918460

DECLARATION OF PROTECTIVE COVENANTS FOR
SOUTH FORK APARTMENTS PLANNED UNIT RESIDENTIAL DEVELOPMENT

THIS DECLARATION OF PROTECTIVE COVENANTS is made by South Fork Apartments, LLC, a Wyoming Limited Liability Company, "Declarant" for itself, its successors, grantees, and assigns this 2nd day of October, 2008.

ARTICLE 1

PROPERTY DESCRIPTION

Section 1: Declarant is the owner of the following real property (the "Property") located in the City of Gillette, Campbell County, Wyoming described as South Fork Apartments Planned Unit Residential Development, a Resubdivision of Block 5, RC Ranch, Phase 1, which is located in the E1/2 Section 4, Township 49 North, Range 72 West, 6th Principal Meridian, as depicted and described on the final plat recorded in the real estate records of Campbell County in Book of Plat Maps as Reception No. _____, Book 9 Page 110 (hereinafter referred to as the "Plat").

ARTICLE II

OBJECTS AND PURPOSES

The Property is hereby made subject to the following covenants, conditions, restrictions, reservations, charges, liens and easements, all of which shall be deemed to run with the Property and each and every portion thereof, to ensure proper use and appropriate development, improvement, operation and maintenance of the Property.

ARTICLE III

DEFINITIONS

Section 1: *"Association"* shall mean "South Fork Apartments Association, Inc., a Wyoming Mutual Benefit Corporation", and any successor thereto. The members of the Association shall be the Owners, with each Owner holding one membership interest for each Lot owned.

Section 2: *"Building Area"* shall mean Lots 1 through 14, inclusive, which are from time to time covered by a building or other residential structure.

Section 3: "*Common Area*" shall mean Lot 15, which includes the garage areas, all of which are intended for common use and enjoyment of any or all Owners. Each Owner of a Lot numbered 1 through 14, inclusive, shall have, as appurtenant to his or her Lot, a one-fourteenth (1/14) undivided interest in the Common Area (Lot 15). Each Lot numbered 1 through 14 shall have appurtenant to it, non-exclusive easements for ingress, egress and support through the Common Area (Lot 15). The Common Interest appurtenant to each Lot numbered 1 through 14 is permanent in character and cannot be partitioned or altered without the unanimous consent of the Owners and of the holders of first mortgages on the Lots, as expressed in an amended declaration. Each Owner may use the Common Area in accordance with the purposes for which it is intended without hindering the exercise of or encroaching upon the rights of any other Owners. The undivided interests in the Common Area are hereby established and are to be conveyed with the respective Lots as indicated above, cannot be changed, except as herein set forth, and Declarant, its successors, assigns and grantees covenant and agree that the interests in the Common Areas and the Lots conveyed therewith, shall not be separated or separately conveyed, and each such interest shall be deemed to be conveyed together even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

Section 4: "*Declarant*" shall mean and refer to South Fork Apartments, LLC, a Wyoming Limited Liability Company ("South Fork Apartments"), its successors and/or assigns, if such successor or assigns are Owners of any portion of the Property and are designated by South Fork Apartments to perform the obligations of the Declarant hereunder.

Section 5: "*Lot*" shall mean and refer Lots 1 through 14, unless the reference relates to the common lot, in which case it shall refer to Lot 15.

Section 6: "*Occupant*" shall mean any Person or Lessee from time to time entitled to the use and occupancy of any portion of a building under an ownership right or any lease, sublease, assignment, license, concession, or other similar agreement.

Section 7: "*Operating Account*" shall mean the account into which the Association deposits all revenue associated with the Property, and out of which all expenses, capital improvements, and Owner distributions are made.

Section 8: "*Owner*" shall mean and refer to the record owner, whether one (1) or more persons or entities, of fee simple title to any of Lots 1 through 14, inclusive, but excluding those having such interest solely as security for the performance of any obligation, in which event the equitable owner of such fee simple title shall be deemed to be the Owner thereof.

ARTICLE IV

ROLE OF ASSOCIATION

Section 1: The Association shall, either itself or through the use of a property management company, have the following authority and responsibilities:

Section 2: *Right to Manage Collectively.* The Association shall lease, manage, operate and maintain the Property in an efficient and professional manner and shall arrange for the performance of everything reasonably necessary for the proper operation of the Property subject to (a) applicable governmental requirements and (b) the terms and provision of this Agreement. It is understood that the entire income of the Property, whether associated with an individual Owner's Lot or not, benefits all Owners, and the expenses associated therewith are a burden to all Owners, in proportion to the number of Lots owned. No Owner is entitled to separate their Lot for income or expense purposes. The income from each Lot, as well as the Common Area, accrues to all Owners in proportion to their Lot ownership. For example, the Owner of one Lot would be entitled to one fourteenth (1/14) of the income from the entire property, and would be responsible for one fourteenth (1/14) of the entire expenses of all Lots, the buildings thereon, as well as the Common Area. So long as this Agreement is in effect, individual Owners shall not have the right to enter into any contracts or agreements affecting the Property or which would encumber the Property or otherwise interfere in the Association's efforts to manage the Property without the consent of all of the Owners.

Section 3: *Right to Lease.* With respect to the leasing of the Property, the Association shall use its commercially reasonable efforts to obtain tenants for all rental units in the Property and to renew leases and rental agreements (collectively "Leases") as provided herein.

Section 4: *Budgets.* The Association shall, by March 31 of each year, prepare and submit to the Owners a report of the income and expenses for the prior calendar year and shall at that time give the Owners its opinion of the manner in which income and expenses, including expenses for promotion, operation, leasing, repair, maintenance and improvement of the Property, are expected to differ in the following year in order to properly maintain and manage the Property. The Association is authorized to incur for the account of the all Owners all operating and capital expenses of the entire Property, whether or not the expense is associated with the Lot owned by such Owner or not.

Section 5: *Collection of Rents and Other Income.* The Association shall bill all tenants and shall use its commercially reasonable efforts to collect all rent, garage rentals, laundry fees, and other charges due and payable from any tenant or from others for services provided in connection with the Property. The Association shall deposit all monies so collected in the Operating Account. The Association shall allocate all income and revenue from the Property to the Owners in proportion to the number of Lots owned.

Section 6: *Books of Accounts.* The Association shall maintain at its offices adequate and separate books and records for the Property with the entries supported by sufficient documentation to ascertain their accuracy with respect to the Property. The Owners agree to provide to the Association any financial or other information reasonably requested by the Association to carry out its services hereunder. Each of the Owners and their representatives may examine all books, records and files maintained for the Owners by the Association. Should the examination by a Owner discover errors in record keeping, the Association shall undertake with all appropriate diligence to correct such discrepancies.

Section 7: *Operating and Reserve Accounts.* The Association shall deposit all rents and other funds collected from the operation of the Property in a bank or financial institution in a special trust or depository account for the Property (the "Operating Account"). The Owners shall be deemed the owners of the funds in all accounts maintained by Association in accordance with the number of Lots owned by them in the Property. The Association and the Owners shall maintain this Operating Account so that an amount at least as great as the budgeted expenses for the forthcoming month is in such Operating Account as of the first of each month. The Association shall pay from the Operating Account the operating expenses of the Property and any other payments relative to the

Property as required or permitted by this Agreement. The Association may also hold one or more reserve or capital improvement accounts for the Property.

Section 8: *Access to Accounts.* As authorized by signature cards, representatives of the Association shall have access to and may draw upon all funds in the Operating Account and shall make distributions to the Owners as provided for in this Agreement without the approval of the Owners. The Owners may not withdraw funds from such accounts without the Association's signature.

