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DECLARATION FOR
The Pines Condominium, Phase II

This Declaration is hereby made and entered into this *12th* day of October, 2005, by S & D DEVELOPMENT LLP, of P.O. Box 161087, Big Sky, Montana 59716, hereinafter referred to as the "Declarant", whereby the lands and property hereinafter described are submitted and subject to the provisions of MCA 70-23-101, et. seq., and known as the "Unit Ownership Act".

The property subject to this Declaration shall be known as THE PINES CONDOMINIUM, PHASE II, (hereinafter referred to as the "condominium" or the "premises"). The condominium is located at Big Sky, Gallatin County, Montana and this Declaration shall replace and supersede all previous Declarations.

I. DEFINITIONS

Unless the context expressly provides otherwise, the following definitions shall pertain throughout this Declaration and the Bylaws for the condominium and the interpretation of either document:

1. Aggregate Voting shall mean the entire number of votes or persons present or available to vote in person or by proxy in a particular circumstance.
2. Association or Owners' Association means all of the Unit Owners acting as a group and in accordance with duly adopted Bylaws and this Declaration.
3. Board or Board of Directors shall mean the Board of Directors of the Association, as more particularly defined in the Bylaws.
4. Building means the building or buildings containing the condominium units.
5. Bylaws means the Bylaws promulgated by the Association under this Declaration and the Unit



Ownership Act.

6. Common Elements means both general common elements and limited common elements.

a. General Common Elements include all those areas which are for the use and benefit of all the Units and of all residents and guests of residents of The Pines Condominium, Phase II. Specifically included are: The real property described in Paragraph II below (except for the portions designated as limited common elements in subparagraph I.6.b below) including the grounds under and surrounding the buildings, footings, foundations, framework, floors, columns, trusses, walls, supports and other structural components of the buildings, the roof of the buildings, equipment and all other improvements for sewage treatment and a water supply, electrical, cable television, gas and telephone lines and wires and connections serving all of the Units; the master water meter; fences; landscaping, plants and other materials and improvements separate from and outside of the buildings containing the Units, ponds and other areas necessary for the safety, maintenance and existence of the condominium in which each Unit Owner shall have his or her designated percentage of interest, as set forth in paragraph IV below, and as described in the Unit Ownership Act.

b. Limited Common Elements as used in this Declaration shall mean those common elements which are reserved for the use of fewer than all of the residents and guests of residents of The Pines Condominium, Phase II. Specifically, as to any given Unit Owner or Owners, limited common elements shall mean the following common elements which are located within or affixed to the buildings containing his or her Unit in which the elements are located or situated on or associated with the real property known as The Pines Condominium, Phase II.

Flues, decks, patios, driveways, chimneys, ducts, cables, conduits, public utility lines, water, sewer, electrical, cable television lines and hot and cold water pipes, (all such utility pipes and lines are limited common

elements where they service less than all Units; where they service all Units they shall be general common elements), electric meter entrances, and fixtures or other portions of the building servicing only a particular Unit or less than all of the Units. Unless only one Unit uses a particular limited common element (such as the deck areas where the interest of the Unit in that limited common element is 100%) the percentage of a separate Unit's interest in the limited common elements shall be computed by determining the number of Units that have use of the limited common elements and taking the value of each such Unit using the formula set forth in subparagraph IV-1 below and dividing it by the value of the Unit or all such Units making use of the particular limited common element. Such values shall be the same as the values used to compute the percentage of interest of the Unit Owners in the general common elements and shall be the value of the Units at the date of filing this Declaration and which are set forth in this Declaration.

- 7. Common Expenses means expenses of administration, maintenance, repair or replacement of general common elements, expenses agreed upon by the Association of all Unit Owners, and expenses declared common by the Unit Ownership Act.
- 8. Condominium means The Pines Condominium, Phase II as the same is created by this Declaration and the Bylaws and submitted to the Unit Ownership Act and the condominium units, general common elements, limited common elements, buildings and land and any other improvements thereon, which constitute the condominium.
- 9. Declaration means this document and all parts attached hereto or incorporated by reference.
- 10. Limited Expenses means the expenses attributable to the maintenance, repair and replacement of limited common elements.
- 11. Manager means the manager, the Board of Directors, management corporation or any other person or group of persons retained or appointed by the Board, or by the Owners' Association for the purpose of conducting the day-to-day operations of the condominium.

- 12. Property and/or Premises means all the land described below, buildings, improvements and structures thereon and all easements, rights and appurtenances belonging thereto, which are herewith submitted to the Unit Ownership Act.
- 13. Record Officer means the county officer charged with the duty of filing and recording the deeds, mortgages and all other instruments and documents relating to this Declaration and the property to which it is subject.
- 14. Unit means the separate units, or dwelling spaces, of the condominium.
- 15. Unit Designation is the combination of letters, numbers and words which identify the designated Units.
- 16. Unit Owner, Owner, or Condominium Owner means the person or persons owning a Unit in fee simple absolute, or one who is a co-owner in any real estate relationship that is recognized under the laws of the State of Montana in one or more Units of The Pines Condominium, Phase II.
- 17. Mortgagee means any mortgagee, beneficiary under a trust indenture, or a seller under a contract for deed.

II. REAL ESTATE

1. Description. The real property which is by this Declaration submitted and subject to the Unit Ownership Act, shall comprise the ground upon which the condominium shall be situated and is described as follows:

A tract of land located in the south half of Section 35, Township 6 South, Range 3 East, P.M.M., Gallatin County, Montana, being more particularly described as follows:

Commencing at the southwest corner of Section 35, Thence South 89°45'15" East a distance of 1176.35 feet to the True Point of Beginning;
 Thence North 20°30'14" West for a distance of 164.17 feet;
 Thence South 52°49'43" East for a distance of 93.13 feet;
 Thence North 65°04'26" East for a distance of 150.14 feet;
 Thence North 74°56'28" East for a distance of 149.77 feet;
 Thence North 04°58'44" West for a distance of 168.53



feet;
Thence North 67°09'12" East for a distance of 113.54
feet;
Thence South 87°03'24" East for a distance of 195.61
feet;
Thence South 03°51'43" East for a distance of 405.15
feet;
Thence North 89°45'15" West for a distance of 610.13
feet;
to the True Point of Beginning.

