

908824

DECLARATION OF PROTECTIVE COVENANTS

FOR

KHAN PLANNED UNIT COMMERCIAL DEVELOPMENT

THIS DELCARATION OF PROTECTIVE COVENANTS is made by TOWER WEST HOLDINGS, LLC, a Wyoming limited liability company, "Declarant" for itself, its successors, grantees, and assigns this 25th day of JANUARY, 2008.

ARTICLE I
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:

KHAN PLANNED UNIT COMMERCIAL DEVELOPMENT

and depicted and described on the final plat recorded in the real estate records of Campbell County in Book of Plat Maps as Reception No. 908823, Book 9, Page 56 (hereinafter referred to as the "Plat").

ARTICLE II
OBJECTS AND PURPOSES

All Property within the Planned United Commercial Development 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 and maintenance of the Property so as to, but not as a planned or common interest development.

ARTICLE III
DEFINITIONS

Section 1. "Building Area" shall mean all those areas shown on a final site plan for the Khan Planned United Commercial Development which are incorporated herein by this reference, and which are from time to time covered by a building or other commercial structure.

Section 2. "Common Area" shall mean all those areas which are intended for common use and enjoyment of some or all Owners.

Section 3. "Declarant" shall mean and refer to Tower West Holdings, LLC, its successors and/or assigns, if such successor or assigns are Owners of any portion of the Property and are designated by Tower West Holdings, LLC to perform the obligations of the Declarant hereunder.

Section 4. "Lot" shall mean and refer to the parcels of land within the Khan Planned Unit Commercial Development.

Section 5. "Occupant" shall mean any Person or Lessee from time to time entitled to the use and/or occupancy of any portion of a building under an ownership right or any lease, sublease, assignment, license, concession, or other similar agreement.

Section 6. "Owner" shall mean and refer to the record owner, whether one (1) or more persons or entities, of fee simple title to Lot, but excluding those having such interest solely as security for the performance of any obligation, in which event the equitable owner or such fee simple title shall be deemed to be the Owner thereof.

Section 7. "Site Plan" shall mean and refer to the final Khan Plan Unit Commercial Development for the Property.

Section 8. "Business Association" shall mean the Khan Business Association.

Section 9. "Parking Areas" shall mean all those areas identified on the plat for parking and the use of which shall be available to all Lot Owners within the subdivision.

ARTICLE IV CONSTRUCTION OF IMPROVEMENTS AND SIGNAGE

Section 1. Buildings and Improvements: All buildings and improvements shall conform to the Khan Planned Unit Commercial Development as approved by the City of Gillette and this Declaration of Covenants, and be approved by Declarant. Prior to construction, reconstruction, replacement or modification (collectively referred to as "Construction") of any building or other improvements on any lot within the Development, the Owner shall deliver to Declarant or its designated representative a complete set of schematic site, architectural, and other plans showing, among other things, the location of all intended facilities and improvements to the Lot, including parking areas, automobile ingress and egress, schematic architectural, floor plans and improvements to the Lot, all of which are hereinafter called "Plans and Specifications." All utility lines service to the Lot shall be buried underground.

Section 2. Plan Approval:

(a) Procedure. Within thirty (30) days after the submission of the Plans and Specifications, Declarant shall notify the Owner whether the same are approved or disapproved. Any disapproval shall set forth the general reasons for

such disapproval. Thereafter, the Owner shall revise its Plans and Specifications to incorporate such changes as may be requested to secure Declarant's approval, and shall deliver completed copies of the revised Plans and Specifications to Declarant. To the extent any subsequent material changes are made by the Owner to any approved Plans and Specifications, such changes shall be subject to the provisions of this Section 2 and the Owner shall secure the approval of Declarant in the manner provided herein,

(b) Improvement Designs. All improvement designs shall also be subject to the review by the Engineering, Building and Planning Division of the City of Gillette.

(c) No Liability. Declarant shall not be liable in damages or otherwise for any reason, including any mistake in judgment, negligence or nonfeasance, arising out of or in connection with the approval or disapproval or failure to approve or disapprove any application submitted pursuant to this Declaration. The Owner agrees that, by acquiring title to its Lot and submission of such plans, drawings and/or specifications, it will not bring any action or suit against Declarant to recover any such damages. In addition, the Owner shall indemnify, defend, protect and hold Declarant and its officers, directors, shareholders, employees and agents harmless for, from and against any and all causes of action, claims, liabilities, losses, damages, costs and expenses (including reasonable attorneys fees and court costs) arising out of or related to the approval or disapproval of any plans, drawings and/or specifications submitted to Declarant by or on behalf of the Owner or its Occupants. No approval shall be considered an approval of the plans, drawings and/or specifications from an engineering perspective or a determination that they meet building, environmental or engineering design standards, or that any such buildings or improvements have been built in accordance with such plans, drawings and/or specifications.

