

## **SUBDIVISION IMPROVEMENT AGREEMENT**

**THIS AGREEMENT** dated this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between HANSEN & HANSEN, LLP, an Idaho limited liability partnership, hereinafter referred to as “Subdivider”, and the TOWN OF JACKSON, a municipal corporation of the State of Wyoming, hereinafter referred to as the “Town”, provides as follows:

**WHEREAS**, Subdivider is required to construct certain public improvements (the “Improvements”) as a condition of the approval of the final plat and associated Final Development Plan (Permit#B17-0622) approved by Town Council on \_\_\_\_\_ (the “Development Plan”), as memorialized to date in that certain Development Agreement executed and recorded in the Office of the Teton County Clerk by the Town and the Subdivider on \_\_\_\_\_, and all amendments thereto (the “Development Agreement”); and

**WHEREAS**, the Town of Jackson Land Development Regulations also require that a subdivision agreement for public improvements be executed by the Subdivider and the Town and recorded in the Office of the Teton County Clerk with a Final Plat Subdivision and if this Agreement and the Development Agreement conflict, the terms of the Development Agreement shall control; and

**WHEREAS**, the Town Council approves of the terms and conditions of this agreement for the Final Plat Subdivision designated as the Hidden Hollow 1<sup>st</sup> Addition to the Town of Jackson; and

**WHEREAS**, this Subdivision Improvement Agreement supplements the Development Agreement.

**NOW, THEREFORE, IT IS HEREBY AGREED** that for and in consideration of the aforesaid premises and the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, paid by each of the said parties to the other, Subdivider on its own behalf or any successor in interest or assign, and the Town do mutually covenant and agree as follows:

### **1. SUBDIVIDER TO COMPLY**

Subdivider shall comply with all improvement requirements contained in the Development Agreement, Section 8.5.3 of the Town of Jackson Land Development Regulations, the Development Plan and subdivision improvement plans and specifications retained on file in the office of the Town Engineer, the Planning Director, and the requirements of the Town Planning and Zoning Commission and Town Council for this subdivision and additional improvements as set forth within this document. Improvements shall be engineered, designed, constructed, and installed solely at Subdivider’s own cost.

2. DEVELOPMENT PLAN AND FINAL PLAT REQUIREMENTS INCORPORATED

The requirements of the Town Council, as set forth in its approval of the Development Plan and Final Plat are hereby incorporated herein by reference as though fully set forth. Development and use of all land within the subdivision is limited to that conveyed by the Final Plat and the Land Development Regulations of the Town of Jackson, as they may be amended from time to time.

3. APPROVED SUBDIVISION INFRASTRUCTURE IMPROVEMENT PLANS AND SPECIFICATIONS

The subdivision infrastructure improvement plans and specifications filed by Subdivider or its agents, as approved by the Town Engineer and maintained on file in the office of the Town Engineer, and any revision of said improvement plans and specifications approved by said Town Engineer and additional improvements as set forth within this document and in the Development Agreement are hereby incorporated herein by reference as though fully set forth. All public improvement work required by Subdivider under this agreement and the Development Agreement shall be in accordance with said improvement plans and specifications.

4. ESTIMATED COST OF SUBDIVISION INFRASTRUCTURE IMPROVEMENTS AND SECURITY THEREFORE

The list of improvements and upgrades together with the total cost of improvements and upgrades required by this agreement as estimated by the Subdivider and approved by the Town Engineer is attached hereto as **Attachment “A”** and by this reference made a part hereof. Subdivider shall deposit with the Town, prior to filing of the Final Plat, an irrevocable letter of credit, or performance and payment bond, or funds in escrow, or other equivalent security or commitment approved by the Town Council. Such security shall be in the amount of 125% of the estimate approved by the Town Engineer and Planning Director (the “Security”) and such security amount shall be released as portions of work are completed and reasonably approved for release by the Town Engineer per Paragraph 12 below.

5. ESTIMATED COST OF OTHER SUBDIVISION IMPROVEMENTS AND SECURITY THEREFORE

Affordable Housing Obligation. Subdivider shall construct those certain affordable units and those certain workforce units as required by the Development Plan, and all amendments thereto, and the Hidden Hollow Planned Unit Development Master Plan (the “HHPUD Master Plan”), and all amendments thereto (the “Affordable Units” and the “Workforce Units”, respectively).

6. PUBLIC PATHWAYS

The variable width Public Pathways delineated as “pathway easements” on the site plan of the Final Development Plan approved by Council, requires that the Subdivider complete the installation of the Public Pathways as part of the overall improvements described in **Attachment “A”**. At such a time that the Town determines that public access is safe and appropriate, the Subdivider shall receive a letter from the Town requesting that all required work necessary (survey, design and installation) of an approved Public Pathway or Public Pathway segment shall be completed within six months of the request. The Subdivider may be granted an extension for the completion based on a determination by the Town Engineer that weather conditions has precluded progress.