The tract contains 3.92 acres, more or less, and is subject to all easements of record or apparent on the ground.

The above described tract of land is to be known and designated as the Condominium Site Plan for The Pines of Big Sky Phase II.

The condominium consists of two (2) Units as of the time of this Declaration and shall include eighteen(18) Units when completed, with site plans and floor plans to be prepared for the additional buildings, when constructed. The provisions of this Declaration and the Bylaws shall be construed to be covenants running with the land including every Unit and shall be binding upon the Unit's Owners, their heirs, successors, personal representatives and assigns for so long as this Condominium Declaration and Bylaws are in effect.

2. Condominium Units: Each Unit, together with the appurtenant undivided interest in the common elements of The Pines Condominium, Phase II shall together comprise one condominium Unit, shall be inseparable, and may be conveyed, leased, rented, devised or encumbered as a fee simple interest in a parcel of real property. Included in all Units, as a part of each Unit, are the garages appurtenant to such Unit and the storage areas contained within and made a part of each Unit.

3. Encroachments: If any portion of the general common elements or limited common elements encroaches upon a Unit or Units, a valid easement for the encroachment and for the maintenance of the same, so long as it stands, shall and does exist. If any portion of a Unit encroaches upon the general common elements or limited common elements or upon an adjoining Unit or Units, a valid easement for the encroachment and for the maintenance of the same, so long as it stands, shall and does exist. Such encroachments and easements shall not be considered or determined to be encumbrances either on the general common elements, the limited common elements or on the Units for the purpose of marketability of title. In the event that any building or any portion thereof is destroyed and then rebuilt, the Owners of the Unit or Units agree that minor encroachments of parts of the

general common or limited common elements because of such construction shall be permitted and that an easement for such encroachment and the maintenance and repair of the same shall exist.

4. Buildings: The Units which will comprise the condominium shall be located in several buildings, containing two, three or four Units, in the discretion of the Developer.

5. Unit Boundaries: Each Unit shall include the part of the building containing the Unit that lies within the boundaries of the floors, walls and ceilings of the Unit. All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the Unit, and all other portions of the unfinished walls, floors, or ceilings are a part of the common elements.

a. The finished portion of the garage within the boundaries of the interior walls, floors and ceilings thereof and the deck attached to each Unit shall constitute a part of and be appurtenant to such Unit. Square footage of garages and decks shall not be used for the computation of value which forms the basis for the percentage of ownership in the common elements of the condominium.

6. Construction Materials: The principal materials of construction of the Units shall be concrete for the foundations, footings, and slabs, including the garage floors; wood for the framing, structural, and finish work; sheetrock for the interior walls and ceilings; carpet, wood, or vinyl for the floors; wood for the exterior wall surfaces, with log and stone accents, and asphalt shingles on the roof of the building.

7. Automobile Parking: The use of the Unit area set aside for the parking or driveway shall be restricted to the Owner of the Unit that the driveway services.

III. EASEMENT - COMMON ELEMENT - INTERIOR REMODELING

1. Common Element Easements: A nonexclusive right of ingress and egress and support through the general common elements is appurtenant to each Unit and all the general common elements are subject to such rights. Such easements include an easement for ingress and egress from and to each Condominium Unit to the public roads or other means of access bounding the Condominium property.

2. Utilities: An easement shall exist over, across and into the general and limited common elements as shown on the site plan



and in the condominium Units themselves for installation, maintenance and repair of all utilities for lines, wires, pipes, equipment and other items necessary for supplying light, heat, water, sewer, power, telephone, any cable television and other means of communication to the condominium.

3. Interior Remodeling: Each Unit Owner shall have the exclusive right to paint, repair, tile, wallpaper, panel, carpet, brick or otherwise maintain, refinish and decorate the inner surfaces of the walls, ceilings, floors, windows and doors bounding his own Unit, and the interior thereof, so long as such work does not affect the structural integrity of the building.

IV. OWNERSHIP AND VOTING - EXHIBITS - USE

1. Percentage of Interest: Each Unit Owner shall be entitled to the exclusive ownership, use and possession of his or her Unit and the percentage of the interest of each Unit Owner in the common elements as shall be set forth in Amendments to this Declaration. Each Unit Owner shall have a percentage of undivided interest in the general common elements of The Pines Condominium, Phase II. Such percentage represents his or her ownership interest in the general common elements, and his or her liability for common expenses and taxes. The percentages of interest in the general common elements for the Owners of Units shall be computed by taking the approximate value of each Unit at the date of filing and Amendment to this Declaration creating and adding the Units, and dividing the value of each Unit by the then combined value of all of the Units having an interest in the general common elements of the condominium. The calculation shall be based upon the square footage of the Units, since the materials and finishes of the Units shall be comparable. It is anticipated that all of the Units will be of the same approximate value per square foot, regardless of when constructed, and that each of the Unit Owners will enjoy an equal percentage of interest in the condominium per square foot of living space.

*all unit
will be
equal
percent*

<u>UNIT</u>	<u>PERCENTAGE OF INTEREST</u>
I-1	50%
I-2	50%

Exhibits: The Pines Condominium, Phase II shall initially consist of the real property described above, together with the Units designated above. At the time that additional Units are completed and added to the condominium regime, the Developer shall create or amend the following Exhibits:

Exhibit A: Showing the site plan of the initial phase of The Pines Condominium, Phase II and the location of the building containing the condominium Units on the property and the common elements.

Exhibit B: Showing the floor plans for each of the Units of The Pines Condominium, Phase II, the area of each, the dimensions and the designation for each Unit.