Section 3. Monument Signs. The Owner's Lot may have, subject to the City of Gillette ordinances, one freestanding monument sign on the Lot. Such monument sign shall display a single designation for an Occupant of the Lot. The initial design of the monument sign structure (including without limitation, height and size) shall be subject to applicable ordinances and be approved by Declarant. The cost of constructing, installing, maintaining, operating, repairing and replacing such monument sign structure and sign fascia shall be paid by the Owner.

Section 4. Building Signs. There shall be no other signs, banners or similar advertising media allowed on the Lot, except directional signs, handicap parking signs, and signs on buildings. All exterior building signs shall be restricted to identification of the businesses or services located or provided on the Lot and shall be subject to applicable city ordinances.

Section 5. General Construction Requirements:

(a) Manner of Performance. All work performed in the construction, maintenance and repair of any building, landscape, sign or other improvements located on the Lot shall be completed as expeditiously as possible and in such a manner as not to unreasonably interfere, obstruct or delay (i) access to or from the Property or another Lot or any part thereof, or to or from any public right-of-way, (ii) construction work being performed on the another Lot, or (iii) the use, enjoyment or occupancy of the any Lot by Declarant. Unless otherwise specifically stated herein, the Owner shall, at its sole cost and expense, promptly repair and restore all buildings, signs and common area improvements damaged or destroyed in the performance of such work or otherwise.

Any person constructing a building on a Lot shall maintain in full force and effect a policy of builders risk insurance with such coverage as may be required by the City of Gillette for any contractor constructing a dwelling within the city limits.

Any damage done to sidewalks, streets, or curbs during the construction of the dwelling shall be the financial responsibility of the Lot Owner.

During construction, all contractors and Owners shall be required to have adequate trash bins on the property. No trash shall be allowed to lay on the surface of the Lot. All trash shall be dumped into the trash containers on a daily basis.

All contractors shall provide a portable toilet on their property for use by all laborers working at the site.

No surplus cement shall be allowed to be dumped on any lots located within the subdivision, nor shall any materials or excess dirt from one lot be placed on an adjoining lot without the approval of the adjacent lot owner.

All City of Gillette Nuisance Ordinances shall apply to all lots and shall be enforced.

(b) Staging. Staging for the construction, maintenance and repair of any building, sign or other improvements located on the Lot, including, without limitation, the location of any temporary buildings or construction sheds, the storage of building materials, and the parking of construction vehicles and equipment, shall be limited to and take place only on the Lot. Unless otherwise specifically stated herein, the Owner shall, at its sole cost and expense, promptly repair and restore or cause to be promptly repaired and restored to its prior condition all buildings, signs and Common Area improvements, if any, damaged or destroyed in the performance of such work.

(c) Standards of Work. All work performed in the construction, maintenance and repair of any building, sign or other improvements located on the Lot shall be done in a good and workmanlike manner and in accordance with good design and engineering standards.

(d) Lighting.

(i) Required Lighting. The lighting for the Common Areas and the Lot shall remain on each day from dusk until 11:00 p.m. The Lot Owner shall, at its expense, keep any exterior building security lights on from dusk until dawn. No Lot Owner shall allow lighting from his Lot to incidentally shine on another Lot without the consent of the Lot owner.

(ii) Overtime Lighting. The parties recognize that the hours of operation of the businesses located on the Property may be different from each other and, accordingly, that an Owner may wish to illuminate the Common Area on a Parcel beyond the hours required under Section 5(d)(i). Therefore, any Owner shall have the right to require that the Common Area lights on a Parcel be illuminated beyond the hours required under said Section, provided that such requesting Owner notifies the Owner of the Lot to be lighted of such request not less than fifteen (15) days in advance. In its notice, the requesting Owner shall state the period during which it wishes the lights to be kept on, and the requesting Owner shall pay to the Owner of the Lot to be lighted the cost of the electricity required to illuminate such lights beyond the hours required in Section 5(d)(i) within thirty (30) days after receipt of an invoice therefore.

