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STATE OF MONTANA MADISON COUNTY
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DECLARATION

FOR

**ELKHORN CREEK LODGES,
A CONDOMINIUM**

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CERTIFICATE OF NAME

The undersigned being the duly authorized agent of the Department of Revenue of the State of Montana within the County of Madison, herewith executes the following certificate relating to ELKHORN CREEK LODGES, A CONDOMINIUM, situated as follows:

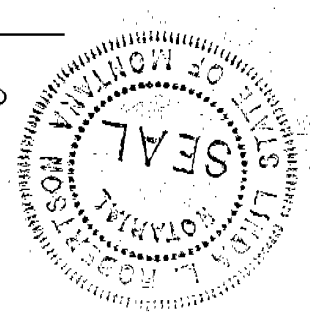
Tract 1 in Block 1, Amended Cascade Subdivision, Mountain Village, Big Sky, Montana, as shown in Book 4 of Plats, Page 153-A, Madison County, Montana.

1. That the name "ELKHORN CREEK LODGES, A CONDOMINIUM" is not the same as, similar to or pronounced the same as a word in the name of any other property or subdivision within Madison County, except for the word "Condominium"; and

2. All taxes and assessments due and payable for the said ELKHORN CREEK, LODGES, A CONDOMINIUM have been paid to date.

Dated:

Brandy Hilton
COUNTY ASSESSOR
Taxpayer # 2900200



STATE OF MONTANA
COUNTY OF MADISON

ON THIS 29TH DAY OF AUGUST, 2006, BEFORE ME PERSONALLY APPEARED BRANDY HILTON, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE WITHIN INSTRUMENT, AND ACKNOWLEDGED TO ME THAT SHE EXECUTED THE SAME.

Sandra L. Robertson

NOTARY PUBLIC FOR THE STATE OF MONTANA

RESIDING AT SHERIDAN, MONTANA

MY COMMISSION EXPIRES FEBRUARY 17, 2010


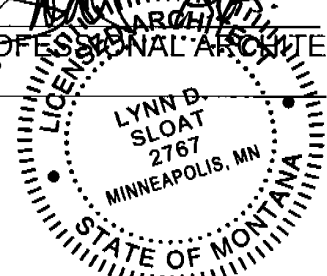
CERTIFICATE OF FLOOR PLAN

The undersigned, being a duly registered professional architect in the State of ~~Minnesota~~, herewith certifies the following:
~~MONTANA~~.

That the floor plans for ELKHORN CREEK LODGES, A CONDOMINIUM, being Units numbered by floor as First floor: A101, A102, and A103; Second floor A201, A202 and A203; Third floor A301, A302, A303, within the building designated as Building A and Buildings B, C and D to be constructed at a later date, as reserved by these Declarations, with a maximum of four (4) buildings containing nine (9) Units each, situated according to the official plat thereof on file and of record in the office of the County Clerk and Recorder of Madison County, Montana, as duly filed with the Declaration and Bylaws thereof, fully and accurately depict the layout, location, unit designation and dimensions to be built as ELKHORN CREEK LODGES, A CONDOMINIUM, and that such floor plans are an accurate copy of the plans filed with and approved by the officials of Madison County, Montana.

The floor plans accurately depicting the layout, location, unit designation and dimensions of each unit as built, shall be recorded by the Declarant thirty (30) days from the date of completion of the building or from the date of occupancy of the building, whichever first occurs.

DATED: 6.24.06


REGISTERED PROFESSIONAL ARCHITECT
Number 2767


DECLARATION

FOR

**ELKHORN CREEK LODGES,
A CONDOMINIUM**

THIS DECLARATION is hereby made and entered into this 24th day of August, 2006, by The Lodges at Elkhorn Creek, LLC (hereinafter referred to as the "Declarant"), whereby lands and property hereinafter described are submitted and subject to the Montana Unit Ownership Act pursuant to Chapter 23, Title 70, M.C.A., as amended.

The property subject to this Declaration shall be known as ELKHORN CREEK LODGES, A CONDOMINIUM (hereinafter referred to as the "Condominium," "Property" or "Project"). The address of the Condominium is 7 Sitting Bull Road, Big Sky, Montana 59716.

