

232

RECORDED JULY 21, 2003 BK 445 PG 232 NO 447857 AUDREY KOLTISKA, COUNTY CLERK

**AMENDED DECLARATION OF PROTECTIVE COVENANTS FOR FALCON
RIDGE HOMEOWNERS ASSOCIATION**

THIS AMENDED DECLARATION OF PROTECTIVE COVENANTS FOR
FALCON RIDGE HOMEOWNERS ASSOCIATION ("Declaration") made this _____
day of July 2003, by Falcon Ridge Homeowners Association hereinafter known as the
"Association".

This Declaration applies and pertains to that certain real estate (the "Property")
situated in City of Sheridan, County of Sheridan, Wyoming, legally described as follows:

Lots 1 through 40 and Outlots A and B of Falcon Ridge Development,
previously described as follows:

A tract of land situated in the SW¹/₄NE¹/₄, SE¹/₄NW¹/₄, NE¹/₄SW¹/₄,
NW¹/₄SE¹/₄, all located in Section 3, Township 55 North, Range 84 West
of the 6th P.M., Sheridan County, Wyoming, being more particularly
described as follows:

Beginning at a point located S13°58'24"W, 2421.76 feet from the North
quarter corner of said Section 3, said point being on the South right-of-way
line of West Brundage Lane; thence along said South right-of-way line,
N50°31'00"E, 788.12 feet to the Northwest corner of a tract of land
described in Book of Deeds 290, Page 439; thence leaving said right-of-
way line along the Westerly line of said tract, S39°28'50"E, 430.00 feet;
thence S17°35'11"E, 638.18 feet; thence leaving said westerly line,
N64°20'42"W, 353.93 feet; thence N80°46'12"W, 425.38 feet; thence
S31°11'30"W, 151.39 feet; thence S78°03'51"W, 250.64 feet to an
existing fence; thence along said existing fence, N1°43'09"W, 399.16 feet
to the point on beginning. Said tract contains 12.75 acres, more or less.

Basis of bearings is Wyoming State Plane (East Central Zone).

This Property consists of townhomes (herein sometimes called "Falcon
Ridge") which have been designed to obtain for the residents thereof the benefits of more

effective and attractive land use, and freedom from the burdens of individual maintenance and repair of grounds and of exterior surfaces of the structures thereon.

Falcon Ridge consists of forty (40) townhomes or "Residential Units" situated upon property described in the Plat". The Residential Units and Common Areas are subject to the provisions of this Declaration. The Common Areas have been conveyed to the Association. Owners.

ARTICLE ONE

PROVISIONS RELATING TO THE COMMON AREAS

1.01. The Common Areas shall be and are hereby declared to be subject to the covenants, agreements, easements and restrictions set forth in this Declaration, to be and remain in effect until such time as amended, modified or revoked in accordance with the provisions of this Declaration.

1.02. The Common Areas shall be held and maintained for the use and benefit of the Owners of the Residential Units and their guests and invitees, including, without limitation, the right of ingress and egress over, upon and across, the driveways and paths in or upon the Common Areas, and not for the use or benefit of the public generally.

1.03. There shall be upon the Common Areas at least such driveways, private vehicular right of way and paths (herein referred to and shown on the Plat, as "Limited Common Elements" or "LCE") as shall be necessary to provide ingress and egress to and from the Residential Units for the use and benefit of the Owners of the Residential Units and their guests and invitees, and such other vehicular right of way and paths as the Association shall from time to time determine and as shall be in compliance with such governmental laws, ordinances and regulations as shall be applicable from time to time.

1.04. The Common Areas may include fences of such design as shall be in conformity with all applicable governmental laws, ordinances and regulations, at or near the perimeter of the Property and partially or entirely enclosing the Property except for

such gates and other openings as the Association shall determine. There may also be upon the Common Areas patios, lighting and lighting fixtures, such leisure facilities, trees, shrubs, and other landscaping as the Association shall determine from time to time, and as being in accordance with applicable governmental laws.

1.05. Except as herein provided for, there shall be no structure or enclosures above the ground of the Common Areas except patios, balconies, lighting and lighting fixtures, and such leisure facilities as the Association shall determine from time to time, and in accord with applicable governmental laws. No public, commercial or business use of any kind shall be permitted therein.

1.06. Residential Owners shall not park vehicles on the streets within the Property on a permanent basis and shall not leave vehicles parked or left standing unattended or operated upon any of said streets in any manner violative of any applicable law or ordinance..

1.07. An easement of ingress and egress and a right and easement of enjoyment is hereby granted to every Residential Owner in and to the Common Areas and such rights and easements shall be appurtenant to and shall pass with the title to every Residential Unit so long as said Residential Owner resides on his Residential Unit, provided that such rights and easements shall, in accordance with the terms of this Declaration belong to the Residential Owner's tenants or contract purchaser. The Residential Owner, from time to time, of the Common Areas hereby grants, in addition to those shown on said Plat or otherwise in force, such conveyances of such easements and rights of, over, upon and under the Common Areas or any part thereof for the construction and maintenance of facilities for the supply of water, electricity and gas, the furnishing of telephone service, and cable TV, the removal of sewage and waste, storm water drainage, detention and conveyance, and other utilities, as shall be necessary or appropriate in order to provide said service to all the Residential Units and the Residential Owners from time to time thereof. Further, the Association hereby grants the

Residential Owners and all persons claiming by, through and under them such easements and rights over, upon and under the Common Areas as shall be necessary or appropriate in order to more fully establish and maintain the rights of ingress and egress described in Section 1.02 and 1.03 hereof.