(e) Mechanics' Liens. If any mechanics', materialmen's, architects', or other design or construction liens shall be filed against the Property or any Lot for any work done or materials furnished in connection with the Lot, the Owner shall: within thirty (30) days after the filing of such lien, either (i) cause any such outstanding lien or claim of lien to be released of record, or (ii) give such assurances as would enable a title insurance company to insure over said outstanding lien or claim of lien. The Owner shall indemnify, defend, protect and hold Declarant and their respective officers, directors, shareholders, employees and agents harmless for, from and against any and all causes of action, claims liabilities, losses, damages, costs, expenses (including reasonable attorneys' fees and court costs), liens and claims of lien arising out of or in any way connected with the performance of such work.

(f) Indemnity. In addition to other indemnification set forth herein, the Owner shall indemnify, defend, protect and hold Declarant, and its respective officers, directors, members, employees and agents harmless for, from and against any and all causes of action, claims, liabilities, losses, costs and expenses (including reasonable attorneys' fees and court costs) and damages,

arising out of or related to injury to or death of any person or damage to or destruction of any property (i) arising out of or resulting from any construction activities performed by or at the request of the Owner or its Occupants, or (ii) occurring within the Property.

(g) Debris Excavation. All excavation to be conducted by an Owner shall first be approved by the Declarant and the City of Gillette. During all construction on the Lot, the Owner shall keep the construction site and surrounding areas clean and free of construction materials, trash and debris, and shall take appropriate precautions to protect against personal injury and property damage to the other party and its Occupants and invitees. With regard to excavation, and without limiting any other provision of this Declaration, no excavation shall be made on, and no sand, gravel, silt or other material shall be removed from, the Lot, except in connection with the construction or alteration of buildings or improvements approved in the manner set forth in this Declaration. Upon completion of any such operations, exposed openings shall be backfilled and disturbed ground shall be graded, leveled and paved or landscaped in accordance with the approved Plans and Specifications. No excavation which impacts or alters the drainage of other Lots within the development shall be permitted.

(h) Building Areas. Prior to construction, all portions of the Lot which will be used for buildings or parking shall, until developed for such building or parking use, be either developed as parking area or seeded or graveled and be kept weed free and clean by the Owner.

Section 6. Building Maintenance. From and after the date construction of a building on the Lot is completed, the exterior of such building shall be maintained by the Owner in first class order, condition and repair.

Section 7. Damage and Destruction. If the building(s) or improvements on the Lot are damaged or destroyed, the Owner may, but shall not be obligated to, restore its building(s) or improvements on the Lot. If the Owner elects to so restore its building(s) or improvements, such building(s) or improvements shall be restored to a condition at least as good as the building(s) or improvements which existed immediately prior to such damage or destruction. All such restoration and reconstruction shall be performed in accordance with the following requirements as the same are applicable thereto: (i) no work on the Lot shall be commenced unless the Owner desiring to perform the same has in each instance complied with the appropriate provisions of this Declaration with respect to approval of Plans and Specifications for work performed on the Lot; and (ii) any work shall be performed in accordance with the requirements of this Declaration. If the Owner elects not to restore its building(s) and improvements following damage and destruction, the Owner's obligations with respect to the Common Areas on its Lot shall continue, and the Owner shall, at its sole cost, raze its damaged building(s) and improvements and clear and the Building Area and surrounding Common Areas of all debris and reclaim the property.

Section 8. Insurance During Construction.

(a) Prior to commencing any construction activities within the Lot, the Owner shall obtain or require its contractors to obtain and thereafter maintain so long as such construction activity is occurring, at least the minimum insurance coverages set forth below:

- (i) Workers' compensation and employer's liability insurance as required by Wyoming law.
- (ii) Employer's liability insurance in the amount of \$2,000,000 each accident for bodily injury.
- (iii) Commercial General Liability insurance covering all operations by or on behalf of the general contractor, which shall include the following minimum limits of liability: \$2,000,000 each occurrence (for bodily injury and property damage).

(b) Automobile Liability Insurance: Any automobile liability insurance (bodily injury and property damage liability) including coverage for owned, hired, and non-owned automobiles, shall have limits of liability of not less than \$1,000,000 combined single limit each accident for bodily injury and property damage combined. The general contractor shall require each of its subcontractors to include in their liability insurance policies coverage for Automobile Contractual Liability.

(c) Umbrella/Excess Liability Insurance: The general contractor shall also carry umbrella/excess liability insurance in the amount of \$3,000,000. If there is not per project aggregate under the Commercial General Liability policy, the limit shall be \$5,000,000.