7. UNDERGROUND ELECTRICAL POWER, TELEPHONE, TELEGRAPH, CABLE TELEVISION, AND GAS FACILITIES

All electrical power, telephone and telegraph communication, cable television, and gas facilities within the subdivision shall be installed underground, except that above-ground facilities necessary to serve underground facilities, other installation of peripheral overhead electrical transmission and distribution feeder lines, or other installation of either temporary or peripheral overhead communications, distance, trunk, or feeder lines may be allowed. Subdivider understands and agrees that any and all said facilities that are to be constructed within or under any street improvements shall be in place prior to the construction of the surface street improvements. Subdivider affirms that the public utility companies, including the cable television company enfranchised by the Town, providing the said services and facilities to and within the subdivision have been directly consulted by Subdivider through its officers, agents, or employees and that Subdivider is informed as to the approximate cost to Subdivider of the provision and installation of said facilities and services underground and that the requirements for said facilities have been considered in the preparation of the subdivision improvement plans.

8. EXACTIONS:

Subdivider shall pay exactions for the following purposes and in the following amounts to the Town prior to the filing of the Final Plat:

Parks Exactions:                   \$ \_\_\_\_\_  
School Exaction:                   \$ \_\_\_\_\_

9. TIME FOR COMPLETION OF AFFORDABLE UNITS:

The required affordable units shall be completed within the time frame required by the HHPUD Master Plan, as amended.

10. WARRANTY:

Except for Affordable Housing Mitigation which affordable units shall have a one (1) year warranty, all work and improvements required pursuant to this agreement and the ordinances of the Town shall be subject to and shall carry a guarantee and warranty for all work and materials for a period of two (2) years from the date of acceptance, which shall be for the benefit of the Town and this obligation shall survive any release of security by the Town. The Subdivider shall post maintenance bonds or appropriate letters of credit to secure the warranties equal to 20% of the total estimated cost of construction.

#### 11. LIABILITY:

Subdivider agrees to carry a comprehensive general liability policy with minimum limits of \$500,000 for each occurrence and \$1,000,000 annual aggregate for bodily injury and \$500,000 for each occurrence and \$1,000,000 annual aggregate for property damage or a combined single limit policy with minimum limits of \$1,000,000 for each occurrence and \$2,000,000 annual aggregate which includes coverage for manufacturer and contractors, independent contractors, products, completed operations and personal injury. Subdivider also agrees to name the Town as an additional named insured as respects the contract, and a certificate of insurance covering these items shall be filed with the Town Engineer contemporaneous with the filing of the Final Plat.

#### 12. PERFORMANCE TESTING AND INSPECTION:

Subdivider shall be required to obtain a Town approved State of Wyoming licensed engineer to perform and/or monitor all testing required per the Town standards.

Subdivider shall be responsible for obtaining all required Town permitting and abiding by the conditions set forth within same. Subdivider shall be required to complete all construction work and necessary performance tests on installed infrastructure per the Grading Permit application. Subdivider shall be responsible for the preparation of daily inspection reports and tests results. This information shall be submitted to the Town Engineer. The Town shall have the right, but not the obligation, to be present at any and all such performance tests and to perform periodic observation of any and all phases of construction. Subdivider shall notify the Public Works Department prior to the commencement of any performance test or any placement of asphalt pavement or concrete curb and gutter and shall provide placement for a representative of the Town to be present at the test or placement.

13. RELEASE OF SECURITY: As improvements are completed, the Subdivider may submit a written request to the Town Engineer for a full or partial release of the Security. Upon inspection and approval of the infrastructure applicable to the requested full or partial release of the Security, the Town Engineer may authorize the Town Finance Director to release a portion or all of the assurance, provide that the amount retained for Security shall not be less than 125% of the remaining cost to complete the improvements as such cost was set forth at the time such assurance was secured. The

Planning Director and/or Town Engineer may require that a professional engineer, landscape architect, or other professional licensed or certified to practice in the State of Wyoming certify completion of the improvements applicable to the requested full or partial release of the Security.

If the Town Engineer determines that any of the improvements are not constructed in substantial compliance with the approved plans and/or specifications or requirements, the Town Engineer shall furnish the Subdivider a list of specific deficiencies of constructed or partially constructed improvements and shall be entitled to withhold a portion of the requested full or partial release of the Security reasonably determined to be sufficient to ensure correction of any deficiencies.

Alternatively, if improvements are not completed as required by this Agreement, the Town Engineer may draw and expend from the Security such funds as may be necessary to construct the improvements and/or correct deficiencies in accordance with the Subdivider's obligations pursuant to this Agreement and the Subdivider hereby grants the Town access to the property for the construction and completion of such work as required to fulfill the Subdivider's obligations.

Release of the Security does not constitute acceptance of the improvement; or certification of compliance with the standards of the Town of Jackson Land Development Regulations, any applicable code, or other requirement; nor is it a release of the responsibility of the Subdivider.