1.08. Outlot B of the Common Area shall be reserved for passive uses, such as park-like activities, picnicking, walking and seating areas. The Association shall have the exclusive authority to determine if any proposed activity is within the contemplated meaning of "passive use".

1.09. The Common Areas and the use thereof shall be subject to such additional rules and regulations adopted by the Board and as shall be in force from time to time governing the conduct of persons and the operation of the Common Areas deemed necessary and appropriate to assure the peaceful and orderly use and enjoyment of the Common Areas.

PROVISIONS RELATING TO THE RESIDENTIAL UNITS

2.01. All the Property shown on the Plat as the Residential Units is hereby declared to be subject to the covenants, agreements, easements and restrictions set forth in this Declaration, to be and remain in effect until such time as amended, modified or revoked in accordance with the provisions of this Declaration.

2.02. From and after the completion of the construction of each respective Residential Unit and the delivery thereof to the initial Residential Owner thereof, there shall be no alterations, changes, additions or deletions to or from said Residential Unit of any nature which will, or may be, visible from the exterior of the Residential Unit or which will, or may, adversely affect any other Residential Unit, whether by impairment of strength of any party wall, increase of sound transmission between units or otherwise. Any exception to this provision must be approved by the Board. Each Residential Owner shall be responsible for all maintenance of the exterior of the Residential Units, including without limitation, painting, staining and tuck pointing thereof at such intervals as shall

be prudent, as well as the maintenance, repair and replacement of roof of the Residential Units. The Residential Owner shall pay the cost of all labor and materials associated with the foregoing. Any exception to this provision must be approved by the Board.

2.03. There shall be no change in any exterior color of any Residential Unit, from the color scheme then in effect throughout the Property, except in connection with a general change in such color scheme under the direction or approval of the Board.

2.04. No trade or business, which is visible or has effect on other residents in the Association, shall be carried on within any Residential Unit and no signs shall be placed upon or about any Residential Unit other than the name and address of Residential Unit Owners, in such styles and materials as the Association shall approve. The aforesaid sign prohibition shall extend to and include "for sale", rental and any advertisement signs. "For Sale" real estate signs will be permitted provided they are not larger than standard real estate signs, i.e., 3 feet by 4 feet.

2.05. No domestic or other animals of any kind shall be kept or maintained within any Residential Unit, except for such birds, dogs, cats, ornamental fish and other household pets as may be permitted by rules or regulations adopted by the Board from time to time, it being expressly understood that the Board is hereby granted and shall have power to entirely prohibit the keeping or maintenance of any or all of such pets. No dog run or exterior animal cage of any kind shall be allowed without the written consent of the Board. If the Board allows any such pets, each Residential Owner shall be required to clean up any feces or defecation produced by such pets and shall be strictly liable for all damage or injury caused by such pets. And all pets shall be required to be kept inside the Residential Owner's dwelling from 10:00 o'clock p.m. until 6:00 o'clock a.m. unless they are walking such pets on a leash, confined to deck area, or restricted on patio areas. At all times, owners shall prevent dogs from creating barking nuisance or other nuisance and must not allow any animal out of the dwelling unless the owner is in the animals presence outside the dwelling.

2.06. Laundry, bedding and the like shall not be hung out to dry in any position in which it is visible from the exterior of any Residential Unit. No bicycles, carriages, snowmobiles, trailers, 4-wheelers or other articles shall be upon the Common Areas or outside the Residential Units of the Residential Owner thereof except when in use.. The parking pads are intended for visitor vehicle use only and not as permanent parking by residents. Overnight parking of trucks, RVs, boats, whether trailered or otherwise, will not be permitted beyond a 48-hour limit. Pickups are excluded from this requirement.

2.07. Exterior television, radio, or other type antenna shall be permitted only to the extent permitted by regulations adopted by the Board from time to time, it being expressly understood that the Board is hereby granted and shall have power to entirely prohibit the installation or continuation thereof, without regard to whether or not the Association shall have provided for master television antennas or other equipment for the use of the owners of the Residential Units in lieu of such prohibited equipment. Any and all facilities of any kind presently existing or hereinafter installed upon any Residential Unit designed for the common use of any two or more units, shall be perpetually used in common by such Residential Owners or occupants.