(d) If the construction activity involves the use of another Owner's Lot, then the Owner of such Lot shall be named an additional insured and such insurance shall provide that the insurance shall not be canceled, or reduced in amount or coverage below the requirements of this Declaration, without at least thirty (30) days' prior written notice to the additional insureds and each additional insured. If such insurance is canceled or expires then the construction Owner shall immediately stop all work on or use of the other Owner's Lot until either the required insurance is reinstated or replacement insurance obtained. The general contractor shall supply each Owner Certificates with respect to all insurance required by this Section. Notwithstanding the foregoing, written permission to use another Owner's Lot shall be obtained before entering on the Lot Owner's property.

- (e) Effective upon the commencement of construction of any building

on its Lot and so long as such building exists, an Owner shall carry, or cause to be carried, property insurance with "all-risk" coverage, in the amount of 100% of full insurable replacement cost thereof (excluding footings, foundations or excavations).

ARTICLE V EASEMENTS

Section 1. Utility Easements.

(a) Grant of Easements. Declarant hereby grants to the Owner, and the Owner hereby grants to Declarant, for the benefit of the Declarant's property and the Lot, as applicable, a non-exclusive and perpetual easement under, through and across the Common Areas (exclusive of any portion within a Building Area), for the installation, operation, maintenance, repair and replacement of utility lines. The initial location of any utility lines shall be subject to the prior written approval of the Declarant, which approval shall not be unreasonably withheld; provided, however, that it shall in all events be reasonable for the Declarant to deny its approval if the proposed location is within a Building Area.

(b) Easement Area and Facilities. The easement area shall be no wider than necessary to reasonably satisfy the requirements of a private or public utility, or ten (10) feet on each side on the centerline if the easement is granted to a private party. All utility lines shall be installed and maintained below ground level, except for (i) ground-mounted electrical transformers and such other facilities as are required to be above ground by the utility providing such service, and (ii) temporary utility service required during construction, maintenance and repair of any buildings or improvements located on a Lot.

(c) Installation and Maintenance. The installation, operation, maintenance, repair and replacement of such utility lines shall not unreasonably interfere with the use of the improved Common Area or with the normal operation of any business on the Property. Any party installing utility lines pursuant to the provisions of this Section shall pay all costs and expenses with respect thereto, shall cause all work in connection therewith (including general clean-up and proper surface and/or subsurface restoration) to be completed as quickly as possible and in a manner so as to minimize interference with the use of the Common Area, and shall provide Declarant with as-built plans for all such facilities, including the location of the easement (as determined by a licensed surveyor), within thirty (30) days after the date of completion of construction. Except for any utility lines installed by Declarant, the party installing utility lines shall maintain, repair and replace them at its sale cost and expense. If Declarant installed a utility line for the exclusive use by the Owner, then the Owner shall maintain, repair and replace the utility lines which were so installed by Declarant.

(d) Relocation of Utility Lines. At any time and from time to time, the owner shall have the right to relocate any utility lines installed on its Parcel pursuant to the foregoing grant of easement, provided that such relocation: (i) shall be performed only after sixty (60) days' prior written notice of the grantor's intention to undertake the relocation shall have been given to Declarant and any owners affected by the relocation; (ii) shall not unreasonably interfere with or diminish utility service to any Parcel served by the Utility Lines; (iii) shall not reduce or unreasonably impair the usefulness or function of the utility lines; (iv) shall be performed without cost or expense to any other owner; (v) shall be completed using materials and design standards which equal or exceed those originally used; (vi) shall have been approved by the service provider and any appropriate governmental agencies having jurisdiction thereof; (vii) shall provide for the original and relocated area to be restored to the original specifications; and (viii) shall not interfere with the conduct or operation of the business of any Occupant. The Lot Owner performing such relocation shall provide as-built plans for all such relocated utility lines and facilities to those affected by such utility lines within thirty (30) days after the date of completion of such relocation.

(e) Term. The terms and provisions of this Article V shall survive the expiration or earlier termination of this Declaration.

Section 2. Landscaping Easement. The Owner shall be responsible for the installation, irrigation, maintenance and replacement of landscaping on any portion of its Lot designated as landscape areas on the approved Plans and Specifications for such Lot and/or required to be landscaped by the City of Gillette, which landscaping shall be maintained in compliance with the requirements of all applicable governmental regulations and ordinances. The Owner hereby grants to Declarant a non-exclusive easement for the installation, irrigation, maintenance and replacement of landscaping on any such portions of the Lot. If the Owner fails or refuses to undertake its responsibilities described in this Section with respect to landscaping, Declarant may perform such landscape work as may be reasonably necessary to comply with such requirements, and within thirty (30) days after demand by Declarant, the Owner shall reimburse Declarant for all costs and expenses incurred by Declarant in connection with such landscape work, together with a management fee equal to fifteen percent (15%) of such costs and expenses.