#### 14. ACCEPTANCE BY THE TOWN:

**THE TOWN SHALL NOT BE RESPONSIBLE FOR ANY IMPROVEMENTS, MAINTENANCE, OR CARE UNTIL THE SAME SHALL BE ACCEPTED, NOR SHALL THE TOWN EXERCISE ANY CONTROL OVER THE IMPROVEMENTS UNTIL ACCEPTED. NO OCCUPANCY WILL BE GRANTED WITHIN THE DEVELOPMENT UNTIL THE PUBLIC UTILITIES AND OTHER OUTSTANDING PUBLIC SAFETY CONCERNS (AS LISTED IN ATTACHMENT "A") HAVE BEEN ACCEPTED.**

The Town agrees to accept the improvements only upon acceptable completion of the public and private infrastructure improvements, the satisfactory testing and inspection of said improvements in according with this Agreement, and the acceptance criteria set forth in this Agreement.

Prior to acceptance, the Town shall not have any responsibility with respect to any street, utility, or other improvement, nor shall the Town exercise any control over the improvements until accepted, notwithstanding the use of the same by the public or in the case of an emergency, unless the street or other improvement has been formally accepted by the Town.

Criteria for acceptance by the Town:

- A. *Request for acceptance.* Upon completion of the improvements in accordance with this Agreement, the Subdivider may request, in writing, acceptance by the

Town. The request for acceptance shall include all outstanding submittals required by this Agreement and the development plan for review.

- B. *Final inspection.* Upon receipt of a written request for acceptance from the Subdivider, the Town Engineer, and other appropriate government agencies, within thirty (30) days will conduct a final inspection of the public and private improvements. The Town Engineer will furnish a written list of any deficiencies noted. The Town Engineer will base the inspection on compliance the approved plans and/or specifications, as required by the Town of Jackson Land Development Regulations and the Jackson Municipal Code.
- C. *Acceptance and Conveyance.* Upon satisfactory completion of all construction and correction of any deficiencies noted in the Final Inspection; and in accordance with the approved plans and/or specifications, and all other standards and procedures set forth in this Agreement have been met; as certified by a Town approved registered engineer in the State of Wyoming; and approval by the Town Engineer, and other appropriate government agencies; the Subdivider shall thereafter:
  - i. Convey to the Town (and the Town shall accept) the improvements, infrastructure, and associated land via a Bill of Sale prepared by the Town Attorney; and,
  - ii. Grant utility easements to the Town in the locations of the said improvements and infrastructure as described on **Exhibit "A"** of this Agreement.

Acceptance will be final and the infrastructure will be conveyed to the Town upon the recordation of the Bill of Sale and Easements in the Teton County Clerk's office by the Town.

- D. *Responsibility to maintain.* Upon acceptance by the Town, all responsibility for the improvements shall be assumed by the Town, at its sole cost and expense, except that the Subdivider shall be subject to a two (2) year warranty on the construction of the improvements from the time of acceptance by the Town in accordance with this Agreement.
- E. *Submittals.* Prior to the acceptance of any improvements, the following must be submitted to the Town Engineer for approval:
  - i. Legally recorded documents of all easements, or easements to be recorded at acceptance; and,
  - ii. A certification that there are no outstanding judgements, liens, or encumbrances on the improvements and infrastructure including all appurtenances, and land upon which the public improvements are located, provided that if there is a construction mortgage on the improvements and infrastructure then the Subdivider will obtain the mortgagees consent to such transfer and/or subordination agreements with respect to any utility easements related thereto; and,

- iii. Field verified by survey record drawings and specifications in accordance with the following:
  - a. Record drawings shall be submitted electronically in Portable Document Format (PDF) with a corresponding AutoCAD compatible file depicting the improvements and property boundaries, GIS Shape files, and in any other format deemed suitable by the Town Engineer; and,
  - b. Record drawings shall show all improvements constructed including but not limited to, easements, water valves, fire hydrants, water service locations, storage tanks, pump stations, PRV vaults, sewer service locations, manholes, manhole rim and invert elevations, lift stations, streets, drainage, sidewalks, and any other relevant facilities; and,
  - c. The surveyor, date of survey, coordinate system and datum used for the project shall be noted on the plans. Two permanent benchmarks with coordinates, elevations, and ties to a nearby public lands survey monument; and,
  - d. Each sheet of the plans shall be noted as a RECORD DRAWING; and,
  - e. Certification. The following certification by the project engineer shall appear on the face of the record drawings; and,  
*RECORD PLANS CERTIFICATE:*  
*These record plans were prepared under my direct supervision and control and are an accurate representation of the public improvements shown hereon as they were constructed. The improvements as installed conform to the requirements of the Wyoming Department of Environmental Quality, the Wyoming Department of Transportation, the Town of Jackson, and other applicable agencies. Where the improvements were constructed in a different manner, form, type, alignment, location, or material than as originally approved, they have been so noted. (Engineer's Signature) (Engineer's Name, Printed) (Date) (Wyoming P.E. No) or signed and dated stamp.*
- iv. Operation, maintenance, and parts manuals; motor plate information, serial numbers, etc. for all electrical and mechanical equipment included in the improvements. Submitted in the quantity and format deemed suitable by the Town Engineer; and,
- v. Submittal of all inspection and testing reports as set forth in this Agreement.