Section 9: *Payment of Expenses.* The Association shall pay all expenses of the operation, maintenance and repair with respect to the Property directly from the Operating Account or, if there are inadequate funds in that account, shall be reimbursed by the Owners. In addition, the Association shall be entitled to hire a management company, accountants, lawyers or other professionals to handle responsibilities of the Association. However, unless special arrangements are made, each Owner shall be responsible for the payment of any lender who has made a loan to such Owner secured by the Owner's Lot or Lots.

ARTICLE V

EASEMENTS ON PROPERTY

Section 1: *Utility Easements.* Each Owner shall be entitled to any and all easements over, through and across any of the Common Area that may be necessary and or convenient to serve such Owner's Lot.

Section 2: *Access Easements.* Each Owner shall be entitled a general easement across the undivided interests of the other Owners in the Common Area for ingress, egress and access to such Owner's Lots. Such easement is for both pedestrian and vehicular access, subject to reasonable rules and regulations as the Association may impose.

Section 3: *Parking Easements.* Each Owner shall be entitled to park, and to have their tenants park, vehicles in designated parking spots in the Common Area, subject to reasonable rules and regulations as the Association may impose.

Section 4: *Garage Easements*. Each Owner shall be entitled to park, and to have their tenants park, in the garage areas which are part of the Common Area. Provided however, the Association may charge a fee for such parking, and anticipates charging such fees to maximize income from the Project for the benefit of all Owners. Any fees received will become part of the general revenues of the Property, subject to distribution to all Owners according to the number of Lots held after the payment of expenses as set out above.

Section 5: *Clubhouse Easement*. Each Owner shall be entitled to utilize, and to have their tenants utilize, the Clubhouse that is in the Common Area, subject to such fees, restrictions and reasonable regulations as the Association may impose. Provided however, the Association may charge a fee for certain uses of the Clubhouse, and would charge such fees to maximize income from the Project for the benefit of all Owners. Any fees received will become part of the general revenues of the Property, subject to distribution to all Owners according to the number of Lots held after the payment of expenses as set out above.

Section 6: *No Merger*. Notwithstanding Declarant's or any Owner's ownership of more than one Lot, the easements granted hereunder shall burden and benefit each Lot individually, without merger as a result of such common ownership, and upon conveyance of a Lot so that such Lot ceases to be under common ownership, neither the Owner conveying said Lot nor the owner acquiring said Lot shall need to execute additional documentation to evidence the existence of said easements, and said easements shall relate back to and shall be deemed to have been created as of the date hereof.

ARTICLE VI

USE RESTRICTIONS

Section 1: *General Use Restrictions*. The Property shall be used as a multifamily residential community, and for no other purpose.

Section 2: *Change in Use.* If a change in use is desired, the Owner desiring such change shall provide the Association with written notification of any proposed change in use (and each subsequent change in use). It shall be reasonable for the Association to withhold its consent for the following reasons, which are set forth herein as examples and are not meant to be an exhaustive list: (1) if the use violates this Declaration, (2) if the use violates zoning or other governmental laws, rules and/or regulations.

Section 3: *Hazardous Materials.* No Hazardous Material shall be brought upon, kept, used, generated or stores in or around the Property, except with the prior written consent of the Association and in compliance with all applicable Environmental Regulations. Notwithstanding the foregoing, the Association's consent shall not be required for the storage use or disposal of common household cleansers and degreasers in the ordinary residential use on the Lot, provided that such storage, use and disposal is in compliance with all applicable Environmental Regulations. If the Lot Owner (as opposed to the Association) breaches its obligations above, then the Lot Owner shall indemnify, defend, protect and hold the Association and its respective officers, directors, members, employees and agents, harmless from and against any and all causes of action, claims, liabilities, losses, damages, costs and expenses (including reasonable attorney's fees and court costs) arising out of such breach or the existence of such Hazardous Material.

ARTICLE VII

MAINTENANCE; TAXES; INSURANCE

Section 1: *Maintenance; Taxes and Insurance.* The Association shall be responsible for all maintenance, taxes and insurance on the Property, and the cost of such maintenance shall be an expense of the Property which will be deducted from any proceeds otherwise payable to the Owners.

Section 2: *Maintenance Standards.* The Association shall keep each Lot and the Common Areas on the Lot at all times in good and clean condition and repair and perform all necessary maintenance. Said maintenance shall include, without limitation, the following: (a) Maintaining, repairing and resurfacing, when necessary, all paved surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal or superior in quality, use and durability,

and re-striping when necessary; (b) Removing all ice and snow, papers, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition and keeping the Common Area on the Lot free from any obstructions including those caused by snow and ice; (c) Maintaining, repairing, restriping and replacing, when necessary, all traffic directional signs, markers and lines; (d) Keeping the Common Area on the Lot lighted; (e) Maintaining, repairing and replacing all landscaped areas on the Lot; operating, maintaining, repairing and replacing, when necessary, automatic sprinkler systems and water lines; and replacing shrubs and other landscaping as necessary; (f) Maintaining, repairing and replacing, when necessary, all Common Area walls, including, without limitation, any screening walls serving buildings or retaining walls that are also part of the walls of a building on the Lot; (g) Maintaining, repairing, cleaning or replacing, when necessary, all utility lines not conveyed to any public or private utility and common area lighting facilities, including light standards, wires, conduits, lamps, ballasts, and lenses, time clocks and circuit breakers to the extent same are reasonably required; (g) Maintaining, repairing and replacing, when necessary, the monument signs on the Lot; (h) Maintaining and repairing the Clubhouse and Garage Areas; and (i) the foregoing obligations shall include any repairs or replacements which may become necessary due to damage or destruction of the Common Areas or any Lot.

Section 3. *Taxes and Assessments.* The Association shall pay or cause to be paid, prior to delinquency, all taxes and assessments levied with respect to the Lots and Common Area and the buildings, improvements and any person property located thereon. If a tax or assessment may be paid in installments, the Association may pay such tax or assessment in installments, as and when the same becomes due and payable. Nothing contained in this Section shall prevent the Association from contesting any taxes and assessments with respect to the Property, so long as such contest is prosecuted in good faith and with all due diligence. At the time that such contest is concluded (including any appeal(s) that may be necessary and appropriate), the Association shall promptly pay all such taxes and assessments determined to be owing, together with all interest, penalties and costs thereon.

Section 4. *Liability Insurance*. The Association shall, as an expense of the Property, maintain Commercial general liability insurance with broad form coverage endorsement (including broad form property damage endorsement) insuring against claims on account of loss of life, personal injury or property damage that may arise from or be occasioned by the condition, use or occupancy of any Lot Owner's building and the Common Areas of the Lot, by the Lot Owner and its Occupants (the "Liability Insurance"). The insurance required pursuant to this Section shall include the following provisions: (i) shall provide that the policy may not be canceled or reduced in amount or coverage below the requirements of this Declaration, without at least thirty (30) days' prior written notice by the insurer to each insured and to each additional insured; (ii) shall provide for severability of interests; (iii) shall provide that an act or omission of one of the insured or additional insured which would void or otherwise reduce coverage, shall not reduce or void the coverage as to the other insureds; and (iv) shall provide for contractual liability coverage, naming the Lot Owners and Primary Insured and the Association as an additional insured.