Section 3. No Merger. Notwithstanding Declarant's or the 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.

Section 4. Maintenance of Common Areas, Easements and Parking Areas. The maintenance of the Common Areas, Easements and Parking Areas shall be the responsibility of the Khan Business Association.

Section 5. Parking Easement. Each Lot Owner hereby grants to Declarant and Declarant grants to each Lot Owner a non-exclusive easement for parking in all platted Parking Areas, which area shall be for the mutual benefit of all Lot Owners, their employees, guests and patrons.

ARTICLE VI
USE RESTRICTIONS

Section 1. General Use Restrictions.

(a) Lots with the Planned Unit Commercial Development shall be restricted as follows:

- (i) Lot 1 may be used for any approved commercial use except it may not be developed into a motel or hotel.
- (ii) Lots 2, 3 and 4 shall be used for motel and hotel complexes, or any other commercial business not specifically prohibited by these Covenants.

(b) No portion of the Common Areas shall be used for the sale, storage or display of merchandise and no promotions shall be held in the Common Areas without the prior written consent of Declarant, which consent may be given or withheld in Declarant's sole and absolute discretion.

(c) Lot 1 shall be used for retail sales or office uses which offer retail services directly to the public except for a motel or hotel. No part of the Lot shall be used for a business or use which: (i) creates strong, unusual or offensive odors, fumes, dust or vapors which are objectionable to Declarant; (ii) is a public or private nuisance; (iii) emits noises or sounds which are objectionable to Declarant due to intermittence, beat, frequency, shrillness or loudness; or (iv) creates unusual fire, explosive or other hazards.

(d) No Lot within the Development shall be used for any non-retail use or for any of the following purposes: a cemetery; mortuary; bookstore or establishment engaged in the business of selling, exhibiting or delivering pornographic or obscene materials; junk yard; recycling facility or stock-yard; motor vehicle or boat storage facility; a night club or adult entertainment facility; or fuel filling station.

(e) The Lot Owner shall provide Declarant with written notification of any proposed change in use (and each subsequent change in use) from the

initial use of any business operation located on the Lot, and any such change shall be subject to the prior written approval of Declarant, which approval shall not be unreasonably withheld or delayed. It shall be reasonable for Declarant 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, (ii) if the use violates zoning or other governmental laws, rules and/or regulations.

Section 2. Hazardous Materials.

(a) Restriction on Hazardous Materials. No Hazardous Material (as defined in Section 2(c) below) shall be brought upon, kept, used, generated or stored in or around any Lot with in the Development, except with the prior written consent of Declarant, which consent shall not be unreasonably withheld, and in compliance with an applicable Environmental Regulations (as defined in Section 2(e) below), and then only to the extent that such Hazardous Material is necessary in the ordinary course of business conducted on the Lot. Notwithstanding the foregoing, Declarant's consent shall not be required for the storage, use or disposal of common household cleansers and degreasers in the ordinary course of business on the Lot, provided that such storage, use and disposal is in compliance with all applicable Environmental Regulations. It shall be *per se* reasonable for Declarant to prohibit underground storage tanks on the Property. Declarant's approval of any method of use or storage of Hazardous Materials on the Lot shall in no way limit Declarant's rights and remedies under this Section 2, nor create any liability on the part of Declarant. Without limiting the foregoing, in the event of a violation of any Environmental Regulation on the Lot, the Lot Owner shall promptly take all actions at its sole expense as necessary to correct such violation to the satisfaction of Declarant.

(b) Indemnity. If any Lot Owner breaches its obligations under Section 2(a) above, or if a Hazardous Material is at any time released or found to exist on any Lot (except to the extent caused by Declarant), then the Lot Owner shall indemnify, defend, protect and hold Declarant and its respective officers, directors, members, employees and agents, and all other Lot Owners harmless from and against any and all causes of action, claims, liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees and court costs) arising out of such breach or the existence of such Hazardous Material, including without limitation, (i) diminution in value of the Lots, (ii) damages for the loss or restriction on use of rentable or usable space or of any improvement on the Lots, (iii) sums paid in settlement of, payment of, or in order to comply with any claims, suits, actions, judgments, proceedings or investigations, (iv) reasonable consultants' fees, experts' fees and incidental costs incurred in connection with any of the above, and (v) reasonable costs of any investigation of site conditions or any cleanup, remediation, removal or restoration work required by any governmental or quasigovernmental authority with jurisdiction.

The obligation to indemnify, defend, protect and hold Declarant harmless as set forth herein shall survive the expiration of this Declaration.