15. DEVELOPMENT COORDINATION:

Unless specifically provided in this Agreement to the contrary, the contact person representing the Town shall be the Town Engineer who shall have general responsibility for coordinating development of the improvements required herein. Subdivider shall notify the Town Engineer when improvements shall be installed. The Planning Director shall coordinate development exactions related to parks fees, school fees and affordable housing or construction of affordable housing.

## 16. NOTICES

Any notice or communication required or permitted herein shall be given in writing and shall be personally delivered or sent by United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

Town:           Town of Jackson  
                  Attention: Town Engineer  
                  P.O. Box 1687  
                  Jackson, WY 83001

Subdivider:   Hansen & Hansen, LLP  
                  Attn: Zane Powell  
                  2251 North Holmes Ave.  
                  Idaho Falls, ID 83401

Either party upon written notification sent via United States Mail, return receipt requested, may change mailing addresses and contact information.

## 17. BINDING EFFECT OF AGREEMENT AND MODIFICATIONS

This agreement shall run with the land included within the subdivision and shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. No modification of the terms of this agreement shall be valid unless in writing and executed with the same formality as this agreement, and no waiver of the breach of the provisions of any section of this agreement shall be construed as a waiver of any subsequent breach of the same section or any other sections which are contained herein.

## 18. TITLE AND AUTHORITY

Subdivider warrants to the Town that it is the record owner of the Subject Property upon which the development shall be constructed or is acting in accordance with the authority of the owner. The undersigned further warrants having full power and authority to enter into this Agreement.



19. SEVERABILITY

This agreement is to be governed and construed according to the laws of the State of Wyoming. In the event that any provision of this Agreement is held to be in violation of Town, State or Federal laws and hereby rendered invalid or unenforceable as to any party or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.

**TOWN OF JACKSON,  
a municipal corporation  
of the State of Wyoming**

APPROVED AS TO FORM:

\_\_\_\_\_  
\_\_\_\_\_, Mayor

\_\_\_\_\_  
Town Attorney

CONTENTS:

\_\_\_\_\_  
\_\_\_\_\_, Town Clerk

\_\_\_\_\_  
Town Engineer

\_\_\_\_\_  
Planning Director

STATE OF WYOMING     )  
                                  )ss.  
COUNTY OF TETON     )

The foregoing instrument was acknowledged before me by \_\_\_\_\_ as Mayor of the Town of Jackson this \_\_\_day of \_\_\_\_\_, 2018.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

My commission Expires:

STATE OF WYOMING     )

COUNTY OF TETON )  
 )ss.

The foregoing instrument was acknowledged before me by \_\_\_\_\_ as Town Clerk of the Town of Jackson this \_\_\_day of \_\_\_\_\_, 2017.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

My commission Expires:

STATE OF WYOMING )  
 )ss.  
COUNTY OF TETON )

The foregoing instrument was acknowledged before me by Audrey Cohen-Davis as Town Attorney of the Town of Jackson this \_\_\_day of \_\_\_\_\_, 2018.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

My commission Expires:

STATE OF WYOMING )  
 )ss.  
COUNTY OF TETON )

The foregoing instrument was acknowledged before me by \_\_\_\_\_ as Town Engineer of the Town of Jackson this day of \_\_\_\_\_, 2018.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

My commission Expires:

STATE OF WYOMING     )  
  )ss.  
COUNTY OF TETON     )

The foregoing instrument was acknowledged before me by Tyler Sinclair as Planning Director of the Town of Jackson this \_\_\_day of \_\_\_\_\_, 2018.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

My commission Expires:

**Hansen & Hansen, LLP,  
an Idaho limited liability partnership**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me by \_\_\_\_\_, as \_\_\_\_\_ of Hansen & Hansen, LLP, an Idaho limited liability partnership, this \_\_\_ day of \_\_\_\_\_, 20\_\_.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public  
My commission expires:

## ACCESS AND UTILITY EASEMENT

This **ACCESS AND UTILITY EASEMENT** (this "Agreement") is made and entered into by and between **Hansen & Hansen, LLP**, an Idaho limited liability partnership, whose address is Hansen and Hansen LLP, an Idaho limited liability company (hereinafter referred to as "GRANTOR"), and the **Town of Jackson**, a Wyoming municipal corporation, whose address is P.O. Box 1687, Jackson, Wyoming 83001 (hereafter referred to as "GRANTEE").

### RECITALS

**WHEREAS**, in accordance with the requirements of the Hidden Hollow Planned Unit Development Master Plan (the "HHPUD Master Plan"), Grantor owns and desires to establish an express and non-exclusive permanent in gross construction, utility, access and maintenance easement in, under, over, across, and through that certain real property located in Teton County, Wyoming specifically described as Common Area, Lot 21 of the Hidden Hollow First Addition to the Town of Jackson set forth on the plat thereof filed in the Office of the Teton County Clerk the same date hereof (the "Burdened Property") to and for the benefit of Grantee and the public, subject to existing easements as of the date this document is executed, according to the terms and conditions set forth herein; and

**WHEREAS**, Grantee desires to accept such non-exclusive permanent in gross easement in accordance with the terms and conditions set forth herein.