2. Use: The Units and common elements shall be occupied and used as follows:

- a. No part of the property shall be used for other than single family residential purposes; except that an Owner may use a portion of his or her Unit for an office or studio, provided that the activities therein shall not interfere with the quiet enjoyment or comfort of any other Owner or occupant and further that such activities do not violate any applicable zoning regulations or other use restrictions applicable to the property. Nothing contained herein shall prevent an Owner of a Unit from renting or leasing his or her Unit to third parties for residential purposes. Any use of the Unit by the Owner, or any party renting the Unit from the Owner, is made subject to the covenants and restrictions contained in this Declaration and further subject to the Bylaws. There shall be a further exception in favor of the Declarant, to allow the Declarant to own and maintain a model Unit for sales purposes. The model Unit may also contain a sales office for that purpose.
- b. There shall be no obstruction of the common elements, nor shall anything be stored in or on the common elements without the prior written consent of the Association. Each Owner shall be obligated to maintain and keep in good order and repair his or her own family Unit.
- c. Nothing shall be done or kept in any Unit or in the common elements which will increase the rate of insurance on the buildings or contents thereof, above that which may be charged for a residential condominium, without the prior written consent of the Association. No Owner shall permit anything to be done or kept in his or her Unit or in the common elements which will result in the cancellation of insurance on the buildings, or contents thereof, or which would be in violation of any law, this Declaration, or the Association Bylaws. No waste will be permitted in the common elements.
- d. Owners shall not cause or permit anything to be hung or displayed in or upon the outside of windows or placed on the outside walls of a building and no



sign, awning, canopy, radio or television antenna shall be affixed to or placed upon the exterior walls or, roof or any part thereof, without the prior written consent of the Association; except that the Declarant may maintain a model Unit/sales office for which the Declarant may erect a sign in front of the building housing such Unit. The model Unit and accompanying sign may be maintained by the Declarant until the final Unit is sold and Declarant may designate new model Units from time-to-time.

- e. No pets or other animals of any kind shall be raised, bred or kept in any Unit, except that dogs, cats or other household pets (not to exceed two (2) pets) may be kept in the Units, subject to rules and regulations adopted by the Association, provided that they are not kept, bred or maintained for any commercial purpose. Leash laws will be enforced and two (2) complaints of pet disturbances will require the pet owner to remove the animal(s) from the condominium. Failure to remove the pet(s) can result in a fine not to exceed \$20.00 per day for each day the pet remains on the property or in the Unit, which becomes part of the assessments for that Unit. Failure to pick up after an animal immediately on the common grounds will result in a \$25.00 fine, which shall also become a part of the assessment for the owner of the Unit.
- f. No nuisances shall be allowed upon the property, nor shall any use or practice be allowed which is a source of annoyance to residents of the Condominium, or which interferes with the peaceful possession and proper use of the property by its residents. No immoral, improper, offensive or unlawful use shall be made of the property, nor any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.
- g. Nothing shall be done in any Unit or in, on or to the common elements which will impair the structural integrity of the building or which would structurally change the building, except as is otherwise provided herein.
- h. Nothing shall be altered or constructed in or removed from the common elements, except upon the written consent of the Association.
- i. Use by the Owners of the Units in The Pines



Condominium, Phase II shall at all times be in compliance with all applicable laws, regulations and ordinances. Such compliance shall also include and extend to any repair, remodeling or refurbishing of the Units.

3. Exclusive Ownership: Each Owner or Owners shall be entitled to exclusive ownership and possession of his or her Unit. Such Owners may use the general and limited common elements in accordance with the purposes for which they are intended and as they may otherwise agree between themselves, so long as they do not hinder or encroach upon the lawful rights of other Unit Owners.

V. PLAN OF DEVELOPMENT.

1. The project may be developed in phases by the Developer. Developer may add the additional Units contemplated herein without the necessity of receiving prior consent from the Association or Unit owners, subject to the following conditions:

- a. Prior to conveyance or occupancy of any Unit, Developer shall record an amendment to this Declaration with the Gallatin County Clerk and Recorder, which shall include floor plans for the new building(s), a site plan showing the location of the building(s) and the changes to the percentages of ownership in the common elements. Owners of newly completed Units will not be obligated to pay common expenses until such time as the above-described amendment is recorded.
- b. Upon completion of the project, Developer shall record a final amendment to this Declaration, setting forth the percentages of interest of each Unit in the common elements. Upon completion of the project, each Unit owner will have an interest in the common elements as set forth in the final amendment.
- c. Each new building shall be similar in materials, size, style and quality to the other buildings, but Developer reserves the right to modify the design and mixture of floor plans to meet market conditions.
- d. All general common elements within a Phase shall be completed prior to conveyance of any Unit within a Phase; provided, however that exterior common elements other than the buildings themselves may be completed during the summer following the completion of the building to which such common elements attach.

- e. Each Unit owner and each holder of a mortgage or trust indenture on a Unit, by acceptance of the deed or security instrument, hereby consents to all such amendments and grants unto the Developer, as well as its successors and assigns, a limited irrevocable power of attorney, coupled with an interest, to amend this Declaration in accordance with this plan of development. Recordation of amendments modifying the percentages of interest in common elements attached to each Unit shall be deemed a conveyance, transferring title in the common elements in accordance with the amendment.

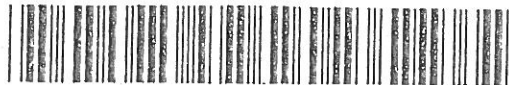
When additional Units are developed, they shall be added to the condominium regime, but shall not be fully included for assessment purposes until they are sold by the Declarant. From the time that they are added to the condominium until the time of the first conveyance, the additional Units shall be assessed for their share of insurance only.

VI. THE ASSOCIATION

1. Membership: An Owner of a Unit in The Pines Condominium, Phase II shall automatically, upon becoming the Owner of the Unit, be a member of The Pines Condominium, Phase II Unit Owners Association, hereinafter referred to as the Association, as well as a member in the Big Sky Owners Association, and shall remain a member of both Associations until such time as his or her ownership ceases for any reason.