2.08. Each Residential Unit is hereby declared to be subject to an easement and right to and in favor of the Association and each and all of its employees, agents and instrumentalities to go upon such Residential Unit for reasonable inspection thereof from time to time for the purpose of carrying out any and all of the obligations and functions with respect to such Residential Unit or for the benefit of any other Residential Unit or Units, as are herein imposed upon or permitted to the Association, expressly including, without limitation, the maintenance, repair and replacement of any and all of the facilities for the supply of utilities and other facilities, apparatus and equipment serving said Residential Unit and/or other Residential Units or the Common Areas. The Association shall have an easement of ingress and egress over and upon any or all Units including, but not limited to, the roof, yard, balcony and patio areas thereof for the purpose of

238

construction, installation, repair, maintenance, replacement and inspection, of all facilities including, but not limited to, television antennas, transformers and water or utility meters for the benefit of the Residential Owner or the Association.

2.09. The Residential Units and the use thereof shall be subject to such additional rules and regulations governing the conduct of persons and the operation and use of the Residential Units as shall be in force from time to time by reason of action taken by the Board, it being expressly agreed that, without limitation, the Board shall have powers to prescribe by such rule or regulation standards of upkeep and maintenance of the respective Residential Units.

ARTICLE THREE

FORMATION OF ASSOCIATION

3.01. The Falcon Ridge Homeowners Association ("Association"), a Wyoming non-profit corporation, has been organized, which has the power, duty and responsibility to carry out the intents and purposes of this Declaration.

3.02. The Owner or Owners of each Residential Unit shall be a share member of the Association (hereinafter "member"), and shall be entitled to cast upon all matters upon which the members shall be entitled to vote, one vote for each Residential Unit, regardless of the number of persons or entities who shall share in the title to or be beneficially interested in such Residential Unit. Upon sale or other transfer of any ownership interest in any Residential Unit, the ownership of the membership in the Association and the said power to vote shall be deemed for all purposes as having been transferred to the person or other entity having acquired such ownership interest in proportion thereto.

3.03. The provisions of Section 3.02 hereof shall be mandatory. No Owner of any interest in any Residential Unit shall have any right or power to disclaim, terminate or withdraw from his membership in the Association or any of his obligations as such

member, and no purported disclaimer, termination or withdrawal thereof or therefrom on the part of any such Owner shall be of any force or effect for any purpose.

3.04. The purpose of the Association shall be to perform all the functions provided in this Declaration to be performed by the Association and the Association shall have and possess all such powers as shall be necessary or appropriate for the accomplishment thereof.

3.05. The Association shall have a Board of not less than five (5) Directors who shall be elected by the members of the Association at such intervals as the articles of incorporation and by-laws of the Association shall provide, except that vacancies in said Board occurring between regularly scheduled meetings of the members may be filled by the Board if so provided by the articles of incorporation or by-laws. Alternates may be appointed for each Director to act in the absence of Directors. Said articles and by-laws may provide for said Directors to be elected for terms of more than one year and for such terms to be staggered so that in any year the terms of one or any number less than all of the Directors shall expire.

3.06. The Association shall have such officers as shall be appropriate from time to time, who shall be elected by the Board and who shall manage and conduct the affairs of the Association under the direction of the Board.

3.07. Except as expressly otherwise provided by the articles of incorporation or by-laws of the Association or this Declaration, or as otherwise required by law, all power and authority to act on behalf of the Association both pursuant to this Declaration and otherwise shall be vested in its Board from time to time and its officers under the direction of said Board, and shall not be subject to any requirement or approval on the part of its members. The articles of incorporation and by-laws of the Association may include such provisions for the protection and indemnification of its officers and directors as shall be permissible by law.

3.08. The Association shall obtain such funds as it shall require from time to time by assessment upon the owners of all the Residential Units, the original construction of which shall have been completed. The amount of such assessments shall be determined not less frequently than annually by the Board who shall notify the members thereof of the imposition thereof or of any change in the amount thereof, as the case may be, not less than 30 days before such action shall become effective. Except as otherwise provided in Section 4.06 hereof, all assessments shall be levied equally upon the Owners of each such Residential Unit and shall be paid monthly, provided, however, that prior to the date of first occupancy of any Residential Unit as a residence, such Residential Unit shall be assessed only for its equal share of the cost of those activities of the Association which inure to the benefit of such Residential Unit. The amounts assessed may include provision for such reserves for future expenditures as the Board shall deem appropriate.

3.09. In addition to the funds obtained pursuant to Section 3.08 hereof, the Association shall receive and utilize for any proper purpose such additional contributions as may be made to it by the Residential Owners or others, whether as an initial contribution made in connection with a first sale of any Residential Unit to a Residential Owner or otherwise.

3.10. To the extent necessary to provide for expenditures for which the requisite funds shall not have been provided by such assessments, the Association shall have power to borrow moneys from such sources and upon such terms and conditions as the Board may determine. The Board shall be empowered to secure such borrowing with the affirmative vote of not less than two-thirds (2/3) of all the members of the Association then entitled to vote.

3.11. The Association need not issue instruments in the nature of certificates in evidence of membership and the Association shall not distribute to its members any sums in the nature of dividends. To the extent that funds shall not be required for current expenditures or for such reserves, the next to become due monthly assessment shall be

eliminated or the amount thereof appropriately reduced. Such reduction shall not prevent reinstatement of or increase in such assessments when required, but such reinstatement or increase shall not be retroactive.