The Liability Insurance shall be carried by an insurance company or companies qualified to do business in the State of Wyoming and having limits for bodily injury to or personal injury to or death of any person, or more than one (1) person, or for damage to property, in an amount of not less than Five Million and no/100 Dollars ($5,000,000) combined single limit per occurrence/aggregate, such coverage to be in a commercial general liability form with at least the following endorsements: (i) deleting any employee exclusion on personal injury coverage; (ii) including coverage for injuries to or cause by employees; (iii) providing for blanket contractual liability coverage (including the Owner's indemnity obligations contained in this Declaration), broad form property damage coverage and products completed operations, owner's protective and personal injury coverage; (iv) providing for coverage of employers automobile non-ownership liability; and (v) if the use of the Lot includes the sale of alcoholic beverages, including coverage for employer's liability, host liquor liability, liquor liability and so-called "dram shop" liability coverage with a combined single limit of not less than Three Million and no/100 Dollars ($3,000,000) per occurrence. The Owner's Liability Insurance shall be made on an "occurrence" basis and not under a "claims made" basis. The insurance referenced in this Section may be provided under (i) an individual policy covering this location, (ii) a blanket policy or policies which includes other

liabilities, properties, and locations of the Owner, so long as the amount and coverage of insurance required to be carried hereunder is not diminished, or (iii) a combination of the foregoing insurance programs. To the extent any deductible is permitted or allowed as part of any insurance policy carried by the Lot Owner in compliance with this Section, the Lot Owner shall be deemed to be covering the amount thereof under an informal plan of self-insurance; provided however, that in no event shall any deductible exceed $25,000.

Section 5: *Property Insurance.* The Association shall cause to be carried 100% full insurable replacement cost fire and extended coverage "all risk" property insurance on all buildings and improvements (including Common Area improvements) on all Lots in an amount at least sufficient to raze and demolish all the buildings and improvements located on such Lots. Any such insurance shall otherwise conform to the provisions with respect to insurance outlined in the previous section.

Section 6: *Mutual Release.* Each Owner and/or the Association (the "Releasing Party") hereby releases and waives for itself, and each person claiming by, through or under it, any other Owner (the "Released Party") from any liability for any loss or damage to all property of such Releasing Party located upon any portion of the Property, which loss or damage is of the type covered by the insurance required to be maintained herein, irrespective either of any negligence on the party of the Released Party which may have contributed to or caused such loss, or of the amount of such insurance required or actually carried, including any deductible or self insurance reserve.

Section 7: *Waiver of Subrogation.* The Owners, Occupants and Association each hereby waive any rights one may have against the other on account of any loss or damage occasioned to an individual Owner or Occupant, the Association, or its respective property, either real or personal, arising from any risk generally covered by fire and extended coverage insurance and from airy risk coverage by insurance then in effect. In addition, the Owners, Association and Occupants, for themselves and on behalf of their respective insurance companies, waive any right of subrogation that any insurance company may have against the Owners, Association and Occupants. The foregoing waivers of subrogation shall be operative only so long as available in the State of Wyoming and provided further that no policy of insurance is invalidated thereby.

ARTICLE VIII

GENERAL PROVISIONS

Section 1: *Covenants Running with the Land.* This Declaration shall inure to the benefit of and be binding upon the Association, the Owners, their heirs, personal representatives, successors and assigns, and each Owner shall be liable for the performance of all covenants, obligations and undertakings herein set forth.

Section 2: *Term.* Except as otherwise provided in this Declaration with respect to certain easements and other obligations which are to survive the expiration of this Declaration, this Declaration shall terminate and be of no further force or effect on that date which is sixty five (65) years from the date set forth in the initial paragraph of this Declaration.

Section 3: *Default; Notice and Cure Period.* In the event any party fails to perform any provision of this Declaration, which failure continues for a period of thirty (30) days after receipt of written notice specifying the particulars of such failure, such failure shall constitute a default under this Declaration and any other party may thereafter institute legal action against the defaulting party for specific performance, declaratory or injunctive relief, monetary damages or any other remedy provided by law; provided, however, that the defaulting party shall not be deemed to be in default if such failure to perform cannot be reasonably be rectified within said thirty (30) day period and such party is diligently proceeding to rectify the particulars of such failure. The foregoing shall be in addition to any other remedies expressly provided for in this Declaration. Each Owner agrees by acquiring a Lot that the violation of any covenants, conditions or restrictions in this Declaration may result in damages which are difficult or impossible to determine in amount, and therefore equitable remedies to enjoin the violation hereof may be appropriate. Therefore, in addition to any other remedies set forth herein, the Association shall be entitled to seek temporary and permanent injunctions against the breach of any of the provisions hereof. It is expressly agreed that no breach of or default under this Declaration shall entitle any party to terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which such party may have hereunder or by reason of any breach of or default under this Declaration or at law or equity.

Section 4: *Amendment; Termination.* This Declaration may not be modified or terminated in any respect whatsoever by the Lot Owner. The Association (or any successor Owner of the Property) may modify or terminate this Declaration, and then only by written instrument duly executed and acknowledged by all the Lot Owners, duly recorded in the office of the recorder of the county in which the Parcels are located.

Section 5: *Multiple Owners.* If the Lot is owned by more than one person, then all of such persons shall agree among themselves by a fifty one percent (51%) majority of ownership interests and designate in writing to the other parties a single person or entity who is entitled to act as the Lot Owner for the Lot. If the Owners cannot agree who shall be entitled to act as the Lot Owner for the Lot, or if the Owners fail to designate the single person or entity who is entitled to act as the "party" for the Lot within thirty (30) days after receipt of a request to do so from any other party, then such other parties shall designate one of the Owners to act as the "party" for that Lot.

Section 7: *Notices.* All notices given pursuant to this Declaration shall be in writing and shall be given by personal delivery, or by United States mail (certified, return receipt requested), or by United States Express Mail or other established express delivery service (such as Federal Express, DHL and United Parcel Service), postage or delivery charges prepaid, addressed to the person and address specified below or, in the absence of such designation, to the person and address shown on the then current real property tax rolls in the county in which the Property is located. All notices to the Association shall be addressed as follows:

SOUTH FORK APARTMENTS ASSOCIATION, INC.
c/o Robert Bergner
P.O. Box 728
Buffalo, WY 82834

Each party may change the person and address to which notices are to be given, upon written notice to the other parties. All notices given pursuant to this Declaration shall be deemed given upon receipt. For the purposes of this Declaration, the term "receipt" shall mean the earliest of any of the following: (i) the date of delivery to the address specified pursuant to this section as shown on the return receipt; (ii) the date of actual receipt by the person or entity specified pursuant to this section; or (iii) in the case of refusal to

accept delivery or the inability to delivery, the earlier of (A) the date of the attempted delivery or refusal to accept delivery, (B) the date of the postmark on the return receipt, or (C) the date of receipt of notice of refusal or notice of non-delivery by the sending party.

Section 8: *Waiver.* The failure of a party to insist upon strict performance of any of the terms, covenants, conditions or agreements contained herein shall not be deemed a waiver of any rights or remedies that said party may have, and shall not be deemed a waiver of any subsequent breach of default in the performance of any of the covenants, conditions and restrictions contained herein by the same or any other person or entity.

Section 9: *Attorneys' Fees.* If any party initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Declaration, the prevailing party in any such action or proceeding shall be entitled to recover from the losing party its reasonable costs and attorneys' fees (including costs and attorneys' fees on any appeal.)

Section 10: *Partial Invalidity.* If any term or provision of this Declaration or the application hereof to any person or circumstances shall to any extent to invalid or unenforceable, then the remainder of this Declaration and the application of such term or provision to other persons or circumstances shall be unaffected thereby, and each term and provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

Section 11: *No Partnership.* The provisions of this Declaration are not intended to create, nor shall they in any way be interpreted or construed to create, a joint venture, partnership or any other similar relationship between the parties. Each party shall be considered a separate party and no party shall have the right to act for another, unless expressly authorized to do so herein or by separate written instrument signed by the party to be charged.

Section 12: *Joint and Several.* If any party hereto is composed of more than one person or entity, then the obligations of such party shall be joint and several.

Section 13: *Recording.* This Declaration shall be recorded in the office of the recorder of Campbell County, Wyoming.

Section 14: *Time of Essence; Force Majeure.* Time is of the essence with respect to the performance of each obligation of this Declaration. Whenever performance is required by an person or entity hereunder, such person or entity shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing or other labor disputes, unavailability of labor or materials, damage to work in progress by reason of fire or other casualty, or any other cause beyond the reasonable control of such person or entity, then the time for performance as herein specified shall be extended by the amount of the delay actually so caused. Notwithstanding the foregoing, the provisions of this Section shall not operate to excuse any person or entity from the prompt payment of any monies required by this Declaration to be paid.