(c) Definitions. As used herein, the term "Hazardous Material" means: (1) any waste, material or substance (whether in the form of a liquid, a solid or a gas and whether or not air-borne), which is deemed to be a pollutant or a contaminant, or to be hazardous, toxic, ignitable, reactive, corrosive, dangerous, harmful or injurious to public health or to the environment, and which is or may become regulated by or under the authority of any applicable local, state or federal laws, judgments, ordinances, orders, rules, regulations, codes or other governmental restrictions or requirements, any amendments or successor(s) thereto, replacements thereof or publications promulgated pursuant thereto (collectively "Environmental Regulations" and individually, an "Environmental Regulation"); (ii) petroleum and hydrocarbons, whether crude or refined, and any fraction or mixture thereof; (iii) asbestos; (iv) polychlorinated biphenyls; and (v) any radioactive material. The term "Environmental Regulations" means local, state and federal laws, judgments, ordinances, orders, rules, regulations, codes and other governmental restrictions and requirements, any amendments and successors thereto, replacements thereof and publications promulgated pursuant hereto, which deal with or in any manner relate to Hazardous Material.

ARTICLE VII
MAINTENANCE, TAXES, INSURANCE

Section 1. Maintenance.

(a) Maintenance Standards. The Lot Owner shall keep its 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:

(b) 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;

(c) 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 and the sale or display of merchandise;

(d) Maintaining, repairing, restriping and replacing, when necessary, all traffic directional signs, markers and lines;

(e) Keeping the Common Areas within the Lot lighted as required in this Declaration;

(f) 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;

(g) 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;

(h) Maintaining, repairing, cleaning and 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;

(i) Maintaining, repairing and replacing, when necessary, the monument signs on the Lot;

The foregoing obligations shall include any repairs or replacements which may become necessary due to damage or destruction of the Common Areas on the Lot.

Section 2. Take-Over Right. In the event that any Lot Owner fails or refuses to undertake the maintenance obligations set forth in this Section 5 then upon thirty (30) days prior written notice to the offending Lot Owner, Declarant may at its option but without any obligation to do so, elect to assume the Lot Owner's maintenance obligations. The Lot Owner hereby grants to Declarant, and its contractors, agents and employees, a license to enter upon the Lot to operate, maintain, repair and replace the Common Areas located thereon. In no event shall Declarant be responsible for security or traffic supervision, nor shall Declarant be obligated to perform repairs and replacements of the Common Area or Lot in connection with damage or destruction by fire or other casualty or in connection with a taking under the powers of eminent domain or transfer in lieu thereof. Upon thirty (30) days prior written notice to the Lot Owner, Declarant may elect to return to the Lot Owner the maintenance obligations set forth above.

Section 3. Reimbursement: Lien. In the event Declarant is performing the Common Area maintenance and/or carrying the Common Area liability insurance on the Lot, then the Lot Owner shall reimburse Declarant the reasonable costs incurred by Declarant in connection therewith, plus a management fee equal to fifteen percent (15%) of such costs to defray administrative expenses, within thirty (30) days after receipt of Declarant's invoice therefore. If the Lot Owner fails to pay when due its share of any invoice for the Common Area maintenance expenses described above (including the management fee described herein), or any other sums which may be due and owing

from the Lot Owner to Declarant under this Declaration, then, following any cure period provided in Article IV below, such failure shall constitute a default under this Declaration and Declarant may thereafter institute legal action against the Lot Owner for reimbursement, plus interest from the date said bill was due and payable to and including the date said bill is paid, at the Rate of eighteen percent (18%) per annum. Furthermore, Declarant shall have a lien on the Lot Owner's Lot for the amount of said expenses and accrued interest as set forth above. The lien provided for in this Section shall only be effective when filed for record by Declarant as a claim of lien against the Lot Owner in the office of the recorder of the county in which the Lot is located, signed and verified, which shall contain at least: (1) an itemized statement of all amounts due and payable pursuant hereto; (ii) a description sufficient for identification of the Lot which is the subject of the lien; (iii) the name of the owner or reputed owner of the Lot; and (iv) the name and address of Declarant. The lien, when so established against the Lot described in the lien, shall be prior and superior to all right, title, interest, lien or claim which may be or has been acquired or attached to such Lot after the time of filing the lien. The lien shall be for the use and benefit of Declarant or its successors and may be enforced and foreclosed in a suit or action brought in any court of competent jurisdiction.