2. Function: It shall be the function of the Association to

- a. Be responsible for the upkeep, maintenance, repair, refurbishing and remodeling of the common elements of the condominium including the lands, grounds, landscaping, shrubbery, and trees, as well as the exteriors of the Units including the walls and roofs, as well as any fences bounding the condominium.
- b. To maintain and care for the driveways giving access to the various Units. Such maintenance shall be deemed limited common maintenance and shall be assessed against the Owners of the particular Units and the buildings to which the driveways give access.
- c. To cooperate with the Hidden Village Owners Association and The Pines of Big Sky Owners Association in the repair and maintenance of common roads servicing the three associations. The owners of units within The Pines Condominium,



Phase II, by purchasing and owning units within the condominium, agree that they will waive their right to protest the creation of a rural improvement district (R.I.D.) for the maintenance of the roadways within the Hidden Village Condominium. In the alternative, if no R.I.D. is created, the owners of units within The Pines Condominium, Phase II, will cooperate with the Hidden Village Owners Association to establish a schedule for payment of maintenance expenses. In the absence of some other agreement established by the Hidden Village Owners Association and The Pines Condominium, Phase II Owners Association, the owners of each of the units within The Pines Condominium, Phase II will be required to pay an annual assessment equal to the total expenditure of the Hidden Village Owners Association for roadway maintenance, divided by the total number of units within Hidden Village Condominium, The Pines Condominium and The Pines Condominium, Phase II. As an example, if there are a total of 184 units within the three condominium regimes, and the annual expenditures of Hidden Village Owners Association for road maintenance and repairs are \$18,400.00, then the amount to be paid by each unit within The Pines Condominium, Phase II will be \$100.00¹. All such sums shall be collected by The Pines Condominium, Phase II Owners Association and paid to Hidden Village Owners Association as the directors of the two associations might agree from time to time.

- d. Adopt Bylaws for the governance of the Association.
- e. Make provisions for the general management of the Condominium.
- f. Levy and collect assessments as provided for in the Declaration, Bylaws, and the Unit Ownership Act.
- g. Adopt and implement a policy for the affairs of the Condominium.
- h. Enter into contracts to hire personnel for the management of the affairs of the Association and

¹ This example is for illustrative purposes only. It is anticipated that the actual number of units could vary and that the figure stated for road maintenance will be different from the amount shown in this example, thus resulting in a different figure for the assessment.



the maintenance and repair of the common area.

- i. To represent the Owners of The Pines Condominium, Phase II in all affairs affecting the condominium.
- j. Additionally, the Association shall have the power to do such other things and take such other action as are deemed necessary, reasonable and proper to carry out its functions and as are allowed by law.

3. Vote: On all matters to be decided by the Association, unless excluded by this Declaration, each Unit Owner shall have one vote, regardless of the percentage of interest that such owner may have in the common elements; except that when a Unit is owned by more than one person, the vote associated with that Unit may not be split between the various owners. It shall be the responsibility of the owners of each Unit to appoint one person who shall be entitled to cast the vote for that Unit. Except as otherwise provided in the Unit Ownership Act, this Declaration or the Bylaws, a majority of the aggregate interest present at any meeting or by proxy shall be sufficient to act on matters brought before the Association. Meetings of the Association shall only be conducted when a quorum is present, as defined in the Association Bylaws.

4. Failure to Comply: Each Owner shall comply strictly with the provisions of this Declaration and the Bylaws of the Association, as the same may be lawfully amended from time to time, as well as the rules, regulations, decisions and resolutions of the Association adopted pursuant to the Declaration and Bylaws. Failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief or both, and for reimbursement of all costs, including attorneys fees incurred in connection therewith, which action shall be maintainable by the Association, on behalf of the Owner, or by an aggrieved Owner where there has been a failure of the Association to bring such action within a reasonable time.

5. Payment of Assessments - When Due: All assessments shall be due thirty (30) days from the date of mailing of such assessments to the Owners by the Association, following the meeting at which the assessments are levied by the Association. Assessments may be payable in installments monthly, quarterly, annually, or at any other time at the option of the Board. The amount of the common expenses assessed against each Condominium Unit shall be the personal and individual debt of the Owner thereof. No Owner may exempt himself or herself from liability for this contribution toward the common expenses by waiver of the use or enjoyment of any of the general common elements or limited common elements, or by abandonment of his or her Unit. All assessments which are not paid within thirty (30) days from the date they are due and payable

become delinquent and are subject to interest and penalty charges. The Association or Manager shall have the responsibility of taking prompt action to collect any unpaid assessments which becomes delinquent. In the event of delinquency in the payment of the assessment, the Unit Owner shall be obligated to pay interest at a rate to be determined by the Board on the amount of the assessment from the due date thereof, together with such late charges as provided in the Bylaws of the Association. The interest rate shall not exceed that which is allowed by law and shall be stated at the time of the assessments. Suit to recover a money judgment for unpaid common expenses and limited expenses may be maintainable without foreclosing or waiving the lien securing the same.

- a. Common expenses and common profits, if any, and limited common expenses of the Condominium shall be distributed among, and charged to the Unit Owners according to the percentage of interest of each in the common elements.
- b. Except as otherwise limited in this Declaration, each Unit Owner shall have the right to use the common elements for all purposes incident to the use of and occupancy of the respective family Unit as a residence, and such other uses permitted by this Declaration, which rights shall be appurtenant to and run with the Unit.

6. Unpaid Assessments - Mortgagee: Where a mortgagee or other purchaser of a Unit obtains title to the Unit as a result of foreclosure of the first mortgage or trust indenture, such party acquiring title, as well as his or her successors and assigns, shall not be liable for the share of common expenses or assessments by the Association chargeable to such Unit, which became due prior to the acquisition of title of such Unit by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Units including such acquirer, his or her successors and assigns. Nothing contained herein shall, however, relieve the owner of the Unit when the assessment is made from his or her liability for the assessment.