### AGREEMENTS

**NOW, THEREFORE, IT IS HEREBY AGREED** that for and in consideration of the aforesaid Burdened Property and the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, paid by each of the said parties, Grantor on their own behalf or any successor in interest or assign, and the Town do mutually covenant and agree as follows:

1. **Grant of Exclusive Easement.** Grantor hereby conveys, declares and establishes for the benefit of Grantee and Grantee's employees, agents, contractors and licensees; and the public, a permanent non-exclusive access and utility easement in gross in, under, over, across, and through that portion of the Burdened Property described on **Exhibit A** attached hereto and by this reference made a part hereof (the "Easement") for the right to use a roadway and appurtenant sidewalk for public access, ingress, and egress, together with the right to install, operate, and maintain public utilities and appurtenances thereto, including but not limited to sanitary sewer, water, drainage, gas, electricity, telephone, fiber optics, cable television, and other communications, together with the right to remove trees, bushes, undergrowth, and other obstructions interfering with the installation, construction, and maintenance of said utilities, water systems, sewer systems, storm drainage systems and appurtenances thereto, and the further right of access, ingress and egress to and from the said described property over and across reasonable routes approved by Grantor in order that the Grantee might exercise the rights granted by this Easement on the Burdened Property, subject to the terms and conditions set forth herein and any existing easements as of the date this document is executed.
2. **Engineering, Installation, Operation and Maintenance.** The construction of the public water mains, sewer mains, and necessary appurtenances (collectively, the "Water and Sewer Improvements"), the storm water mains and the roadway shall be initially completed by Grantor, at Grantor's sole cost and expense, and in accordance with the requirements of the HHPUD Master Plan except as otherwise agreed to in this Easement. The Water and Sewer Improvements constructed or installed by the Grantor within the Easement shall be conveyed to Grantee pursuant to a Bill of Sale and shall thereafter at all times remain the property of Grantee and such improvements shall thereafter be maintained by the Grantee, at its sole expense. Such conveyance of the Water and Sewer Improvements and this Easement shall not include the water and sewer service line from the point of connection on the outside diameter of the Town's mains, the water service shutoff valves and/or the sewer cleanouts and cleanout lids. Grantee shall not permit any mechanic's or materialmen's lien to be placed upon or remain upon the Burdened Property. Grantee shall be permitted to operate and temporarily park all reasonably necessary equipment, including all reasonably necessary trucks and grading equipment, within the Easement during the term of the Easement. After

maintenance and/or additional improvements to the Water and Sewer Improvements, Grantee or its agents shall promptly restore the Easement area affected thereby to the reasonably same condition it was prior to such operations, including but not limited to restoring the surface grade, replacing landscaping such as, grass, bushes and other similar undergrowth, if removed or damaged. Mature trees and shrubs greater than twelve (12) feet in height and/or width shall be replaced with trees or shrubs at or near twelve (12) feet in height and/or width. Smaller trees will be replaced by similar sized trees or shrubs.

3. **Reservation.** Grantor hereby reserves unto itself, its guests, invitees, and legal representatives, the right to use the surface and subsurface of the Easement, including but not limited to buildings, landscaping, future ingress and egress driveways to Grantor's property, planting and associated irrigation, water and sewer services, and storm water systems, pursuant to any future approved development plan, building or grading permits, provided such use does not unreasonably impair, interfere with or obstruct the use of the Easement by Grantee.

Grantor also hereby reserves unto itself, its guests, invitees, and legal representatives, the right to all existing uses of the Easement including but not limited to, water and sewer services, storm drainage, and access including repairs and maintenance.

4. **Restrictions.** The grant of the Easement shall be subject to the following restrictions:

- 4.1. Grantee shall use the rights granted above, with due regard to the rights of others and their use thereof, and shall not use the Easement in any way that would impair the rights of Grantor or others to the use of the same;
- 4.2. Grantor shall not construct any building, structure, or improvement within the Easement, without the express written approval of Grantee;
- 4.3. Grantor shall not construct any landscaping that impairs, interferes with, or obstructs the use of the Easement by Grantee;
- 4.4. Grantor shall not replace existing development or uses within the Easement without the express written approval of Grantee;
- 4.5. Grantor shall at its sole cost and expense pay for improvements required by the Town of Jackson Land Development Regulations, the HHPUD Master Plan, any approved development plan, building or grading permit, unless a cost share agreement is executed; and
- 4.6. Grantor shall not temporarily park vehicles or equipment on the Easement in a manner that obstructs the passage by Grantee or others.