3.12. Neither the Association, the Board nor the members shall be deemed by acting hereunder to be conducting a business of any kind. All funds received by the Association shall be held and expended for the purpose designated herein and shall be deemed to be held for the benefit, use and account of all the Residential Owners in equal shares except for such adjustments as may be made to reflect delinquent, prepaid and special assessments or pursuant to Section 4.06 or other Sections hereof.

3.13. Whenever possible, the Association shall perform its functions and carry out its duties by entering into agreements for the performance thereof with such persons and business entities regularly engaged in the performance of generally similar functions and duties as the Board shall determine, which agreements shall be for such length of time, at such rates of compensation and upon such other terms and provisions as the Board shall determine from time to time, and which such persons or business entities may, but need not, be persons or business entities owning or otherwise directly or indirectly interested in the Property or any part thereof. The Association shall also have power to itself perform its functions and carry out its duties, but shall itself do so only to the extent and so long as the performance pursuant to agreements as aforesaid shall not be reasonably feasible. The Board may engage the services of any agent to manage the Property to the extent deemed advisable by the Board and the Board may retain the services of an accountant and attorney.

3.14. The Association has received title to the Common Areas and shall hold and deal with the Common Areas and such other assets as it may receive from time to time, in accordance with the provisions of this Declaration and of its articles of incorporation and by-laws. The articles of incorporation may, but need not, provide that, from time to time, upon dissolution of the Association, its assets shall be dedicated or

242

distributed to the appropriate public agency or other non-profit organization to be devoted to uses and purposes corresponding as nearly as practicable to those set forth in this Declaration or in said articles of incorporation.

ARTICLE FOUR MAINTENANCE AND REBUILDING

4.01. The Association shall determine the need for and carry out or cause to be performed all maintenance, improvements and repairs of the Common Areas and all the vehicular right of ways, foot paths, fences and landscaping, structures and facilities for the supply of water, gas, telephone, cable TV, electricity, including vehicular right of ways and yard lighting, removal of sewage, storm water management, and other utilities and for the purpose specified in Section 1.03 hereof and other improvements situated therein or appurtenant thereto, but in any event shall cause all said vehicular right of ways and facilities to be and to be maintained and repaired in compliance with all such standards as used in the original construction. Said vehicular right of ways, any access to and from the public streets bordering the Property shall be kept free of snow and other obstruction so as to be open for the passage and that the Residential Owners shall be obligated and responsible therefor in any case in which the Association shall fail so to do.

4.02. The Association shall pay, as agent and on behalf of the Residential Owners and out of the funds furnished to it by them for such purpose, all taxes and other governmental impositions levied upon the Common Areas or any part thereof.

4.03. The Association shall have the authority, after three (3) months' notice to the Residential Owner and upon determination by the Board that it is in the best interest and welfare of all Residential Owners, to perform all maintenance of the exterior of the Residential Units, including without limitation, painting, staining and tuck pointing thereof at such intervals as shall be prudent, as well as the maintenance, repair and replacement of roof of the Residential Units. The cost of any such work performed on the

Residential Units by the Association shall be paid by the Owner of each such Unit within thirty (30) days of submission of a statement to the Owner for the cost incurred, which shall be deemed an assessment. The amount of the assessment shall be a lien on the Unit in all respects as provided for other assessments in this Declaration. The Association shall also perform all maintenance, improvement and repair of the grounds and landscaping of the Residential Units situated outside the exterior walls thereof to all intents and purposes as though said grounds were a part of the Common Areas.

4.04. The Association shall determine the need for and carry out or cause to be performed all such maintenance and repair of all exterior surfaces of the Residential Units and of all water, sewer, gas and electric, telephone, cable television, television antenna and transformer lines and meters incorporated in or forming a part of the Residential Units as originally constructed and serving more than one unit, not including, however, the maintenance or repair of any furnaces, water heaters, stoves, refrigerators, washing machines, or household appliances. The Association shall have such right of access to the Residential Units as may be necessary to carry out the purpose in Section 4.03 and 4.04.

4.05. The Association shall also carry out or cause to be performed or provided in or about the Property all such additional functions in the nature of maintenance, improvements, repairs and services and other facilities for the use and benefit of the Property and its inhabitants generally as shall be determined by its Board from time to time; and in the case of such other functions which said Board may determine as are not provided for in Sections 4.01 through 4.04 hereof, said Board shall also have power to impose upon the individuals actually using or benefiting therefrom such additional charges for the use thereof as said Board shall from time to time deem appropriate.

4.06. To the extent that the use of separate lines or meters therefor shall be impractical or uneconomic, the Association shall have the right to draw water, gas or electricity from individual Residential Units as required for the efficient performance of

244

its duties hereunder, upon making such equitable arrangements as it Board shall determine to adjust for any unequal distribution among all the Residential Owners of the cost thereof. Such uses may include but not be limited to the operation of sprinkling systems and lighting in the Common Areas.