7. Levying Assessments - When Made - Purposes: The Association shall levy assessments upon the Unit Owners (except as provided in paragraph 6 above) in the following manner and for the following reasons:

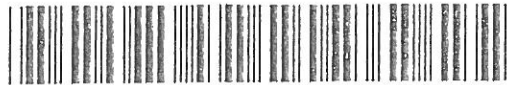
- a. Assessments shall be made as a part of the regular, annual business meeting of the Association as provided in the Bylaws of the Association, or assessments can be made for special purposes at any other regular or special meeting thereof. The Board of Directors shall



cause a preliminary annual budget for income and expenses to be proposed and delivered or mailed to each Unit Owner prior to the annual meeting at which assessments are to be levied. The preliminary annual budget shall be reviewed, amended if necessary and discussed and voted upon at the annual meeting of the Association. A final budget must be approved by a majority of the Unit Owners present or voting by proxy or authorized agent at the annual meeting and the budget shall be amended until so approved. All assessments shall then be fixed by a majority vote of the Board based upon the annual budget approved by the Owners. Written notice of any special assessments, the amount thereof and the purpose for which it is made shall be served on all Unit Owners affected by mailing or delivering a copy of the notice to the Unit Owners at their address of record at least thirty (30) days prior to the date of such meeting. At such meeting, the approval of such special assessments shall require an affirmative vote of seventy-five percent (75%) of the Owners affected by such assessments.

b. Assessments shall be made for the repair, replacement, insurance, general maintenance, creation of reserves, management and administration of common elements, fees, costs and expenses of the manager, taxes for common areas if any, and as more particularly provided in the Unit Ownership Act (Section 70-23-101, et. seq., MCA). Assessments shall be based upon and computed by using the percentage of interest that each Unit Owner has in relation to the common elements; provided, however that the Developer shall only be responsible for the pro-rata share of snowplowing and insurance for all units owned by the Developer have not been sold by the Developer to the initial buyer.

c. Assessments may also be made for the payment of limited common element expenses such that the Unit Owners are chargeable only for the expenses relating to their respective Units or building. Unit Owners shall share in the payment of limited expenses for the repair, maintenance and replacement of limited common elements of their respective Units in accordance with the percentage of condominium Unit or Units they have in the limited common elements for which the assessment is being made. If only one Unit is associated with the limited common element involved, then the entire cost of such repair,



maintenance or replacement shall be borne by that Unit.

- d. Assessments may also be made for any purpose contemplated by this Declaration and for any purpose set out in the Montana Unit Ownership Act.
- e. In a voluntary conveyance of a Unit, the Grantee of the Unit shall be jointly and severally liable with the Grantor for all unpaid assessments by the Association against the latter for his or her share of the common expenses up to the time of the grant or conveyance, without prejudice to the Grantee's rights to recover from the Grantor the amounts paid by the Grantee therefore. Any such Grantee shall be entitled to a statement from the Manager or Board of Directors of the Association, as the case may be, setting forth the amount of such unpaid assessments against the Grantor due the Association. Such Grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid assessments made by the Association against the Grantor in excess of the amount therein set forth.
- f. At the time that the Association holds its first meeting, a reserve account may be set up to which initial assessments shall then be deposited, in an amount to be determined by the Association.

VII. DECLARANT'S RIGHT TO CHANGE

The Declarant reserves the right to change the interior design and arrangement of all Units, so long as the Declarant owns the Units so altered. No such change shall increase the number of Units or alter the boundary of the general common elements without an amendment of this Declaration.

VIII. AMENDMENT

1. Amendment of this Declaration, other than amendments by the Developer to add additional Units, or amendments by the Developer in the First Amendment to this Declaration to add the first two Units, shall be made in the following manner:

- a. At any regular or special meeting of the Association such amendment may be proposed as a resolution by any Unit Owner. Upon adoption of the resolution by a majority vote of those present, the amendment shall be made subject for consideration at the next succeeding meeting of the Association

with notice thereof, together with a copy of the amendment to be furnished to each Owner and each holder of a first lien on any Unit or ownership interest in any Unit, no later than thirty (30) days in advance of such meeting. At such meeting, the amendment shall be approved upon receiving the favorable vote of seventy-five percent (75%) of the Unit Owners, unless another percentage is required by the Montana Unit Ownership Act, in which case the latter percentage shall apply. If so approved, it shall be the responsibility of the Association to file the amendment with the office of the County Clerk and Recorder of Gallatin County, Montana.

- b. If an amendment is proposed by the Board and notice of the proposed Amendment is given to all of the Owners at least thirty days in advance of the meeting at which the amendment is to be discussed and voted upon, such amendment may be adopted without the need to hold a second meeting. In addition, an amendment may be adopted at any time without a meeting if it is approved in writing by the signatures of one hundred percent (100%) of the Owners.

IX. CHANGES, REPAIRS AND LIENS

1. Alterations by Unit Owners: The interior plan of the Unit may be changed by its Owner, with the exception of the bearing walls which may not be moved or altered, without the prior approval of the Board. In the event that an Owner proposes any change to a bearing wall, the Owner must first obtain a certification by a registered architect or engineer that the proposed action will not affect the structural integrity of the building. No Units may be subdivided, nor may any change in the boundaries of the Units encroach upon the boundaries of the common elements, except by amendment to this Declaration. Boundary walls must be equal to quality of design and construction of the existing boundary walls. A change in the boundaries between Units shall be set forth in an amendment to this Declaration. In addition to compliance with the provisions of Article VIII above, such an amendment must further set forth and contain plans to the Units concerned, showing the Units after the change in boundaries, and such plans shall be attached to the amendment as exhibits. Such an amendment shall be signed and acknowledged by the Owners of the Units concerned, as well as those Owners with an interest in any common elements affected, together with words of conveyance in the amendment conveying interests acquired in the Units or common elements by such change. The amendment shall also be approved by the Board of Directors of the Association and signed and acknowledged by all lienholders and mortgagees of the Units concerned. It shall be the responsibility of the Owner(s) causing the change to record the

Amendment and to pay all expenses associated with such amendment.