NOW, THEREFORE, Declarant hereby declares that the Project and the buildings constructed on the property in each subsequent phase to the extent they become built as described herein shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold and improved subject to the declarations, limitations, covenants, conditions, restrictions and easements contained in this Declaration, all of which are imposed as equitable servitudes pursuant to a general plan for the development of the Project for the purpose of enhancing and protecting the value and attractiveness of the Project, and every part of it, in accordance with the plan for the improvements of the Project and its division into Condominiums. All of the limitations, covenants, conditions, restrictions and easements shall constitute covenants that run with the land and are binding upon, and inure to the benefit of, Declarant, the Association, and all parties having or acquiring any right, title, or interest in or to any part of the Project or the Property in the Project.

**ARTICLE I.
TITLE AND NATURE**

The Project shall be known as ELKHORN CREEK LODGES, A CONDOMINIUM. The Project is established in accordance with the Montana Unit Ownership Act. The Project contains individual Units for residential use, as set forth herein and in the Bylaws, and each Unit is capable of individual utilization on account of having its own entrance from and exit to a Common Element of the Project. Each Unit Owner in the Project shall have an exclusive right to his Unit, the Unit's designated garage space(s),

which include Unit storage space and shall have undivided and inseparable rights to share with other Unit Owners the Common Elements of the Project.

ARTICLE II. DEFINITIONS

Unless the context expressly provides otherwise, the following definitions shall pertain throughout this Declaration and the interpretation thereof:

- 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) Articles - Shall mean the Articles of Incorporation for the Association.
- 3) Association or Association of Unit Owners - Shall mean the ELKHORN CREEK LODGES, A CONDOMINIUM ASSOCIATION, a non-profit corporation organized under the laws of the State of Montana.
- 4) Board or Board of Directors - Shall mean the Board of Directors of the Association as more particularly defined in the Bylaws.
- 5) The Lodges at Elkhorn Creek - The Lodges at Elkhorn Creek, LLC, a Florida limited liability company, which as reserved certain rights affecting the hereinafter described property, said rights being described and/or referred to herein. The term "The Lodges at Elkhorn Creek" shall include its successor and assigns whenever, however and wherever said term is used.
- 6) Building(s) - Means the building(s) containing the condominium Units.
- 7) Bylaws - Means the Bylaws promulgated by the Association under this Declaration and the Unit Ownership Act.
- 8) Common Elements shall mean both general common elements and limited common elements.
 - a. General Common Elements include all those elements that are for the use of all Unit Owners, invitees, and guests of Unit Owners of Elkhorn Creek Lodges, a Condominium.

Specifically included are: grounds surrounding the building(s), the land on which the buildings are located, paths sidewalks and walkways, any portion of the parking areas not specifically allocated to a particular unit

that includes the common area in the parking garage together with the floor heating pipes, lines, and all mechanical equipment utilized for heating the common area garage floor, any irrigation system placed on the property for landscape maintenance, storm water drainage facilities, any portions of the buildings designated on the floor plans as common to all Units, electrical, gas, telephone, water and sewer lines and connections serving all of the units, cable, landscaping, plants and other materials and improvements separate from and outside of the buildings containing the units, the common building that will contain the caretaker residence and other elements necessary for the safety, maintenance and existence of Elkhorn Creek Lodges, a Condominium in which each Unit Owner shall have its/his/her designated percentage of interest, as set forth in paragraph IV below.

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 owners, invitees, and guests of Unit Owners of Elkhorn Creek Lodges, a Condominium, to the exclusion of other such owners, invitees, and guests. As to any given Unit Owner or Owners, limited common elements shall mean the common elements which are located within or affixed to the building containing his unit, and which are for the use of the Unit Owners, business invitees, and guests of that Unit in which the elements are located or situated on the real property known as Elkhorn Creek Lodges, a Condominium.

Specifically included are: flues, chimneys, ducts, cables, conduits, public utility lines, water, sewer, electrical, gas, cable television lines within the unit, hot and cold water pipes (all such utility pipes and lines are limited common elements where they service only one or two units; where they service all units, they shall be general common elements), stairways, balconies, entrances, stoops, furnaces, patios, decks, driveways, boilers, hot water tanks and fixtures, or other portions of the building servicing only a particular unit or less than all of the units. The percentage of the 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 dividing that number into the total value of those limited common elements.

- 9) Common Expenses - Means expenses of administration, maintenance, repair or replacement of General Common Elements, Limited Common Elements, and all other expenses of the Association, and expenses declared common by the Unit Ownership Act.