Section 15: *Mortgagee Protection.* Any mortgage or assignment of rents recorded against any Lot shall be effective to assign to such Mortgagee such Lot Owner's proportionate distribution of the rents from the entire Property, after payment of expenses as set out above. It shall not entitle such Mortgagee to the gross rents or revenues from any specific lot. Notwithstanding anything in this Declaration to the contrary, no breach of this Declaration shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value, but this Declaration shall be binding upon and effective against any party hereto whose title is acquired by foreclosure, trustee's sale, deed or conveyance in lieu of foreclosure or otherwise.

Section 16: *Variances.* Where appropriate, the Association may, in its sole and subjective discretion grant variances to the provisions hereof that do not prejudice any specific Lot Owner, where strict adherence to the requirements of this Declaration would, in the judgment of the Association, cause undue hardship.

IN WITNESS WHEREOF, THIS DECLARATION HAS BEEN EXECUTED AS OF THE DATE AND YEAR FIRST ABOVE WRITTEN.

DECLARANT

South Fork Apartments, LLC
A Wyoming limited liability company

By: _____
Robert Bergner, Manager
MANAGING MEMBER

By: _____
Chris Toeppen, Manager
MANAGING MEMBER

NOTARIZATIONS

State of Wyoming

County of Campbell

"On this 2nd day of October, 2008, Robert Bergner, ~~who I know personally~~ ~~whose identity was proven to me on the oath of _____, a credible witness by me duly sworn~~ (whose identity was proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, personally appeared before me and acknowledged that she executed the same."

MANAGING MEMBER, ~~a member~~ ~~who I~~ South Fork Apartments LLC

Witness my hand and official seal.

Patricia A. Kimbley - Notary Public
County of Campbell State of Wyoming
My Commission Expires 11-24-2011

Patricia A. Kimbley
Notary Public

My commission expires: 11/24/2011

RECEIVED
OCT 20 2008
CAMPBELL COUNTY CLERK

State of Wyoming

County of Campbell

"On this 2nd day of October, 2008, Chris Toeppen, ~~who I know personally~~ ~~whose identity was proven to me on the oath of _____, a credible witness by me duly sworn~~ (whose identity was proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, personally appeared before me and acknowledged that she executed the same."

MANAGING member, ~~who I~~ South Fork Apartments LLC

Witness my hand and official seal.

Patricia A. Kimbley - Notary Public
County of Campbell State of Wyoming
My Commission Expires 11-24-2011

Patricia A. Kimbley
Notary Public

My commission expires: 11/24/2011

918480 Recorded on 10/20/2008 at 8:54:00 Fee 53.00
Book 2399 of PHOTOS Pages 453 to 468
Susan F. Saunders, Campbell County Clerk by: P. SPARLING

RECORDED ✓
ABSTRACTED ✓
INDEXED ✓
SCANNED ✓

AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS FOR SOUTH FORK APARTMENTS PLANNED UNIT RESIDENTIAL DEVELOPMENT

THIS AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS is made by South Fork Apartments, LLC, a Wyoming Limited Liability Company, "Declarant" for itself, its successors, grantees, and assigns, as itself and as Owner of all Lots contained in the Property, this 12TH day of MARCH, 2009, and replaces and supersedes in its entirety that certain DECLARATION OF PROTECTIVE COVENANTS FOR SOUTH FORK APARTMENTS PLANNED UNIT RESIDENTIAL DEVELOPMENT recorded on October 20, 2008, as Document No. 918460, in Book 2399, Pages 453-468 in Official Records, Campbell County, Wyoming.

ARTICLE 1

PROPERTY DESCRIPTION

Section 1: Declarant is the owner of the following real property (the "Property") located in the City of Gillette, Campbell County, Wyoming described as Lots 1,2,3,4,5,6, 7,8,9,10,11,12,13,14,& 15, South Fork Apartments Planned Unit Residential Development, a Resubdivision of Block 5, RC Ranch, Phase 1, which is located in the E1/2 Section 4, Township 49 North, Range 72 West, 6th Principal Meridian, as depicted and described on the final plat recorded in the real estate records of Campbell County in Book of Plat Maps on October 20, 2008, Book 9, Pages 110-112 (hereinafter referred to as the "Plat").

ARTICLE II

OBJECTS AND PURPOSES

The Property is hereby made subject to the following covenants, conditions, restrictions, reservations, charges, liens and easements, all of which shall be deemed to run with the Property and each and every portion thereof, to ensure proper use and appropriate development, improvement, operation and maintenance of the Property.

ARTICLE III

DEFINITIONS

Section 1: *"Association"* shall mean "South Fork Apartments Association, Inc., a Wyoming Mutual Benefit Corporation", and any successor thereto. The members of the Association shall be the Owners, with each Owner holding one membership interest for each Lot owned.

Section 2: *"Building Area"* shall mean Lots 1 through 14, inclusive, which are from time to time covered by a building or other residential structure.

Section 3: *"Common Area"* shall mean Lot 15, which will be owned by the Association and includes the garage areas, all of which are intended for common use and enjoyment of any or all Owners Each Lot numbered 1 through 14 shall have appurtenant to it, non-exclusive easements for ingress, egress and support through the Common Area (Lot 15). Each Owner may use the Common Area in accordance with the purposes for which it is intended without hindering the exercise of or encroaching upon the rights of any other Owners.

Section 4: *"Declarant"* shall mean and refer to South Fork Apartments, LLC, a Wyoming Limited Liability Company ("South Fork Apartments"), its successors and/or assigns, if such successor or assigns are Owners of any portion of the Property and are designated by South Fork Apartments to perform the obligations of the Declarant hereunder.

Section 5: *"Lot"* shall mean and refer Lots 1 through 14, unless the reference relates to the common lot, in which case it shall refer to Lot 15.

Section 6: *"Occupant"* shall mean any Person or Lessee from time to time entitled to the use and occupancy of any portion of a building under an ownership right or any lease, sublease, assignment, license, concession, or other similar agreement.

Section 7: *"Operating Account"* shall mean the account into which the Association deposits all assessments and any revenue associated with the Common Area, and out of which all expenses, maintenance, repairs, and capital improvements for the Common Area are made.

Section 8: *"Owner"* shall mean and refer to the record owner, whether one (1) or more persons or entities, of fee simple title to any of Lots 1 through 14, inclusive, but excluding those having such interest solely as security for the performance of any obligation, in which event the equitable owner of such fee simple title shall be deemed to be the Owner thereof.

ARTICLE IV

ROLE OF ASSOCIATION

Section 1: The Association shall, either itself or through the use of a property management company, have the following authority and responsibilities:

Section 2: *Management of Common Area.* The Association shall operate and maintain the Common Area in an efficient and professional manner and shall arrange for the performance of everything reasonably necessary for the proper operation of the Common Area subject to (a) applicable governmental requirements and (b) the terms and provision of this Agreement. So long as this Agreement is in effect, individual Owners shall not have the right to enter into any contracts or agreements affecting the Common Area. The Association shall maintain, repair, replace, and restore the driveways, parking areas, garages, community building or buildings, and landscaping, and shall be allowed access to individual Lots if necessary to conduct such maintenance.

The Association shall also be responsible for landscaping in the Common Area, including, but not limited to, the provision and maintenance of water (and electricity, if applicable) to such landscaping. The Association shall have complete authority to determine the nature, character and maintenance of all such landscaping. Owners may not alter, change, or modify the landscaping in the Common Area.

Section 3: *Right to Charge Reasonable Fees.* With respect to the use of the Common Area, the Association shall have the right to charge reasonable fees for the use thereof, as determined by the Board.