4.07. The Board shall provide and be responsible for all maintenance, repair and replacement required to keep in good condition the Common Elements including the Limited Common Elements. The cost and expense of the maintenance, repair and replacement of the Common Elements (other than the Limited Common Elements) and the cost and expense of the maintenance, repair and replacement of the Limited Common Elements, if any, which the Board elects to maintain, repair or replace shall be part of the Common Expenses.

4.08. The Association may enter into an agreement with City of Sheridan, Wyoming, to provide maintenance, repair and/or replacement of sanitary and water services for the Property. Said City shall have the right to survey and inspect the sewer and water lines and to make recommendations to the Association should there be any condition which might be adverse to the general sewer and water systems such as water leaks, excess inflow or infiltration into the sewer or illegal connections. Should any such conditions come to said City's attention, it shall notify the Association which shall take corrective action within 24 hours unless an emergency requires more prompt action. Upon installation and approval of sewer and water improvements, City shall accept the maintenance for said lines. Thereafter said City shall be responsible for the operation, maintenance and repairs of the sewer and water improvements at its own expense. Maintenance flushing of the lines shall be done by said City in its routine flushing schedule and shall not be the responsibility of the Association.

ARTICLE FIVE
CASUALTY AND INSURANCE

5.01. In the event the Property or any part thereof or any of the Residential Units thereon shall be damaged or destroyed by fire, other casualty or any other cause or event whatsoever, the Owners of the property so damaged or destroyed shall cause it to be repaired, restored or rebuilt, as the case may be, as rapidly as reasonably possible to the condition in which such property was immediately prior to such damage or destruction, subject only to the right of the Association to authorize and direct such different action as shall be recommended by the Board and approved by the affirmative vote of not less than two-thirds (2/3) of all members of the Association then entitled to vote.

5.02. All repair, restoration or rebuilding pursuant to the provisions of this Article Five shall be carried out under such supervision and direction as the Board shall deem appropriate in order to assure the expeditious and correct completion of work concerned, and the owner or owners of each Residential Unit which shall have been damaged or destroyed shall fully cooperate with, and abide by all instructions and directions of the Association in connection therewith.

5.03. Without limitation, the Association is hereby given and shall have power to approve the architects, contractors and sub-contractors to be employed in connection with such repair, restoration or rebuilding; to approve a single contractor or contractors to perform all various parts of the work to be done upon the Residential Units which shall have been damaged or destroyed by such casualty or other happening.

5.04. In any case in which the owner or owners of the Residential Units concerned shall fail to carry out and see to the repair, restoration or rebuilding by the provisions of this Article Five, and in any case in which more than one contiguous Residential Unit shall be involved the Association is granted the right to carry out and see to the repair, restoration or rebuilding required by the provisions of this Article Five.

5.05. Each Residential Owner shall maintain in force at all times insurance covering the Residential Unit owned by him, consisting of, or providing all the protection afforded by, at least the insurance now generally described as fire, extended coverage, additional extended coverage, vandalism and malicious mischief, to 100% of the full insurable value thereof, with loss payable on the basis of the cost of replacement without deduction for depreciation. A replacement cost endorsement is required on each Residential Owner's policy. Each Residential Owner shall also maintain in force such insurance protecting the Association from loss, damage, express or liability resulting directly or indirectly from any act or omission of such Residential Owner or any employer, agent, representative, guest or invitee of such Residential Owner. The insurance companies indicated on the certificates of insurance must be admitted carriers and licensed by the State of Wyoming and acceptable to the Association.

5.06. Liability insurance is required to be maintained by all Residential Owners and shall name the Association as an additional insured with respect to that liability insurance. An appropriate certificate showing the evidence of such insurance shall be furnished to the Association. Certificates evidencing the renewal of each expiring policy in insurance shall be furnished to the Association in each case at least ten (10) days prior to the expiration date of the expiring insurance policy.

5.07. The Association and its officers, directors, employees, agents and representatives shall have no liability to any Residential Owner for damage or loss of either the Residential Unit of such owner or any personal property of said Owner. Each Residential Owner waives all his rights of subrogation against the Association and its officers, directors, employees, agents and representatives.

5.08. Whenever the Association shall not be satisfied that any insurance required by this Article Five is in force, or if about to expire will not be renewed prior to expiration, the Association shall have the right (but shall not be required) to proceed to obtain such insurance or such lesser coverage as it may deem advisable, and the cost

thereof shall be due from the owner of the Residential Unit so insured to the Association forthwith upon demand.

5.09. In the event that the Association finds it possible from time to time to effect broader or better coverage at lesser cost, by the obtaining of a blanket policy or policies of insurance upon all the Residential Units in the Property, the Association shall have and is hereby granted power so to do at the election of its Board; and the Residential Owner of each Residential Unit so covered shall accept and pay a proportionate share of the cost of such insurance, whether by regular assessment or otherwise, in lieu of providing and paying for the individual policies of insurance hereinabove provided for.

5.10. The Association shall not be responsible for repair, restoration or replacement of any personal property of the Residential Owner or others which, although in or about the Residential Units, shall not be attached thereto so as to form an affixed part thereof.