2. Maintenance by Unit Owner: An Owner shall maintain and keep in repair the interior of his or her own Unit and the fixtures thereof; all fixtures, utility lines and equipment installed in the Unit commencing at a point where the utilities enter the Unit shall be maintained and kept in repair by the Owner thereof. An Owner shall do no act, nor any work, that will impair the structural soundness or integrity of the building or impair any easement. An Owner shall also keep all areas and limited common elements appurtenant to his or her Unit in a clean and sanitary condition. The right of each Owner to repair, alter, and remodel is coupled with the obligation to replace any finishing or other materials removed with similar types or kinds of materials. No acts of alteration, repairing or remodeling by any Unit Owner shall impair in any way the structural integrity of the adjoining Units or the structural integrity of limited common elements or general common elements.

3. Exterior Alterations: No Owner may change, alter or remodel the exterior of his or her Unit without the prior written approval of the Board of Directors of the Association.

4. Exterior Maintenance by Association: The Association shall take all necessary steps, including, but not limited to, painting, lawn care, roof maintenance and repair, repair and maintenance of exterior walls, entrances, cement repairs, ice and snow removal and replacement or repair of all broken or worn parts, to ensure that no building comprising the condominium shall not unnecessarily deteriorate and the Association shall also provide maintenance, upkeep and repair of the driveways to each building (as a limited common expense). The Board of Directors of the Association, or its agent, shall annually inspect the building and proceed with any necessary maintenance or repairs. Failure by the Board of Directors of the Association to make annual inspections and/or proceed with any necessary maintenance shall give any mortgagee or beneficiary of any trust indenture the right to order such work done and bill the Association therefore after notice to the Association of such intent by the lienholder and giving the Association a reasonable time to perform such work. Any lienholder or representative of the same upon written request, shall have the right to join the annual inspection made by the Board of Directors and suggest needed repairs and maintenance necessary to preserve the security value of the condominium project.

5. Liens for Alterations: Labor performed and materials furnished and incorporated into a Unit with the consent of or at the request of the Unit Owner, the Owner's agent, contractor or subcontractor, shall be the basis for the filing of a lien against the Unit or the Unit Owner consenting to or requesting the same. Each Unit Owner shall indemnify and hold harmless each of the other Owners from and against all liability arising from the claim of any



lien against the Unit or against the general common elements or limited common elements for construction performed or for labor, materials, services or other products incorporated in the Owner's Unit at such Owner's request.

6. Liens and Foreclosure: All sums assessed, but unpaid, for the share of general common expenses and limited common expenses chargeable to any condominium Unit shall constitute a lien on such Unit superior to all other liens and encumbrances, except only for taxes and special assessment liens on the Unit in favor of any assessing authority, and all sums unpaid on the first mortgage or a first trust indenture of record, including all unpaid obligatory sums as may be provided by such encumbrance. To evidence such lien, the Board, or its authorized agent, shall prepare a written notice of lien assessment setting forth the amount of such unpaid indebtedness, the amount of accrued interest and late charges thereon, the name of the Owner(s) of the Unit and a description of the Unit. Such notice shall be signed and verified by one of the officers of the Association or by its authorized agent, and shall be recorded in the office of the County Clerk and Recorder of Gallatin County, Montana. Copies of such notice shall be mailed to the Owner against whose interest the lien has been filed and the holder of any first lien of record and shall attach from the date of recording such notice. Such lien may be enforced by the foreclosure of the defaulting Owner's Unit by the Association, in the manner provided in the Unit Ownership Act and as provided for the foreclosure of a mortgage on real property, upon the recording of a notice of claim thereof. In any such foreclosure the Unit Owner shall be required to pay a reasonable rental for the Unit and the Association shall be entitled to the appointment of a receiver to collect the same. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosure or waiving the lien securing the same. In any such proceeding the Owner may be required to pay the costs, expenses and attorney's fees incurred in filing a lien, and in the event of foreclosure proceedings, additional costs, expenses and attorney's fees incurred.

7. Bidding at Foreclosure: The Board of Directors of the Association, on behalf of the other Unit Owners, shall have the power to bid on and purchase the Condominium Unit at a foreclosure or other legal sale, including the appurtenant interest in the common elements. Any lienholder holding a lien on a Unit may pay, but shall not be required to pay, any unpaid general common expenses, or limited common expenses payable with respect to any such Unit, and upon such payment, the Association shall assign to such person or entity its lien upon the Unit, which shall retain the same priority as the lien of the Association.

X. INSURANCE

1. All insurance policies upon the condominium buildings,

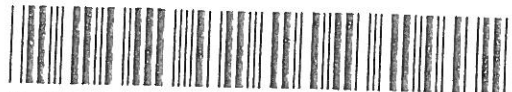


common elements and real property shall be purchased by the Association and shall be issued by an insurance company authorized to do business in Montana.

- a. Named Insured - Personal Property: The named insured shall be the Association, as agent for the Unit Owners. Such policies shall provide that payments for losses thereunder by the insurer shall be paid to the Insurance Trustee hereinafter designated, and all policies and endorsements thereon shall be deposited with the Insurance Trustee. Unit Owners may obtain insurance coverage at their own expense upon their own personal property and for their personal liability and living expenses for alternate accommodations if they are dispossessed.
- b. Copies to Mortgagees: One (1) copy of each insurance policy and of all endorsements thereon shall be furnished by the Association to each mortgagee of a Unit Owner on request.