Section 4. Taxes and Assessments. The Lot Owner shall pay or cause to be paid, prior to delinquency, all taxes and assessments levied with respect to its Lots and the buildings, improvements and any personal property located thereon and owned or leased by the Lot Owner. If a tax or assessment may be paid in installments, the Lot Owner may pay such tax or assessment in installments, as and when the same becomes due and payable. Nothing contained in this Section 4 shall prevent the Lot Owner from contesting, at its sole cost and expense, any taxes and assessments with respect to its Lot, 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 Lot Owner shall promptly pay all such taxes and assessments determined to be owing, together with all interest, penalties and costs thereon.

Section 5. Liability Insurance. The Lot Owner shall, at its sole cost and expense, maintain the following policies of insurance in full force and effect:

(a) Commercial general liability insurance with a 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 Lot Owner's building and the Common Areas of the Lot, by the Lot Owner and its Occupants (the "Lot Owner's Liability Insurance"). The insurance required pursuant to this Section shall include the following provisions: (i) it 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) it shall provide for severability of interests; (iii) it shall provide that an act or omission of

one of the insureds or additional insureds which would void or otherwise reduce coverage, shall not reduce or void the coverage as to the other insureds; and (iv) it shall provide for contractual liability coverage, naming Declarant as an additional insured, endorsed to cover said Owner's agreement to indemnify as set out in Section 6 below and elsewhere in this Declaration. The Lot Owner agrees to furnish to Declarant upon its request a certificate affirming that: (i) such insurance is in full force and effect; (ii) the premiums have been paid in full; (iii) the appropriate parties are designated as additional insureds as required by this Declaration; (iv) the policy contains any required waiver of subrogation; and (v) such insurance may not be cancelled or coverage reduced below the levels required to be maintained hereunder without at least thirty (30) days' prior written notice to all insureds and additional insureds.

(b) The Lot Owner's 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 (\$5,000,000.00) 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 caused 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 (\$3,000,000.00) per occurrence. The Lot Owner's Liability Insurance shall be made on an "occurrence" basis and not on 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 a 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 \$25,000.00.

(c) Property Insurance. The Lot Owner 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 its Lot in an amount at least sufficient to raze and demolish all the buildings and improvements located on the Lot. Any such insurance shall

otherwise conform to the provisions with respect to insurance contained in Section 5.

Section 6. Indemnification by Owners. Each Owner shall defend, indemnify and hold any other Owner harmless for, from and against any and all damages, liabilities, losses, actions, claims, costs and expenses (including reasonable attorneys' fees and court costs and reasonable attorneys' fees and court costs on appeal) (1) in collection with the loss of life, personal injury and/or damage to property arising from or out of any occurrence in or upon the indemnifying Owner's Lot, or occasioned wholly or in part by any grossly negligent or willful act or omission of the Owner or its Occupants; (ii) occurring in the interior of any building constructed on the indemnifying Owner's Lot, unless caused by the grossly negligent or willful act or omission of the indemnified Owner; (iii) in connection with the failure to comply with the provisions of this Declaration; (iv) in connection with any act or omission of such Owner. If Declarant shall, without fault, be made a party to any litigation commenced by or against the Lot Owner, or if Declarant shall, in its reasonable discretion, determine that it must intervene in such litigation to protect its interest hereunder, then the Lot Owner shall defend Declarant using attorneys reasonably satisfactory to Declarant and shall pay all costs, expenses and reasonable attorneys' fees and costs in connection with such litigation. Declarant shall have the right to engage its own attorneys in connection with any of the provisions of this Section 6 or any of the provisions of this Declaration, including, but not limited to, any defense of or intervention by Declarant, notwithstanding any contrary provisions of the laws or court decisions of the State of Wyoming.

Section 7. Mutual Release. Each Owner (the "Releasing Party") hereby releases and waives for itself, and each person claiming by, through or under it, the 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 under Section 5 hereof, 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. Each Owner agrees to use its reasonable efforts to obtain, if needed, appropriate endorsements to its policies of insurance with respect to the foregoing release; provided, however, that failure to obtain such endorsements shall not affect the release hereinabove given. Each Owner ("Indemnitor") covenants and agrees to indemnify, defend and hold harmless each other Owner ("Indemnitee") from and against all claims asserted by or through any Permittees of the Indemnitor's Lot for any loss or damage to the property of such Permittee located upon the Indemnitor's Lot, which loss or damage is covered by the insurance required to be maintained under Section 5 above, irrespective of any negligence on the part of the Indemnitee which may have contributed to or caused such loss.