5.11. The Association may, but shall not be required to, obtain and maintain additional insurance as its Board shall from time to time deem prudent with respect to damage to or destruction of the Common Areas or to or of any or all of the Residential Units, or to or of any other tangible or intangible assets owned by the Association or for which the Association may have responsibility from time to time, from any cause, and may also obtain such liability and other kinds of insurance protection against such other matters or happenings as its Board shall from time to time deem prudent.

5.12. Notwithstanding the foregoing, to the extent required by the terms of any mortgage for value of any part of the Property, the proceeds of any insurance becoming payable on account of any loss of or damage to the part of the Property so mortgaged shall be paid first to such mortgagee to the extent of its interest; provided, however, that such mortgagee shall not apply or seek to apply such proceeds to reduce such mortgage except for any excess of such proceeds over the full cost of such repair or restoration,

248

unless it shall be determined in accordance with the provisions of this Declaration that such loss or damage is not to be repaired or restored.

ARTICLE SIX MORTGAGES

6.01. Each Residential Owner shall have, and is hereby granted, the right to place from time to time upon the Residential Unit owned by him mortgages securing loans made to him or for his benefit by financial institutions regularly engaged in the business of making loans upon real estate situated in the City of Sheridan, Wyoming.

ARTICLE SEVEN PLACEMENT OF PARTY AND OTHER WALLS

7.01. It is contemplated that each of the Residential Units shall have one or more party walls, each connecting it with others of the Residential Units in the building or buildings. It is intended that each party wall shall be erected upon the lot line between the Residential Units concerned and that each non-party exterior wall of each Residential Unit shall be erected wholly within such Residential Unit so as not to encroach upon any Common Areas, but it is recognized that errors may occur in the actual placement of said walls during the course of construction. It is further contemplated that certain patios, balconies and privacy walls of Residential Units and that certain eaves of Residential Units and certain lighting fixtures on exterior walls as constructed shall encroach on the Common Areas. Whenever any party wall or privacy wall of any Residential Unit shall be found to be not precisely upon the lot line intended and whenever any wall or eave or lighting fixture of any Residential Unit shall be found to encroach (whether by intention or mistake) upon any Common Areas, valid easements for the maintenance of all such encroachments as described herein are hereby established by virtue of the provisions hereof and shall exist for the benefit of such Unit so encroaching so long as the patio,

eave, wall or lighting fixture concerned shall remain standing. Further, and without limitation of the foregoing, the legal description of the Residential Units and any Common Areas concerned may be changed or amended, and the owner of each parcel concerned shall without further consideration execute and deliver all such conveyances as may be necessary or appropriate, so as to place the lot line concerned directly underneath such party wall or entirely outside such wall in the case of encroachment of any wall upon any Common Areas, or, alternatively, each owner concerned shall without further consideration execute and deliver all such grants of easement and other and further documents as may be necessary or appropriate in the matter.

ARTICLE EIGHT

CONCERNING OBLIGATIONS OF RESIDENTIAL OWNERS

8.01. Notwithstanding anything to the contrary in this Declaration contained, if the Association shall incur any cost or expense for or on account of any items of maintenance, repair or other matter directly or indirectly occasioned or made necessary by any wrongful or negligent act or omission of any Residential Owner or of any agent, employee or invitee of any Residential Owner, such cost or expense shall not be borne by the Association, but shall be paid or reimbursed to the Association by such owner forthwith upon the Association's demand.

8.02. Any sums due under this Article, including assessments authorized under Article Three, to be paid by a Residential Owner to the Association which shall not be paid when due shall be deemed to be delinquent and shall bear interest at the rate of ten (10%) percent per annum until paid. If any such sum shall not be paid when due, the Association shall have the right upon not less than fifteen (15) days notice to such Residential Owner, to collect such sum by suit at law and all other legal means and to add such sum and collect reasonable attorney's fees and all other expenses incurred by the Association in connection therewith.

250

8.03. All sums assessed against any Residential Owner, together with interest, late charges, costs, and attorney fees, shall be secured by a lien on such Residential Unit in favor of the Association and the Association shall be entitled to file such lien in the records of the County Clerk for Sheridan County, Wyoming. The Association shall have the power to bring all actions against the Residential Owner for the collection of such amounts owing or to foreclose the aforesaid lien in the same manner as other liens for improvement of real property.

8.04. The rights granted to the Association by this Article shall be subject to the lien of such mortgage, if any, as may then have been placed upon such Residential Unit as authorized by Article Seven hereof, and to any lien in favor of the City of Sheridan arising under this Declaration.

8.05. The obligation of each Residential Owner to pay all sums assessed or imposed upon him to pay pursuant to this Declaration and to keep, observe and perform all the terms and provisions of this Declaration to be kept, observed and performed by him shall be a continuing lien upon the Residential Unit owned by such Residential Owner, subject only to the lien of such mortgages as may be placed upon such Residential Unit as authorized by Article Six hereof, and said lien may be enforced by the Association in all respects as though secured by a recorded mortgage in the form provided by the Statutes of Wyoming, with all rights in the nature of homestead exemption being hereby waived by each Residential Owner with respect thereto to the fullest extent that such waiver shall be permissible or valid.