5. **Declaration.** The Grantor and Grantee hereby declare that the Easement shall inure to the benefit of the Grantee and its legal representatives. Grantor hereby declares that the Burdened Property hereto shall be owned, sold, conveyed, encumbered, leased, used, occupied and developed subject to the Easement and the terms and conditions set forth herein, which shall run with the land and shall be binding on all parties having or acquiring legal title or an equitable interest in the Burdened Property.

6. **No Merger.** This Agreement and the Easement and rights declared and established herein are intended to remain separate from the Grantor's fee simple interest in the Burdened Property and shall not merge therewith.

7. **Construction.** Any recitals in this Agreement are represented by the parties to be accurate and constitute a part of the substantive agreement. This Agreement shall be construed in accordance with the laws of the State of Wyoming. Venue is in Teton County, Wyoming.

8. **Enforcement.** If any party hereto fails to perform any of its obligations under this Agreement or if a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, all court costs and all reasonable attorneys' fees (including the costs of in-house counsel) regardless of whether litigation is commenced.

9. **Term.** The easements, covenants, conditions and restrictions contained in this Agreement shall be effective commencing on the date of recordation of this Agreement in the Office of

the Clerk of Teton County, Wyoming and shall be perpetual so long as it is used for the above described purposes; unless this Agreement is modified, amended, canceled or terminated by an instrument in writing signed by the Grantor and the Grantee.

10. **No Assumption of Liability.** Grantor, by granting, declaring and establishing the Easement, does not assume any responsibilities or liabilities with respect thereto, nor shall Grantor at any time incur any liability for failure to comply with any law, ordinance, regulation or order with respect to this Agreement and the Easement contained herein.
11. **Easement In Gross.** The Easement granted herein is a commercial easement "in gross." Grantee shall not have the right to lease or otherwise permit the use of the Easement by any other person or entity other than to Grantee's employees, agents, contractors and licensees, nor shall Grantee assign any of the rights, privileges, duties or obligations of Grantee hereunder except as provided for herein, without the prior written consent of Grantor.
12. **Warranties.** Grantor makes no representations or warranties, express or implied, in connection with the Easement, whether of title, fitness of use, condition, purpose, or of any other nature. Grantee accepts the Easement in its present condition, "as-is", "where-is" and "with all faults" and subject to any and all existing liens, encumbrances, charges, easements, rights and covenants, conditions and restrictions of record. Notwithstanding the foregoing, Grantor represents and warrants that Grantor has the authority to grant the Easement contained herein.
13. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
14. **Entire Agreement; Modification.** This Agreement embodies and constitutes the entire agreement with respect to the subject matters hereof and all prior or contemporaneous agreements, understandings, representations, statements are merged into this Agreement. Neither this Agreement nor any provision hereof may be waived, modified, amended, discharged, or terminated in whole or in part, except by an instrument in writing signed by the Grantor and the Grantee.
15. **Counterparts.** This Agreement may be executed in any number of counterparts and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one Agreement.
16. **Binding Effect.** This Agreement shall be binding on the parties hereto, their heirs, successors and assigns.
17. **Indemnification.** Grantee agrees to indemnify, defend and hold harmless Grantor, its beneficiaries, employees, successors and assigns (the "Grantor Indemnities") from and against any and all liability, loss, claims, demands, liens, damages, penalty, fines, interest, costs and expenses, and for any and all damage to property, personal injury claims, or death, arising out of, or attributable to the use, construction, maintenance, restoration or repair of Access and Utility Improvements within the Easement by Grantee and its employees, agents, contractors, representatives, and the public. This indemnity shall include the costs and expenses including reasonable attorney fees in defending any such actions or lawsuits, and reimbursement for any and all damages suffered by Grantor. All indemnification provided for herein shall not include indemnification for negligence of Grantor and its employees, agents, contractors and representatives or for actions of Grantor and its employees, agents, contractors and representatives, which would otherwise make the indemnification void pursuant to Wyoming State Statutes, Wyoming law or any other applicable law.

IN WITNESS WHEREOF, my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**Hansen and Hansen LLP, an Idaho limited liability company:**

\_\_\_\_\_  
By:  
Its:

**TOWN OF JACKSON**

\_\_\_\_\_  
By: Pete Muldoon  
Its: Mayor

**ATTEST:** \_\_\_\_\_  
Sandra P. Birdyshaw, Town Clerk

DRAFT

STATE OF WYOMING )  
 ) ss.  
COUNTY OF TETON )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018 by \_\_\_\_\_, \_\_\_\_\_ of Hansen and Hansen LLP, an Idaho limited liability company, who does verify that the foregoing instrument is signed in the name of, on behalf of, and by authority of said corporation.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

STATE OF WYOMING )  
 ) ss.  
COUNTY OF TETON )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018 by Pete Muldoon, Mayor of the Town of Jackson.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

STATE OF WYOMING )  
 ) ss.  
COUNTY OF TETON )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018 by Sandra P. Birdyshaw, Town Clerk of the Town of Jackson.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_



**PATHWAY  
ACCESS EASEMENT AND AGREEMENT**

This Pathway Access Easement and Agreement (the "Agreement") is made effective the \_\_\_\_ day of \_\_\_\_\_, 2018 (the "Effective Date"), by and between HANSEN & HANSEN, LLP, an Idaho limited liability partnership ("Grantor") and the TOWN OF JACKSON ("Grantee").

