants, conditions and restrictions of this Declaration, and they shall be the prevailing party in said lawsuit, the Court shall award them reasonable attorney's fees and court costs.

23. **SUCCESSORS.** This Declaration shall be for the benefit of and be binding upon the heirs, legatees, executors, devisees, administrators, guardians, conservators, successors, purchasers, lessees, encumbrancers, donees, grantees, mortgagees, lienors and assigns of and from the Owners in the Project.

24. **REVOCAION OF PREVIOUS COVENANTS.** By the filing of this First Amended Declaration of Covenants, Conditions and Restrictions for the GARDEN HOMES AT TETON PINES, all other covenants for the GARDEN HOMES AT TETON PINES previously filed are hereby revoked and deemed to be replaced in their entirety by this document.