2. Coverage:

- a. Casualty: All buildings and improvements upon the land, and all personal property included as part of the common elements shall be insured to any amount equal to the full insurable replacement value, subject to such deductible clauses as are required in order to obtain coverage at reasonable costs. Such coverage shall afford protection against:
 - i. Loss or damage to the common elements by fire and other hazards covered by a standard coverage endorsement for residential condominiums, and such other coverage deemed appropriate by the Board or Association as a whole. In no event shall insurance coverage be in an amount less than the replacement value of the condominium.
 - ii. Such other risks as may from time to time occur shall customarily be covered with respect to buildings similar in construction, location and use as the buildings on the land, and
 - iii. Errors and Omissions insurance for the Directors, Officers and Managers if the Association so desires, in amounts to be determined by the Board.



b. The policies shall state whether the following items are included within the coverage in order that the Unit Owners may insure themselves if the items are not insured by the Association:

i. Airhandling equipment for space cooling and heating, service equipment such as dishwasher, disposal, laundry, fireplaces, refrigerator, stove, oven, whether or not such items are built-in equipment, interior fixtures such as electrical and plumbing fixtures, floor coverings, inside paint and other inside wall finishings.

c. Public Liability: In such amounts and with such coverage as shall be required by the Board of Directors of the Association, including, but not limited to hired automobile and non-owned automobile coverage, if applicable, and with cross-liability endorsement to cover liabilities of the Unit Owners as a group to a Unit Owner.

d. Other Insurance: Such other insurance as the Board of Directors of the Association shall determine from time to time to be desirable and as may be required by the Federal and State laws.

3. Premiums: Premiums upon insurance policies purchased by the Association shall be paid by the Association as a common expense, except that the amount of increase in the premium occasioned by misuse, occupancy or abandonment of a Unit or its appurtenances, or of the common elements by a Unit Owner shall be assessed against the Owner. Not less than ten (10) days prior to the date when a premium is due, evidence of such payment shall be furnished by the Association to each lienholder listed in the roster of lienholders.

4. Insurance Trustee: All insurance policies purchased by the Association shall be for the benefit of the Association and the Unit Owners and their mortgagees, as their interest may appear. Such policies shall provide that all proceeds covering property losses shall be paid to such bank in Montana with trust powers as may be designated as insurance trustee by the Board of Directors of the Association, which trustee is herein referred to as the insurance trustee. The insurance trustee shall not be liable for payment of premiums, nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the insurance trustee shall be to receive such proceeds as are paid and hold the same in trust for the purposes elsewhere stated in this instrument and for the benefit of the Unit Owners and their mortgagees as follows:

a. Unit Owners: An undivided share for each Unit Owner,



such share being the same as the undivided share in the common elements appurtenant to his or her Unit.

- b. Mortgagees: In the event that a mortgagee endorsement has been issued for a Unit, the share of the Unit Owner shall be held in Trust for the mortgagee and the Unit Owner as their interests may appear; provided however, that no mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have the right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except distributions thereof made to a Unit Owner and mortgagee pursuant to the provisions of this Declaration. The Association shall notify the holder of any first lien on any of the Units of the occurrence of any loss in excess of \$10,000.00, within 30 days of such loss.

5. Distribution of Proceeds: Proceeds of insurance policies received by the insurance trustee shall be distributed to or for the benefit of the beneficial Owners and mortgagees in the following manner only:

- a. Miscellaneous: Expenses of administration, insurance trustee and construction or remodeling supervision shall be considered as part of the cost of construction, replacement or repair.
- b. Reconstruction or Repair: If the damage for which the proceeds are paid is to be repaired or reconstructed by the Association, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided.
- c. If there is no reconstruction or repair the first proceeds for distribution after paying the insurance trustee shall be made to the first lienholders for such Units before distribution to the Unit Owner.
- d. Certificate: In making distribution to Unit Owners and their lienholders, the insurance trustee may rely upon a certificate of the Association made by its representative or manager as to the names of the Unit Owners and their respective shares of the distribution.

6. Association as Agent: The Association is irrevocably appointed agent for each Unit Owner and for each Owner of a

mortgage or other lien upon a Unit and for each Owner of any other interest in the condominium property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

7. Benefit of Mortgagees: Certain provisions in this paragraph entitled "Insurance" are for the benefit of mortgagees or trust indenture beneficiaries of condominium parcels, and all such provisions are covenants for the benefit of any mortgagee of a Unit and may be enforced by such mortgagee or beneficiary.

8. Reconstruction:

a. Repair after Casualty: If any part of the condominium property shall be damaged by casualty, whether or not it shall be constructed or repaired, shall be determined in the following manner:

i. If a Unit or Units are found by the Board of Directors of the Association to be tenantable after the casualty, the damaged property shall be repaired.

ii. If a Unit or Units are found by the Board of Directors to be not tenantable after the casualty, the damaged property may be rebuilt or reconstructed, or, if not, then the property shall be subject to the applicable provisions of the Unit Ownership Act.

iii. In the event the Association elects not to rebuild as herein provided and set forth in the Unit Ownership Act, the insurance proceeds shall be used to satisfy any outstanding liens or encumbrances on the property. The only circumstances under which the Association can elect not to rebuild the condominium Units after a casualty loss is if the Units in the building are damaged to the extent that they are untenable.

iv. Certificate: The insurance trustee may rely upon a certificate of the Association made by its Chairman, President or manager to determine whether or not the damaged property is to be reconstructed.

b. Plans and Specifications: Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original improvements, or if not, then according to plans and specifications approved by not less than seventy-five percent (75%) of the Unit Owners,



including the approval of Owners of all Units which are to be altered, unless another percentage is required by the Montana Unit Ownership Act, in which case the latter percentage shall apply. Any such reconstruction not in accordance with the original plans and specifications must be set forth in an amendment to the Declaration, which amendment shall be prepared and filed of record in accordance with the provisions of such amended filing, more particularly set forth in paragraph VIII and paragraph IX sub-paragraph 1, hereinabove.