**WHEREAS**, Subdivider is required to construct a public pathway as a condition of the approval of the final plat and associated Final Development Plan (Permit#B17-0622) approved by the Town Council, as amended;

**WHEREAS**, the Grantor is the owner in fee simple of that certain real property situated in the Town of Jackson, Teton County, Wyoming, more particularly described in **Exhibit "A"** attached hereto and incorporated herein, over which the Grantee wishes to obtain a right for the public to enter and pass for recreational purposes, under circumstances where Grantor is provided the immunity from liability promulgated by W.S. §34-19-101 (1977) et seq.; and

**WHEREAS**, the Grantee is a governmental body whose powers include the authority to receive easements in land for the public that has joined in the creation and funding of the Jackson Hole Community Pathways Program.

**NOW, THEREFORE**, for and in consideration of good and valuable consideration paid by the Grantee to the Grantor, receipt of which is hereby acknowledged, and in consideration of the covenants and undertakings hereinafter set forth, the Grantor hereby does give, grant, bargain, sell, and convey to the Grantee a non-exclusive perpetual in-gross easement and right over and on the hereinafter described real estate, of the nature and character and to the extent hereinafter expressed, for the purpose of permitting construction and maintenance of pathway improvements for those bicycle, pedestrian and other uses permitted by the Town of Jackson Municipal Code, as amended, by the public on and along a pathway easement as described and shown on **Exhibit "B"** attached hereto (the "Easement"), under the following terms and conditions:

1. The Grantee, for itself and for its successors and assigns, covenants and agrees that once the pathway is constructed by Grantor and accepted by the Grantee, it will maintain the aforesaid pathway improvements for public recreational purposes, without charge, including those bicycle, pedestrian and other used permitted by the Town of Jackson Municipal Code, as amended, and that Grantee shall enforce the laws and guidelines of the Jackson Hole Community Pathways within the Easement.
2. Grantee shall not knowingly or affirmatively permit operation of motorcycles, all-terrain vehicles, snowmobiles, or any other type of motorized vehicle, except that the Grantor shall permit the operation of: (a) vehicles by the Grantee within the Easement in a manner and to an extent satisfactory to the Grantor for the initial construction and periodic maintenance of the pathway; and (b) electric bicycles as permitted on local pathways from time to time.
3. Grantee shall not undertake removal, destruction, cutting, or alteration of any vegetation, whether dead or alive, nor any disturbance or change in the natural habitat in any manner beyond that necessary for construction and maintenance of the pathway improvements for public passage and prevention of pathway deterioration or erosion. Grantee will restore (to substantially the same condition existing as of the date hereof) any property of Grantor that has been disturbed by any such construction of the pathway improvements within thirty days following the completion of the pathway improvements. After the initial construction of the

- pathway improvements by Grantor, future construction activities may not take place on the property of Grantor outside of the Easement without the advance written consent of Grantor. Grantee shall not initiate the construction of any pathway improvements until Grantor has approved the design and construction plans for such improvements, which approval shall not be unreasonably withheld.
4. The Grantee shall be responsible for the prevention and control of noxious weeds and/or exotic plants within the Easement and shall provide prevention and control measures prescribed by the Forest Service. Noxious weeds/exotic plants of concern are defined as those species recognized by the Teton County Weed Control entity.
  5. Once constructed, Grantee shall be deemed to be in control of and shall maintain the pathway improvements at its expense in a neat and orderly condition, free of trash, rubbish, or any other unsightly materials, to the satisfaction of the Grantor, and Grantee shall undertake periodic inspections to ensure that the pathway is maintained in a safe neat and orderly manner and that the terms and conditions of this Easement and agreement are met.
  6. Grantee shall save, defend, indemnify, and hold harmless Grantor and any and all of its Members, Managers, owners, affiliate companies, officers, employees, tenants, invitees, licensees, successors, assigns, or any other person or party claiming under it (collectively, the “Indemnified Parties” and each an “Indemnified Party”) which shall not include the general public against any losses, damages, suits, claims, costs, judgments, and expenses, including reasonable attorneys’ fees which any of them may directly or indirectly suffer, sustain, be liable for, or subject to, arising out of or connected with the exercise by Grantee or the public of the Easement herein granted except to the extent caused by the willful or negligent acts or omissions of an Indemnified Party. Grantor shall have no duty to maintain the easement area nor shall it have any duty, except as provided by law, to warn Grantee or the public of any unsafe or dangerous condition, whether or not known to Grantor.
  7. Prior to the execution of this indenture and throughout its duration, Grantee shall provide and maintain a liability insurance policy in the amount of not less than two hundred fifty thousand dollars (\$250,000.00) for any number of claims arising out of a single transaction or occurrence; containing a policy endorsement insuring Grantee’s indemnity of the Grantor as provided in Section 6 above.
  8. Grantor hereby authorizes Grantee to enter upon the Easement for purposes of clearing, grading, maintaining and repairing the pathway improvements. However, there shall be no construction or placement of any other structures (except signage that is consistent with such markers elsewhere on the pathway posting the pathway route and rules) within the Easement in addition to the pathway improvements without the express prior written consent of the Grantor.
  9. This grant shall be for recreational purposes only, without charge, as defined and provided for under Wyoming’s Landowner Liability Act (W.S. §34-19-101 (1977), *et seq.*), and in the event such statute shall be repealed or amended so as to remove the immunity provided to Grantor, and Grantor is not adequately protected by insurance or by other means, as determined by Grantor in its sole discretion, at Grantee’s expense, Grantor may immediately terminate this Easement by written notice delivered to Grantee. It is hereby acknowledged by the parties hereto that solely for purposes of the Wyoming Landowner Liability Act (W.S. §34-19-101 *et seq.*), the Grantor shall be included within the definition of an “Owner” as set forth in W.S. §34-