Section 4: *Budgets.* The Association shall, by March 31 of each year, prepare and submit to the Owners a report of the expenses (and any fee income) for the prior calendar year and shall at that time give the Owners its opinion of the manner in which expenses are expected to differ in the following year in order to properly maintain and manage the Common Area.

In addition, the Association will inform Owners of the upcoming year Regular assessments (and Special assessments, if any) that will be allocated to each Owner according to the number of Lots held.

Section 5: *Assessments.*

Regular Assessments:

The Association shall establish and levy Regular Assessments in an amount that the Association estimates will be sufficient to raise the funds needed to perform the duties of the Association during each fiscal year. The Regular Assessment shall include a portion for reserves in such amounts as the Association in its discretion considers appropriate to meet the costs of the future repair, replacement or additions to the major improvements and fixtures that the Association is obligated to maintain and repair. The Regular Assessment shall be allocated to each of the Owners of a Lot, 1/14 each.

Special Assessments:

The Association, at any time, may levy a Special Assessment in order to raise funds for unexpected operating or other costs, insufficient operating or reserve funds, or such other purposes as the Association in its discretion considers appropriate. Special Assessments shall be allocated among the Owners in the same manner as Regular Assessments.

Each Owner covenants and agrees (i) to pay Regular Assessments, and Special Assessments to the Association, and (ii) to allow the Association to enforce a lien for such assessments by non-judicial proceedings under a power of sale or by any other means authorized by law. Provided however, (i) the enforcement of any such lien shall not affect and shall be subordinate to the lien of any mortgage holder, for value, that may have a mortgage or deed of trust on an Owner's Lot, and (ii) failure to pay assessments when levied will not result in a loss of usage of the Common Area.

Section 6: *Books of Accounts.* The Association shall maintain at its offices adequate and separate books and records for the Common Area with the entries supported by sufficient documentation to ascertain their accuracy with respect to any expenses and income related thereto.

Each of the Owners and their representatives may examine all books, records and files maintained by the Association. Should the examination by a Owner discover errors in record keeping, the Association shall undertake with all appropriate diligence to correct such discrepancies.

Section 7: *Operating and Reserve Accounts.* The Association shall deposit all assessments and fee income relating to the Common Area in a bank or financial institution in a special trust or depository account for the Common Area (the "Operating Account").

The Association shall maintain this Operating Account so that an amount at least as great as the budgeted expenses for the forthcoming month is in such Operating Account as of the first of each month.

The Association shall pay from the Operating Account the operating expenses of the Common Area and any other payments relative to the Common Area as required or permitted by this Agreement. The Association may also hold one or more reserve or capital improvement accounts for the Common Area.

Section 8: *Access to Accounts.* As authorized by signature cards, representatives of the Association shall have access to and may draw upon all funds in the Operating Account. The Owners may not withdraw funds from such accounts.

Section 9: *Payment of Expenses.* The Association shall pay all expenses of the operation, maintenance and repair with respect to the Common Area directly from the Operating Account or, if there are inadequate funds in that account, shall be reimbursed by the Owners. In addition, the Association shall be entitled to hire a management company, accountants, lawyers or other professionals to handle responsibilities of the Association - including the establishment and maintenance of accounts as set out herein.

ARTICLE V

EASEMENTS ON PROPERTY

Section 1: *Utility Easements.* Each Owner, and such Owner's tenants, guests, and invitees, is hereby granted a non-exclusive, perpetual easement for utilities over, through and across any of the Common Area that may be necessary and or convenient to serve such Owner's Lot.

Section 2: *Access Easements.* Each Owner, and such Owner's tenants, guests and invitees, is hereby granted a non-exclusive, perpetual easement for ingress, egress and access to such Owner's Lots over, through and across any of the Common Area designated for such purpose. Such easement is for both pedestrian and vehicular access, subject to reasonable rules and regulations as the Association may impose.

Section 3: *Parking Easements.* Each Owner and such Owner's tenants, guests and invitees, is hereby granted a non-exclusive, perpetual easement for parking over, through and across any of the Common Area designated for such purpose, and each Owner has the right to have their tenants park vehicles in designated parking spots in the Common Area, subject to reasonable rules and regulations as the Association may impose.

Section 4: *Garage Easements.* Each Owner and such Owner's tenants, guests and invitees, is hereby granted a non-exclusive, perpetual easement for parking in the garage portions of the Common Area - and each Owner shall be entitled to park, and to have their tenants park, in the garage areas which are part of the Common Area. Provided however, the Association may charge a fee for such parking, and allocate available garage spaces among tenants utilizing an equitable system to be determined by the Association in its reasonable discretion.

Section 5: *Clubhouse Easement.* Each Owner and such Owner's tenants, guests and invitees, is hereby granted a non-exclusive, perpetual easement for use of the Clubhouse that is in the Common Area, subject to such fees, restrictions and reasonable regulations as the Association may impose. Provided however, the Association may charge a fee for certain uses of the Clubhouse, and allocate such uses among tenants utilizing an equitable system to be determined by the Association in its reasonable discretion.

Section 6: *Air Conditioning Unit Easements.* Each Owner is hereby granted a non-exclusive, perpetual easement over the Common Area for the placement of air conditioning units as such units are currently located and as they may be constructed, expanded, reconfigured or relocated from time to time by the Owner.

Section 7: *Lot 3 Building Easement.* The Owner of Lot 3 is hereby granted a non-exclusive, perpetual easement over that part of the Common Area onto which the Building Area of Lot 3, as it is currently constructed and located, encroaches.

Section 8: *No Merger.* Notwithstanding Declarant's or any Owner's ownership of more than one Lot, the easements granted hereunder shall burden and benefit each Lot individually, without merger as a result of such common ownership, and upon conveyance of a Lot so that such Lot ceases to be under common ownership, neither the Owner conveying said Lot nor the owner acquiring said Lot shall need to execute additional documentation to evidence the existence of said easements, and said easements shall relate back to and shall be deemed to have been created as of the date hereof.

ARTICLE VI

USE RESTRICTIONS

Section 1: *General Use Restrictions.* The Property shall be used as a multifamily residential community, and for no other purpose.

Section 2: *Change in Use.* If a change in use is desired, the Owner desiring such change shall provide the Association with written notification of any proposed change in use (and each subsequent change in use). It shall be reasonable for the Association to withhold its consent for the following reasons, which are set forth herein as examples and are not meant to be an exhaustive list: (1) if the use violates this Declaration, (2) if the use violates zoning or other governmental laws, rules and/or regulations, or (3) if the use, in the sole opinion of the Association, shall be a detriment to the Property as a whole.

Section 3: *Hazardous Materials.* No Hazardous Material shall be brought upon, kept, used, generated or stores in or around the Property, except with the prior written consent of the Association and in compliance with all applicable Environmental Regulations. Notwithstanding the foregoing, the Association's consent shall not be required for the storage use or disposal of common household cleansers and degreasers in the ordinary residential use on the Lot, provided that such storage, use and disposal is in compliance with all applicable Environmental Regulations. If the Lot Owner (as opposed to the Association) breaches its obligations above, then the Lot Owner shall indemnify, defend, protect and hold the Association and its

respective officers, directors, members, employees and agents, harmless from and against any and all causes of action, claims, liabilities, losses, damages, costs and expenses (including reasonable attorney's fees and court costs) arising out of such breach or the existence of such Hazardous Material.

ARTICLE VII

MAINTENANCE; TAXES; INSURANCE

Section 1: *Maintenance; Taxes and Insurance.* The Association shall be responsible for all maintenance of the Common Areas, taxes and insurance on the Common Areas, and the cost of such maintenance shall be an expense of the Common Area.