- c. Responsibility: The responsibility for reconstruction or repair after casualty shall be the same as for maintenance and repair in the condominium property.
- d. Assessments: If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction or repair for which the Association is responsible or if at any time during such reconstruction or repair, or upon completion of such reconstruction or repair, the funds for the payment of the costs thereof are insufficient, assessments shall be made against all Unit Owners in sufficient amounts to provide funds for the payment of such costs. Such assessments shall be in proportion to the Owner's percentage of interest in the general common elements
- e. Construction Funds: The funds for payment of costs of reconstruction or repair after casualty, which shall consist of proceeds of insurance held by the insurance trustee and funds collected by the Association from assessments against Unit Owners, shall be disbursed in the sound discretion of the trustee and according to the contract of reconstruction or repair, which contract must have the approval of the Board of the Unit Owners involved.
- f. Surplus: It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from the insurance proceeds. If there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be paid to the Association for the use and benefit of the Unit Owners.



XI. REMOVAL OR PARTITION - SUBDIVISION

1. The The Pines Condominium, Phase II may only be removed from condominium ownership, and may only be partitioned or sold, upon compliance with each of the conditions hereof:

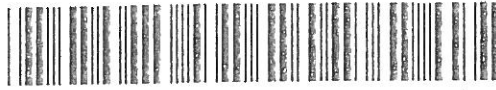
- a. The Board of Directors of the Association must approve the plan of removal, partition or sale, including the details of how any partition or sale and the distribution of property or funds shall be accomplished.
- b. The plan of removal, partition, subdivision, abandonment, termination or sale must be approved as provided in the Unit Ownership Act. If approval for any of the foregoing is not required by the Unit Ownership Act, then approval shall be required from at least seventy-five percent (75%) of the Owners, or first lienholders in the condominium, unless another percentage is required by the Montana Unit Ownership Act, in which case the latter percentage shall apply. Upon obtaining such approval, the Board shall be empowered to implement and carry out the plan of removal, partition, subdivision, abandonment, termination or sale.
- c. No Unit may be divided or subdivided into smaller Units, nor any portion thereof sold or otherwise transferred, except as provided above.
- d. This section shall not apply to the sale of individual condominium Units and shall not be considered as a right of first refusal.
- e. The common elements of The Pines Condominium, Phase II shall not be abandoned, partitioned, subdivided, encumbered, sold or transferred without compliance with all of the above requirements.

XII. INTERPRETATION

The provisions of this Declaration and of the Bylaws to be promulgated and recorded herewith, shall be liberally construed to effectuate the purposes of this Declaration and Bylaws and to create a building or buildings subject to and under the provisions of the Unit Ownership Act.

XIII. REMEDIES

All remedies provided for in this Declaration and Bylaws shall not be exclusive of any other remedies which may now be, or are hereafter, available to the parties hereto as provided for by



law.

XIV. SEVERABILITY

The provisions hereof shall be deemed independent and severable and the invalidity or partial invalidity or unenforceability of any one or more provisions shall not affect the validity or enforceability of any other provision hereof.

XV. MISCELLANEOUS

1. Utility and Structural Easement: Easements are reserved through the condominium property as may be required for utility services, including water, sewer, power, telephone, natural gas and cable television, in order to serve the condominium adequately; provided however, such easements through the property or through a Unit shall only be according to the plans and specifications for the Unit or building, as set forth in the recorded plat, or as the building is constructed, unless approved in writing by the Unit Owner. Every portion of a Unit which contributes to the structural support of the building shall be burdened with an easement of structural support for the benefit of the common elements.

2. Right of Access: The Association shall have the irrevocable right, to be exercised by the Board, or its authorized agent, to have access to each Unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the limited common elements therein or accessible therefrom or for making repairs therein necessary for the maintenance, repair or replacement of any of the limited common elements therein necessary to prevent damage to the general or limited common elements or to any Unit. Damage to the interior or any part of the Unit resulting from maintenance, repair, emergency repair or replacement of any of the general or limited common elements or as a result of any emergency repair within another Unit at the instance of the Association shall be designated either limited or general common expenses by the Association and assessed in accordance with such designation. Each Owner, his or her guests, invitees, tenants or lessees shall have an unrestricted right of ingress and egress to his or her Unit over and across the general common elements of the condominium.

3. Expenditures: No single expenditure or debt in excess of \$1,000.00 may be made or incurred by the Association or Manager without the prior approval of a majority of the Unit Owners.

*512 10/28/05
70 Unit
2,100*

4. Benefit: Except as otherwise provided herein, this Declaration shall be binding upon and shall inure to the benefit of the Declarant, the Association and each Unit Owner, and the heirs, personal representatives, successors and assigns of each, as well as holders of any liens or encumbrances.

5. Service of Process: The name and address of the person to receive service of process for The Pines Condominium, Phase II until another designation is filed of record, shall be John M. Radick, of P.O. Box 160011, Big Sky, Montana 59716.

6. A first lienholder, upon request, will be entitled to written notification from the Association of any default in the performance by an individual Unit Owner of any obligation under the condominium documents which is not cured within sixty (60) days.

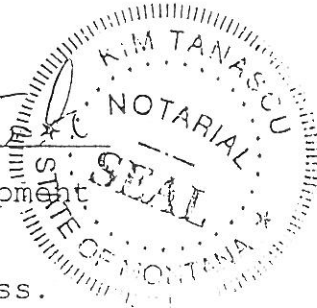
7. First lienholders shall have the right to examine the books and records of the Association and any Manager for the condominium upon reasonable notice during regular business hours.

8. The Declarant expressly makes no warranties or representations concerning the property, the Units, the Declaration, the Bylaws or deeds of conveyance, except as specifically set forth therein and no one may rely upon such warranty or representation not so specifically expressed therein.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be made and executed according to the provisions of the Unit Ownership Act, Section 70-23-101, et. seq., MCA.

S & D DEVELOPMENT LLP

John M. Radick
John M. Radick
Partner in S&D Development



STATE OF MONTANA)
 : ss.
COUNTY OF GALLATIN)

This instrument was executed before me this 12th day of October, 2005, by John M. Radick, Partner in S & D Development LLP.

Kim Tanasch
Printed Name KIM TANASCH
Notary Public for the State of Montana
Residing at BOZEMAN, Montana
My Commission Expires: MARCH 10, 2009