Section 8. Waiver of Subrogation. The Owners and Occupants 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, or its respective property, either real or

personal, arising from any risk generally covered by fire and extended coverage insurance and from airy risk covered by insurance then in effect. In addition, the Owners 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 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 KHAN BUSINESS ASSOCIATION

Section 1. Membership. Each Lot Owner shall be required to be a member of the Khan Business Association (the "Association") and to contribute its proportionate share of the expenses of the Association.

Section 2. Duties and Responsibilities. The Association shall have the responsibility of operating and maintaining the Common Areas, Easements, Parking Areas and private roads within the Khan Planned Unit Commercial Development.

Section 3. Assessments. The Association shall have the power to assess each Lot Owner for its proportionate share of the costs and expenses incurred by the Association in carrying out its obligations.

Section 4. Lien for Non-Payment. Any Lot Owner which fails to pay its proportionate share of such costs and expenses within sixty (60) days of the billing therefore, shall be subject to the filing of a lien against the real property by the Association for the amount of such share, plus costs and attorney fees. The foreclosure of such lien may be enforced pursuant to Wyoming Law.

ARTICLE IX GENERAL PROVISIONS

Section 1. Successors and Assigns: Covenants Running with the Land. This Declaration shall inure to the benefit of and be binding upon 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.

(a) 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 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 of the 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, Declarant shall be entitled to seek temporary and permanent injunctions against the breach of any of the provisions hereof if 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 in equity.

(b) Self-Help. In the event the Lot Owner fails to perform any term or provision of this Declaration, then, upon the expiration of the cure period provided in Section 3(a) above (provided, however, that in an emergency no notice shall be required), and upon a.11 additional ten (10) days' prior written notice, Declarant shall have the right, but not the obligation; to enter upon the Lot to cure such default for the account of and at the expense of such Lot Owner, unless the Lot Owner commences to cure such default within such ten (10) day period and thereafter diligently pursues such cure. If Declarant exercises its self-help right, then, within ten (10) days after receipt of an invoice from Declarant, the Lot Owner shall reimburse to Declarant all costs reasonably incurred by Declarant in curing such default, plus an administrative fee equal to fifteen percent (15%) of such costs. The foregoing shall be in addition to all other remedies provided for in this Declaration or under applicable law. No breach of or default under this Declaration shall entitle a party to terminate this Declaration, but such limitation shall not affect in any other manner any other rights or remedies which such party may have hereunder or at law or in equity.

Section 4. Amendment; Termination. This Declaration may not be modified or terminated in any respect whatsoever by the Lot Owner. Declarant (or any successor Owner of the Property) may modify or terminate this Declaration only with the consent of the Lot Owner which consent shall not be unreasonably withheld, conditioned or

delayed, 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 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 of the Lot 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 6. 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 Declarant, either in its capacity as owner of a Lot, shall be addressed as follows:

Tower West Holdings, LLC
Attn: Aftab Khan
109 N. US Highway 14-16
Gillette, Wyoming 82716

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 purpose 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 inability to deliver, 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 nondelivery by the sending party.

Section 7. 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 or default in the performance of any of the covenants, conditions and restrictions contained herein by the same or any other person or entity.

Section 8. 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 9. Partial Invalidity. If any term or provision of this Declaration or the application hereof to any person or circumstance shall to any extent be 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 10. 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 as agent for another, unless expressly authorized to do so herein or by separate written instrument signed by the party to be charged.

Section 11. 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 12. Recording. This Declaration shall be recorded in the office of the recorder of the county in which the Property is located.

Section 13. 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 any 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 14. Mortgage 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 foreclosure or otherwise.

Section 15. Variations. Were appropriate, Declarant may, in its sale and subjective discretion, grant variations to the provisions hereof, where strict adherence to

the requirements of this Declaration or any architectural standards established by Declarant would, in the judgment of Declarant, cause undue hardship.

IN WITNESS WHERE, THIS DECLARATION HAS BEEN EXECUTED AS THE DAY AND YEAR FIRST ABOVE WRITTEN.

TOWER WEST HOLDINGS, LLC

By: [Signature]
AFTAB KHAN
Manager

STATE OF WYOMING)
) ss.
County of Campbell)

The foregoing instrument was acknowledged before me this 28th day of January, 2008, by AFTAB KHAN, Manager of Tower West Holdings, LLC.

WITNESS my hand and official seal.

[Signature]
Christie A. Johnson
Notary Public

My Commission expires: August 6, 2008



RECORDED
ABSTRACTED
INDEXED ✓
CHECKED

908824 Recorded on 3/28/2008 at 4.18.00 Fee 66.00
Book 2350 of PHOTOS Pages 324 to 344
Susan F. Saunders, Campbell County Clerk by: L. GROSZ