Section 2: *Maintenance Standards.* The Association shall keep the Common Areas at all times in good and clean condition and repair and perform all necessary maintenance. Said maintenance shall include, without limitation, the following: (a) Maintaining, repairing and resurfacing, when necessary, all paved surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal or superior in quality, use and durability, and re-striping when necessary; (b) Removing all ice and snow, papers, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition and keeping the Common Area on the Lot free from any obstructions including those caused by snow and ice; (c) Maintaining, repairing, restriping and replacing, when necessary, all traffic directional signs, markers and lines; (d) Keeping the Common Area lighted; (e) Maintaining, repairing and replacing all landscaped areas on the Common Area; operating, maintaining, repairing and replacing, when necessary, automatic sprinkler systems and water lines; and replacing shrubs and other landscaping as necessary; (f) Maintaining, repairing and replacing, when necessary, all Common Area walls, including, without limitation, any screening walls serving buildings or retaining walls that are also part of the walls of a building on a Lot; (g) Maintaining, repairing, cleaning or replacing, when necessary, all utility lines not conveyed to any public or private utility and common area lighting facilities, including light standards, wires, conduits, lamps, ballasts, and lenses, time clocks and circuit breakers to the extent same are reasonably required; (g) Maintaining, repairing and replacing, when necessary, the monument signs on the Common Area; (h) Maintaining and repairing the Clubhouse and Garage Areas; and

(i) the foregoing obligations shall include any repairs or replacements which may become necessary due to damage or destruction of the Common Areas.

Section 3. *Taxes and Assessments.* The Association shall pay or cause to be paid, prior to delinquency, all taxes and assessments levied with respect to the Common Area. If a tax or assessment may be paid in installments, the Association may pay such tax or assessment in installments, as and when the same becomes due and payable. Nothing contained in this Section shall prevent the Association from contesting any taxes and assessments with respect to the Common Area, so long as such contest is prosecuted in good faith and with all due diligence. At the time that such contest is concluded (including any appeal(s) that may be necessary and appropriate), the Association shall promptly pay all such taxes and assessments determined to be owing, together with all interest, penalties and costs thereon.

Section 4. *Liability Insurance.* The Association shall, as an expense of the Common Area, maintain Commercial general liability insurance with broad form coverage endorsement (including broad form property damage endorsement) insuring against claims on account of loss of life, personal injury or property damage that may arise from or be occasioned by the condition, use or occupancy of the Common Area, by the Lot Owner and its Occupants (the "Liability Insurance"). The insurance required pursuant to this Section shall include the following provisions: (i) shall provide that the policy may not be canceled or reduced in amount or coverage below the requirements of this Declaration, without at least thirty (30) days' prior written notice by the insurer to each insured and to each additional insured; (ii) shall provide for severability of interests; (iii) shall provide that an act or omission of one of the insured or additional insured which would void or otherwise reduce coverage, shall not reduce or void the coverage as to the other insureds; and (iv) shall provide for contractual liability coverage, naming the Association as Primary Insured and the Owners as additional insureds.

The Liability Insurance shall be carried by an insurance company or companies qualified to do business in the State of Wyoming and having limits for bodily injury to or personal injury to or death of any person, or more than one (1) person, or for damage to property, in an amount of not less than Five Million and no/100 Dollars ($5,000,000) combined single limit per occurrence/aggregate, such coverage to be in a commercial

general liability form with at least the following endorsements: (i) deleting any employee exclusion on personal injury coverage; (ii) including coverage for injuries to or cause by employees; (iii) providing for blanket contractual liability coverage (including the Owner's indemnity obligations contained in this Declaration), broad form property damage coverage and products completed operations, owner's protective and personal injury coverage; (iv) providing for coverage of employers automobile non-ownership liability; and (v) if the use of the Lot includes the sale of alcoholic beverages, including coverage for employer's liability, host liquor liability, liquor liability and so-called "dram shop" liability coverage with a combined single limit of not less than Three Million and no/100 Dollars ($3,000,000) per occurrence. The Owner's Liability Insurance shall be made on an "occurrence" basis and not under a "claims made" basis. To the extent any deductible is permitted or allowed as part of any insurance policy carried by the Association in compliance with this Section, the Association shall be deemed to be covering the amount thereof under an informal plan of self-insurance; provided however, that in no event shall any deductible exceed $25,000.

Section 5: *Property Insurance.* The Association shall cause to be carried 100% full insurable replacement cost fire and extended coverage "all risk" property insurance on all buildings and improvements on the Common Area in an amount at least sufficient to raze and demolish all the buildings and improvements located on such Common Areas. Any such insurance shall otherwise conform to the provisions with respect to insurance outlined in the previous section.

Section 6: *Mutual Release.* Each Owner and/or the Association (the "Releasing Party") hereby releases and waives for itself, and each person claiming by, through or under it, any other party, whether Owner or Association (the "Released Party") from any liability for any loss or damage to all property of such Releasing Party located upon any portion of the Common Area, which loss or damage is of the type covered by the insurance required to be maintained herein, irrespective either of any negligence on the part of the Released Party which may have contributed to or caused such loss, or of the amount of such insurance required or actually carried, including any deductible or self insurance reserve.

Section 7: *Waiver of Subrogation.* The Owners, Occupants and Association each hereby waive any rights one may have against the other on account of any loss or damage occasioned to an

individual Owner or Occupant, the Association, or its respective property, either real or personal, arising from any risk generally covered by fire and extended coverage insurance and from airy risk coverage by insurance then in effect. In addition, the Owners, Association and Occupants, for themselves and on behalf of their respective insurance companies, waive any right of subrogation that any insurance company may have against the Owners, Association and Occupants. The foregoing waivers of subrogation shall be operative only so long as available in the State of Wyoming and provided further that no policy of insurance is invalidated thereby.

ARTICLE VIII

GENERAL PROVISIONS

Section 1: *Covenants Running with the Land.* This Declaration shall inure to the benefit of and be binding upon the Association, the Owners, their heirs, personal representatives, successors and assigns, and each Owner shall be liable for the performance of all covenants, obligations and undertakings herein set forth.

Section 2: *Term.* Except as otherwise provided in this Declaration with respect to certain easements and other obligations which are to survive the expiration of this Declaration, this Declaration shall terminate and be of no further force or effect on that date which is sixty five (65) years from the date set forth in the initial paragraph of this Declaration.

Section 3: *Default; Notice and Cure Period.* In the event any party fails to perform any provision of this Declaration, which failure continues for a period of thirty (30) days after receipt of written notice specifying the particulars of such failure, such failure shall constitute a default under this Declaration and any other party may thereafter institute legal action against the defaulting party for specific performance, declaratory or injunctive relief, monetary damages or any other remedy provided by law; provided, however, that the defaulting party shall not be deemed to be in default if such failure to perform cannot be reasonably be rectified within said thirty (30) day period and such party is diligently proceeding to rectify the particulars of such failure. The foregoing shall be in addition to any other remedies expressly provided for in this Declaration. Each Owner agrees by acquiring a Lot that the violation of any covenants, conditions or restrictions in this

Declaration may result in damages which are difficult or impossible to determine in amount, and therefore equitable remedies to enjoin the violation hereof may be appropriate. Therefore, in addition to any other remedies set forth herein, the Association shall be entitled to seek temporary and permanent injunctions against the breach of any of the provisions hereof. It is expressly agreed that no breach of or default under this Declaration shall entitle any party to terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which such party may have hereunder or by reason of any breach of or default under this Declaration or at law or equity.

Section 4: *Amendment; Termination.* This Declaration may not be modified or terminated in any respect whatsoever by any Lot Owner. The Association (or any successor Owner of the Property) may modify or terminate this Declaration, and then only by written instrument duly executed and acknowledged by at least seventy-five percent of the Lot Owners, duly recorded in the office of the recorder of the county in which the Parcels are located.