8.06. The Association shall have, and is hereby given power, to require full payment of all sums then due to it from any Residential Owner as a condition precedent to the transfer of any interest in the Residential Unit owned by such Residential Owner.

8.07. By reason of the nature of the planned community herein contemplated, any violation on the part of any Residential Owner of any of the terms and conditions of this Declaration to be kept, observed or performed by him or of any rules or regulations

adopted by the Association pursuant to the authority herein granted to it so to do, will or is likely to result in damages which are irreparable or impossible of ascertainment. Therefore, the Association shall have, and is hereby granted, the right to prevent any such threatened violation on the part of any Residential Owner, or the further continuation of any such violation, as the case may be, by means of injunctive proceedings, as well as by restricting or entirely suspending, for such period or periods as the Board of the Association may from time to time determine, the use by the offending person of any facility or service the privilege of which use has been abused.

8.08. The various rights and remedies herein granted to the Association shall be in addition to all other rights and remedies which may be available and in addition to each other. All the rights and remedies available to the Association may be exercised either concurrently or consecutively or partly concurrently and partly consecutively, as the Association may from time to time elect, and as often as the Association may elect.

8.09. The failure of the Association to seek redress for any violation, or to enforce any term or provision of this Declaration or of any rule or regulation issued hereunder or pursuant hereto shall never be deemed a waiver of such right of redress or enforcement, either as to any subsequent violation of a similar or other nature or as to any further continuation of any violation.

ARTICLE NINE

AMENDMENTS AND ADDITIONAL RULES

9.01. The Association shall have, and is hereby granted, the power to amend, modify and otherwise alter this Declaration and each and all of the terms and provisions hereof and each and all of the rules, covenants, easements, agreements and restrictions herein contained, at any time and from time to time, by action recommended by its Board and approved by the affirmative vote of not less than two-thirds (2/3) of all the members of the Association then entitled to vote, subject to the limitation that such action shall not cause the Property or any part thereof to be in non-compliance with any zoning ordinance

or other applicable law or governmental regulation. The rights of the members to vote, the method of voting and other matters relating to members are as prescribed in the By-laws of the Association.

9.02. Any action taken pursuant to Section 9.01 hercof shall be evidenced by an appropriate written instrument issued by the Association and shall become and be effective as of such date as shall be designated in such instrument, but not earlier than the date upon which such instrument shall be filed for record in the office of the County Clerk and Recorder of Sheridan County, Wyoming.

9.03. The Association shall have, and is hereby granted, the power to adopt, amend, modify, otherwise alter and enforce additional rules and regulations bearing upon the use and the manner of occupancy and maintenance of the Property, including either or both the Common Areas and the Residential Units, or any part thereof, at any time and from time to time by action recommended by its Board, subject only to the limitations that such action bearing upon Residential Units shall be applied uniformly to all the Residential Units, and that such action shall not cause the Property or any part thereof to be in non-compliance with any zoning ordinance or other applicable governmental law or regulation.

9.04. Any additional rules or regulations adopted by the Association pursuant to the authority granted to it in Section 9.03 hercof or any amendment or modification of any such additional rules or regulations shall be evidenced by an appropriate written instrument issued by the Association and shall become and be effective as of such date as shall be designated in such instrument, and otherwise shall be effective as to each Residential Owner not earlier than the date upon which a full, true and complete copy of such instrument shall be transmitted to him in the manner herein provided for the service of notice upon him.

9.05. Whenever the Association shall cause any instrument to be placed of record in order to render effective any action taken pursuant to Section 9.01 hercof, it shall be

the duty of the Association to transmit a full, true and complete copy of such instrument to each then Residential Owner promptly; provided, however, that failure so to do shall not invalidate or delay the effective date of any action effectuated by such instrument.

ARTICLE TEN MISCELLANEOUS

10.01. Notices: Any notice to be given hereunder shall be deemed conclusively to have been given to the following recipients in the following manners respectively: (a) in the case of a Residential Owner, if delivered personally to him, (b) or to a member of his household of the age of more than fifteen (15) years or when placed in the United States mail, (whether actually received or not) first class and registered or certified postage fully prepaid, addressed to him at his most recent address as shown on the records of the Association, upon delivery to its president, its secretary or its registered agent in person or when placed in the United States mail, first class and registered or certified postage fully prepaid, addressed to the Association in care of its then Registered Agent at its then Registered Office.

10.02. If any term, provision, covenant, easement, agreement or condition contained in this Declaration, or any rule or regulation issued hereunder, shall be found to be invalid, the remainder of this Declaration and the remainder of such rules and regulations shall not be invalidated or terminated thereby but shall remain in full force and effect to all intents and purposes as though such invalid term, provision, covenant, easement, agreement, condition, rule or regulation had never been.

10.03. All the easements, rights, covenants, agreements, reservations, restrictions and conditions herein contained shall run with the land and shall inure to the benefit of and be binding upon each subsequent holder of any interest in any of the Property to the same full force and effect for all purposes as though set forth at length in each and every conveyance of the Property or any part thereof.