19-101 *et seq.* but Grantee shall not be considered an invitee or licensee to whom a duty of care is owed by an “Owner” as such term is defined therein. The Grantees understand and agree that the use within the Easement may also fall within the purview of the Wyoming Recreation Safety Act. Wyo. Stat. §1-1-121 *et seq.*, as may be amended from time to time.

### RESERVED RIGHTS

Notwithstanding any of the foregoing covenants to the contrary, the Grantor specifically reserves for itself, its Members, owners, affiliate companies, officers, employees, tenants, invitees, licensees, successors, assigns, and any other person or party claiming under it the following reserved rights:

1. The right to enter, pass, and repass the lands burdened by the Easement at any time, including the superior right to use any prior easement affecting the property described herein.
2. All rights as owner of the property, including the right to use the property for all purposes not inconsistent with this Easement and Agreement.
3. The right, in a reasonable manner and at reasonable times, to enforce by proceedings at law or in equity the terms and conditions of this indenture. Nothing herein shall be construed to entitle the Grantee to institute any enforcement proceedings against the Grantor for any changes to the granted easements due to causes beyond the Grantor’s control, such as changes caused by fire, storm, landslide, erosion, falling trees or branches, plant growth, water, or any other act of nature, or the unauthorized acts of third persons.
4. It is understood and agreed that this Easement shall not affect or reduce the entitlements set forth in the Hidden Hollow Planned Unit Development Master Plan, as amended.
5. It is understood and agreed that this Easement imposes no other obligations or restrictions upon the Grantor, its Members, Managers, owners, affiliate companies, officers, employees, tenants, invitees, licensees, successors, assigns, or any other person or party claiming under it, and that neither the Grantor nor its Managers, family members, affiliate companies, officers, employees, tenants, invitees, licensees, successors, assigns, or any other person or party claiming under it shall be in any way restricted in their use of said lands for all purposes, present and future, not inconsistent with this grant. Notwithstanding any other provision, the Easement granted herein is a non-exclusive easement and Grantor specifically reserves the right to grant additional easements in, over, under and across the Easement for any purpose as Grantor deems necessary, in Grantor’s sole discretion not inconsistent with this grant.
6. Nothing herein shall be deemed to affect any mortgage, lien, or other interest in the lands described herein.
7. If Grantor is no longer eligible for immunity pursuant to Wyoming Statutes and/or Grantee is unable to provide adequate insurance coverage to Grantor, in Grantor’s sole discretion, or in the event of the abandonment of the pathway by failure to maintain it after construction for a period of one (1) year without reasonable cause, Grantor may, upon thirty (30) days written notice to Grantee and failure to cure the situation by Grantee, terminate this Easement.
8. Notwithstanding any provision set forth herein, the parties agree that the Easement may be unilaterally relocated by Grantor, in the sole and absolute discretion of Grantor and at Grantor’s sole cost and expense, so long as no material interruption in the pathway shall occur beyond that amount of time reasonably necessary to complete such relocation. Upon each such event, Grantor



of \_\_\_\_\_, 20\_\_\_\_\_.

TOWN OF JACKSON

BY: \_\_\_\_\_  
its Mayor

ATTEST:

BY: \_\_\_\_\_  
its Town Clerk

State of Wyoming )  
 ) ss.  
County of Teton )

The foregoing instrument was acknowledged before me \_\_\_\_\_  
\_\_\_\_\_, as Town Attorney of the Town of Jackson this \_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_\_.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires:

State of Wyoming )  
 ) ss.  
County of Teton )

The foregoing instrument was acknowledged before me \_\_\_\_\_  
\_\_\_\_\_, as Town Clerk of the Town of Jackson this \_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_\_.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires:

State of Wyoming )  
 ) ss.  
County of Teton )

The foregoing instrument was acknowledged before me \_\_\_\_\_  
\_\_\_\_\_, as Mayor of the Town of Jackson this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_\_.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires:

DRAFT