Section 5: *Multiple Owners.* If the Lot is owned by more than one person, then all of such persons shall agree among themselves by a fifty one percent (51%) majority of ownership interests and designate in writing to the other parties a single person or entity who is entitled to act as the Lot Owner for the Lot. If the Owners cannot agree who shall be entitled to act as the Lot Owner for the Lot, or if the Owners fail to designate the single person or entity who is entitled to act as the "party" for the Lot within thirty (30) days after receipt of a request to do so from any other party, then such other parties shall designate one of the Owners to act as the "party" for that Lot.

Section 7: *Notices.* All notices given pursuant to this Declaration shall be in writing and shall be given by personal delivery, or by United States mail (certified, return receipt requested), or by United States Express Mail or other established express delivery service (such as Federal Express, DHL and United Parcel Service), postage or delivery charges prepaid, addressed to the person and address specified below or, in the absence of such designation, to the person and address shown on the then current real property tax rolls in the county in which the Property is located. All notices to the Association shall be addressed as follows:

SOUTH FORK APARTMENTS ASSOCIATION, INC.
c/o Robert Bergner
P.O. Box 728
Buffalo, WY 82834

Each party may change the person and address to which notices are to be given, upon written notice to the other parties. All notices given pursuant to this Declaration shall be deemed given upon receipt. For the purposes of this Declaration, the term "receipt" shall mean the earliest of any of the following: (i) the date of delivery to the address specified pursuant to this section as shown on the return receipt; (ii) the date of actual receipt by the person or entity specified pursuant to this section; or (iii) in the case of refusal to accept delivery or the inability to delivery, the earlier of (A) the date of the attempted delivery or refusal to accept delivery, (B) the date of the postmark on the return receipt, or (C) the date of receipt of notice of refusal or notice of non-delivery by the sending party.

Section 8: *Waiver*. The failure of a party to insist upon strict performance of any of the terms, covenants, conditions or agreements contained herein shall not be deemed a waiver of any rights or remedies that said party may have, and shall not be deemed a waiver of any subsequent breach of default in the performance of any of the covenants, conditions and restrictions contained herein by the same or any other person or entity.

Section 9: *Attorneys' Fees*. If any party initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Declaration, the prevailing party in any such action or proceeding shall be entitled to recover from the losing party its reasonable costs and attorneys' fees (including costs and attorneys' fees on any appeal.)

Section 10: *Partial Invalidity*. If any term or provision of this Declaration or the application hereof to any person or circumstances shall to any extent to invalid or unenforceable, then the remainder of this Declaration and the application of such term or provision to other persons or circumstances shall be unaffected thereby, and each term and provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

Section 11: *No Partnership.* The provisions of this Declaration are not intended to create, nor shall they in any way be interpreted or construed to create, a joint venture, partnership or any other similar relationship between the parties. Each party shall be considered a separate party and no party shall have the right to act for another, unless expressly authorized to do so herein or by separate written instrument signed by the party to be charged.

Section 12: *Joint and Several.* If any party hereto is composed of more than one person or entity, then the obligations of such party shall be joint and several.

Section 13: *Recording.* This Declaration shall be recorded in the office of the recorder of Campbell County, Wyoming.

Section 14: *Time of Essence; Force Majeure.* Time is of the essence with respect to the performance of each obligation of this Declaration. Whenever performance is required by an person or entity hereunder, such person or entity shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing or other labor disputes, unavailability of labor or materials, damage to work in progress by reason of fire or other casualty, or any other cause beyond the reasonable control of such person or entity, then the time for performance as herein specified shall be extended by the amount of the delay actually so caused. Notwithstanding the foregoing, the provisions of this Section shall not operate to excuse any person or entity from the prompt payment of any monies required by this Declaration to be paid.

Section 15: *Mortgagee Protection.* Notwithstanding anything in this Declaration to the contrary, no breach of this Declaration shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value, but this Declaration shall be binding upon and effective against any party hereto whose title is acquired by foreclosure, trustee's sale, deed or conveyance in lieu of foreclosure or otherwise.

Section 16: *Variances.* Where appropriate, the Association may, in its sole and subjective discretion grant variances to the provisions hereof that do not prejudice any specific Lot Owner, where strict adherence to the requirements of this Declaration would, in the judgment of the Association, cause undue hardship.

IN WITNESS WHEREOF, THIS AMENDED AND RESTATED DECLARATION HAS BEEN EXECUTED AS OF THE DATE AND YEAR FIRST ABOVE WRITTEN.

ASSOCIATION

South Fork Apartments Association, Inc.
A Wyoming Mutual Benefit Corporation

By: _____
Robert Bergner, President

By: _____
Chris Toeppen, Secretary/Treasurer

DECLARANT

For itself, and as Owner of all Lots in the Property, executing this Amended and Restated Declaration pursuant to Article VIII; Section 4 of the Original Declaration of Protective Covenants for South Fork Apartments.

South Fork Apartments, LLC
A Wyoming limited liability company

By: _____
Robert Bergner, Manager

By: _____
Chris P. Toeppen, Manager

NOTARIZATION

State of Wyoming

County of Campbell

"On this 16th day of MARCH, 2009, Robert Bergner, President of South Fork Apartments Association, Inc., (who I know personally) ~~(whose identity was proven to me on the oath of _____, a credible witness by me duly sworn) (whose identity was proved to me on the basis of satisfactory evidence)~~ to be the person whose name is subscribed to this instrument, personally appeared before me and acknowledged that she executed the same."

Witness my hand and official seal.

STACIE L. LANIER NOTARY PUBLIC COUNTY OF LARAMIE STATE OF WYOMING MY COMMISSION EXPIRES

Notary Public

My commission expires: 7.14.09

State of California

County of ~~San Mateo~~ SANTA CLARA

"On this 12 day of MARCH, 2009, before me, VINITA BHALLA, personally appeared Chris P. Toeppen, Secretary/Treasurer of South Fork Apartments Association, Inc., who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose names~~(s)~~ is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity~~(ies)~~, and that by his/~~her/their~~ signature~~(s)~~ on the instrument the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

VINITA BHALLA Commission # 1700480 Notary Public - California San Mateo County My Comm. Expires Oct 24, 2010

Notary Public

NOTARIZATION

State of Wyoming

County of Campbell

"On this 16th day of MARCH, 2009, Robert Bergner, Manager of South Fork Apartments, LLC, (who I know personally) ~~(whose identity was proven to me on the oath of _____, a credible witness by me duly sworn) (whose identity was proved to me on the basis of satisfactory evidence)~~ to be the person whose name is subscribed to this instrument, personally appeared before me and acknowledged that she executed the same."

Witness my hand and official seal.

STACIE L. [illegible] NOTARY PUBLIC
COUNTY OF LARAMIE STATE OF WYOMING
MY COMMISSION EXPIRES JUL 14, 2010

Notary Public

My commission expires: 7.14.10

RECEIVED
MAR 17 2009
CAMPBELL COUNTY CLERK

State of California

County of ~~San Mateo~~ SANTA CLARA

"On this 12 day of MARCH, 2009, before me, VINITA BHALLA, personally appeared Chris P. Toeppen, Manager of South Fork Apartments, LLC, who proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose names(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

VINITA BHALLA
Commission # 1700660
Notary Public - California
San Mateo County
My Comm. Expires Oct 24, 2010

Notary Public

924485 Recorded on 3/17/2009 at 3.52.00 Fee 56.00
Book 2431 of PHOTOS Pages 434 to 450
Susan F. Saunders, Campbell County Clerk by: L. GROSE

RECORDED
ABSTRACTED
INDEXED
CHECKED

AFTER RECORDING RETURN TO:

Gregory C. Dyekman
Dray Dyekman Reed & Heely PC
204 East 22nd Street
Cheyenne, Wyoming 82001

----------[SPACE ABOVE THIS LINE FOR RECORDING DATA]----------

FIRST AMENDMENT TO AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS FOR SOUTH FORK APARTMENTS PLANNED UNIT RESIDENTIAL DEVELOPMENT

THIS FIRST AMENDMENT TO AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS FOR SOUTH FORK APARTMENTS PLANNED UNIT RESIDENTIAL DEVELOPMENT, is made and executed this 30th day of July 2014 (this "First Amendment"), by SOUTH FORK PHASE II, LLC, a Delaware limited liability company ("SFAII") in its capacity as "Declarant" under the Declaration (in such capacity, the "Declarant"), and SFAII and SFA PHASE I, LLC (in their capacities as "Lot Owners" under the Declaration, collectively, in such capacity, the "Lot Owners"). Terms used herein and not defined herein shall have the meaning assigned to such term in the Declaration (defined below).