10.04. Throughout this Declaration the phrase "owner of a Residential Unit" includes but is not restricted to "Residential Owners" as defined in the introductory portion herein, and includes all Owners of Residential Units.

10.05. The division of this Declaration into Articles and the Articles and Section numbers and headings, are for convenience only and the validity and enforceability of any portion of this Declaration shall never be affected or called into question by reason of the position thereof in this Declaration or the captions or Article headings pertaining thereto.

10.06. If at any time or times the Board shall deem it necessary or advisable to rerecord this Declaration or any part hereof in the office of the Recorder of Deeds of Sheridan County, Wyoming, in order to avoid the expiration hereof or any of the covenants, easements, agreements or other provisions herein contained under any of the provisions of the Wyoming Statutes presently in force, or any other law or statute of similar purport, they shall submit the matter to a meeting of the members of the Association called upon not less than ten (10) days notice, and unless at such meeting at least two-thirds (2/3) of the votes which the members shall then be entitled to cast shall be voted against such re-recording the Association shall have, and is hereby granted, power to so record, rerecord and/or refile this Declaration or such part thereof, and such re-recording and/or refiling shall be binding upon all the Owners of any part of the Property in every way and with all the full force and effect as though such action were taken by each of said owners and such re-recorded and refiled document executed and acknowledged by each of them.

10.07. These protective covenants shall run with the land and shall be binding on the property until November 1, 2034, at which time said covenants shall be automatically extended for successive periods of twenty (20) years unless by vote of a three-fourths (3/4) majority of the then owners of the lots (the owners of each lot being entitled to one vote) it is agreed that such protective covenants shall no longer be binding. The owners of three-fourths (3/4) of the lots may effect a termination of such protective covenants by

signing and recording in the office of the Sheridan County Clerk and Recorder, a certificate stating that they are in agreement that the protective covenants be terminated. The filing of such instrument shall effect a termination of these protective covenants at the expiration of the then existing original or renewal term. Until such an instrument is filed, it shall be presumed that the covenants have been extended.

10.08. Enforcement of these Covenants and Restrictions shall be by a proceeding initiated by any Residential Owner, any member of the Board, or by the County of Sheridan against any Residential Owner violating or attempting to violate any covenant or restriction contained in this Declaration, either to restrain or enjoin violation or to recover damages for the violation, or both, or to enforce any lien created by this instrument. They shall have an election and right, but not an obligation or duty, to enforce these covenants and restrictions by a proceeding or proceedings at law or in equity. Failure by any party to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. With respect to any litigation hereunder, the prevailing party shall be entitled to recover reasonable attorney's fees from the nonprevailing party. Further, and with respect to any litigation brought against the Board or any of their members or representatives arising out of any action, failure to act, or performance or non-performance of duties imposed hereby, by the Board or their members or representatives, the Board and/or their members or representatives so sued shall be entitled to recover their reasonable attorneys' fees from the person or entity bringing such action against it or them, the Board or their members or representative shall specifically be adjudicated liable to such claimant.

10.09. A Residential Owner shall be notified in writing of the specific violation of any covenant or restriction contained in this Declaration and shall have ten (10) days after the date of the notice to cure any such violation. Upon request, the Residential Owner so notified shall be entitled to a hearing before the Board on the violation; provided that such hearing shall be requested within ten (10) days after the notice has been given. If after such hearing, the Board determines that the Residential Owner is in violation of the covenants or restrictions in this Declaration, or if a timely request for a hearing is not made, and the violation has not been cured, the Board shall have the power

256

and authority to impose upon the Residential Owner a fine for such violation not to exceed fifty dollars (\$50.00). Upon a second or subsequent violation by the same Residential Owner of the same or similar covenant or restriction of this Declaration, if found by the Board to exist upon hearing, if requested, a fine for each such violation may be imposed not to exceed one hundred dollars (\$100.00). If any such violation is not cured within forty (40) days from the date of the notice of violation, fines, together with interest at the highest lawful rate per annum and any costs of collection, including attorneys' fees, shall be deemed a continuing lien upon the Residential Unit against which such fine is made.

ARTICLE ELEVEN DEFINITIONS

The following words and expressions as used in this Declaration have the meanings indicated below unless the context clearly requires another meaning:

- (a) "Association" means Falcon Ridge Homeowners Association, a Wyoming non-profit corporation, which was incorporated with the Wyoming Secretary of State on August 30, 1995..
- (b) "Board" means the Board of Directors who are elected by the members of the Association.
- (c) "Common Areas" means that property described and shown on the Plat as "Outlot A" and "Outlot B".
- (d) "Declaration" means that document filed in the office of the County Clerk and Recorder on December 14, 1994 in Book 371 of Deeds at page 23.
- (e) "Falcon Ridge" consists of forty (40) townhouse units situated upon Property described in the Plat
- (f) "Lots" means those portions of the Property on which the townhomes are located.
- (g) "Plat" means that Plat which was recorded in the office of the Sheridan County Clerk and Recorder on December 12, 1994, in Book F of Plats at page 13.