RECITALS

WHEREAS, pursuant to that certain Amended and Restated Declaration of Protective Covenants for South Fork Apartments Planned Unit Residential Development, dated March 12, 2009, and recorded on March 17, 2009, in the Official Records Book 2431, Page 434, of the Public Records of Campbell County, Wyoming (as may be further amended, restated, supplemented, or otherwise modified from time to time, the "Declaration"), South Fork Apartments, LLC, a Wyoming limited liability company (the "Original Declarant") did declare that certain real property more particularly described in the Declaration was to be subject to certain covenants, conditions, easements, and restrictions more particularly set forth therein, and

WHEREAS, Original Declarant assigned to Declarant its rights and obligations as "Declarant" under the Declaration pursuant to that certain Assignment and Assumption of Declarant's Rights Under Amended and Restated Declaration of Protective Covenants for South Fork Apartments Planned Unit Residential Development, dated on or about the date hereof;

WHEREAS, Declarant intends to maintain residential apartments upon the Property;

#31452925_v4

WHEREAS, Declarant has authority to enter into this First Amendment in accordance with Article VIII, Section 4 of the Declaration;

NOW, THEREFORE, for and in consideration of the premises hereof, Declarant does hereby declare, and the Lot Owners hereby agree, that the Declaration shall be amended as follows:

1. The Declaration is hereby modified and supplemented as follows.

a. Article III, Definitions shall be amended as follows:

i. Section 4 is amended and restated to read as follows:

"Section 4: "*Declarant*" shall mean and refer to South Fork Phase II, LLC, a Delaware limited liability company ("South Fork"), its successors and/or assigns, if such successor or assigns are Owners of any portion of the Property and are designated by South Fork to perform the obligations of the Declarant hereunder."

ii. Section 7 is amended and restated to read as follows:

"Section 7: "*Operating Account*" shall mean the account into which the Association deposits all assessments and any revenue associated with the Common Area, and out of which all expenses for maintenance, repairs, capital improvements for the Common Area, and payments to the Owners of income from the Common Area are made."

b. Article IV (Role of Association) shall be amended as follows:

i. Section 3 is amended and restated to read as follows:

"Section 3: *Right to Charge Reasonable Fees*. With respect to the use of the Common Area, the Association shall have the right to charge reasonable fees for the use thereof, as determined by the Board; provided, however, that the Association shall pay to each Owner any income from the use of the Common Area owing to such Owner."

ii. The third paragraph of Section 7 (Operating and Reserve Accounts) shall be amended and restated as follows:

"The Association shall pay from the Operating Account the operating expenses of the Common Area and any other payments relative to the Common Area as required or permitted by this Agreement, including without limitation the payment of any income from the Common Area owing to the Owners. The Association may also hold one or more reserve or capital improvement accounts for the Common Area."

2. The Declaration, as revised and modified by this First Amendment, is incorporated herein by reference with the same force and effect as if set forth at length herein. Except as amended hereby, all other terms and provisions of the Declaration are hereby ratified and confirmed and shall remain in full force and effect.

3. The provisions of this First Amendment shall be perpetual and construed to be covenants running with the Land and every part thereof and interest therein, and all provisions thereof shall be binding upon and inure to the benefit of the owner of all or any part of the Property or any interest therein, and his heirs, executors, administrators, legal representatives, successors and assigns.

4. This Amendment was duly executed and acknowledged in the manner provided in the Declaration, including, without limitation, in accordance with Article VIII, Section 4 of the Declaration, by approval of at least seventy-five percent (75%) of the Lot Owners.

[*Remainder of page intentionally blank; signature page follow.*]

IN WITNESS WHEREOF, the Declarant has executed this First Amendment as of the day and year first above written.

DECLARANT:

SOUTH FORK PHASE II, LLC,
a Delaware limited liability company,
as Declarant

By: _____
Name: Robert Bergner
Title: Manager

ACKNOWLEDGMENT

STATE OF Wyoming :
: SS:
COUNTY OF Campbell :

On this, the 24th day of July, 2014, before me, Crystal L. Terry, the undersigned Notary Public, personally appeared Robert Bergner, who acknowledged himself to be a Manager of **SOUTH FORK PHASE II, LLC**, a Delaware limited liability company, and that being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Crystal L. Terry
Notary Public
(SEAL)

My commission expires: 1/8/18

Registration No.: _____

CRYSTAL L. TERRY – NOTARY PUBLIC
COUNTY OF CAMPBELL
STATE OF WYOMING
My Commission Expires 1/8/18

[Signature Page to First Amendment to Declaration]

#31452925

LOT OWNERS:

SOUTH FORK PHASE II, LLC,
a Delaware limited liability company,
as a Lot Owner

By: _____
Name: Robert Bergner
Title: Manager

ACKNOWLEDGMENT

STATE OF Wyoming :
: SS:
COUNTY OF Campbell :

On this, the 24th day of July, 2014, before me, Crystal L Terry, the undersigned Notary Public, personally appeared Robert Bergner, who acknowledged himself to be a Manager of **SOUTH FORK PHASE II, LLC**, a Delaware limited liability company, and that being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Crystal L Terry
Notary Public
(SEAL)

My commission expires: 1/8/18

Registration No.: _____

CRYSTAL L. TERRY – NOTARY PUBLIC
COUNTY OF CAMPBELL STATE OF WYOMING
My Commission Expires 1/8/18

[Signature Page to First Amendment to Declaration]

#31452925

SFA PHASE I, LLC,
as a Lot Owner

By: _____
Name: Robert A. Bergner
Title: Manager

ACKNOWLEDGMENT

STATE OF Wyoming :
: SS:
COUNTY OF Campbell :

On this, the 24th day of July, 2014, before me, Crystal L. Terry, the undersigned Notary Public, personally appeared Robert A. Bergner, who acknowledged himself to be the Manager of **SFA PHASE I, LLC**, and that being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Crystal L. Terry
Notary Public
(SEAL)

My commission expires: 1/8/18

Registration No.: _____

CRYSTAL L. TERRY – NOTARY PUBLIC
COUNTY OF CAMPBELL STATE OF WYOMING
My Commission Expires 1/8/18

[Signature Page to First Amendment to Declaration]

#31452925

EXHIBIT A

Legal Description

Lots 9, 10, 11, 12, 13, and 14, and a 6/14 undivided interest in Lot 15 (Common Area), Block 5 South Fork Apartments Planned Unit Residential Development, City of Gillette, a Resubdivision of Block 5, RC Ranch Phase I, according to the official plat filed for record 20 October 2008 in Book 9 of Plats, pages 110 through 112 of the records of Campbell County, Wyoming.

Commonly known as: 4532,4534,4530,4524,4526, & 4528 Running W Drive, Gillette, WY 82718

RECORDED
ABSTRACTED
INDEXED
CHECKED

998940 Recorded on 7/25/2014 at 2.50.00 Fee 30.00
Book 2881 of PHOTOS Pages 348 to 354
Susan F. Saunders, Campbell County Clerk by: S. ROBERTS