- 10) Declaration - Means this document and all parts attached thereto or incorporated by reference.
- 11) Developer - Means The Lodges at Elkhorn Creek, LLC and its successors and assigns. Both successors and assigns shall always be deemed to be included within the term "Developer" whenever, however and wherever such terms are used in the Governing Documents.
- 12) Governing Documents - Shall mean this Declaration, the Bylaws, Articles and Rules of the Association.
- 13) Limited Expenses - Means the expenses attributable to the maintenance, repair and replacement of Limited Common Elements.
- 14) Manager - Means the Board of Directors or any management company or any other person or group of persons retained or appointed by the Board, or by the Association of Unit owners for the purpose of conducting the day-to-day operations of the Association.
- 15) Property or Project - Means the land, building, improvements and structures thereon and all easements, rights and appurtenances belonging thereto, which are herewith submitted to the Unit Ownership Act and subject to this Declaration.
- 16) Unit - Shall be the separate Units of the Condominium and is a parcel of property including and containing one or more rooms, intended for independent residential use, and with a direct exit leading to a street or highway or to common elements leading to a street or highway whether directly or indirectly by way of an easement connecting to a street or highway.
- 17) Unit Designation - Is the combination of letters, numbers and words that identify the designated Units.
- 18) Unit Owner and Owner - Means the person owning a Unit in fee simple absolute individually or as Co-Owner in any real estate tenancy relationship recognized under the laws of the State of Montana, in one or more Units of the condominium.
- 19) Unit Ownership Act - Means and refers to the Unit Ownership Act of the State of Montana, Chapter 23, Section 70-23-101, M.C.A., et seq., as amended.

Whenever any reference herein is made to one gender, the same shall include a reference to any and all genders where the same would be appropriate. Similarly, whenever a reference is made herein to the singular, a reference shall also be included to the plural where the same would be appropriate and vice versa.

ARTICLE III.
REAL ESTATE

- 1) **Description** - The property which is by this Declaration submitted and subject to the Montana Unit Ownership Act is described as Tract 1 in Block 1, Amended Cascade Subdivision, Mountain Village, Big Sky, Montana, as shown in Book 4 of Plats, Page 153-A, Madison County, Montana.

The Condominium units consist of 9 units per building subject to the expansion provisions of Article V below. The provisions of this Declaration and the bylaws shall be construed to be covenants running with the land, and shall include every unit and shall be binding upon the Unit Owners, their heirs, successors, personal representatives and assigns for as long as this Elkhorn Creek Lodges, a Condominium Declaration and Bylaws are in effect.

- 2) **Condominium Units** - Each Unit, together with the appurtenant undivided interest in the common elements of the condominium shall together comprise one condominium Unit, shall be inseparable, and may be conveyed, leased, rented, devised or encumbered as a condominium in accordance with this Declaration.
- 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 the 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 the 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 comprising the condominium are contained in one (1) building, which may be expanded to add units and buildings according to the expansion provisions below. The land on which the building is located is a Common Element of the Project.

- 5) Unit Boundaries - Each Unit shall include the part of the Building containing the Unit that lies within the boundaries of the Unit, which boundaries are as follows: Each of the Units as separately shown, numbered and designated in **Exhibit B** consists of the space bounded by and contained within the interior unfinished surfaces of the perimeter walls, floors, ceilings, windows, window frames, doors, door frames, and trim of each Unit, each of those spaces being defined and referred to in this Declaration as a "Unit." Bearing walls located within the interior of a Unit, except for their finished surfaces, are part of the Common Elements, not part of the Unit. Each Unit includes the utility installations located within its boundaries of which the Owner has exclusive use, including, without limitation: hot water heaters, space heaters, lighting fixtures, cabinetry, and air-conditioning equipment that are located entirely within the Unit they serve. Each Unit includes both the portions of the Building so described and the airspace so encompassed. The Unit does not include those areas and those things that are defined as Common Elements in Article I of this Declaration.
- 6) Construction Materials - The principal materials of construction of the building are concrete for foundations, footings and slabs, walls; wood frames for the structure; sheet rock and wood trim for the interior; wood, carpet or tile for the floors; wood siding and stone for the exterior wall surfaces and for the wood structure and roofing material of the building.
- 7) Furniture - All furniture, fixtures and equipment contained in each Unit shall be conveyed with the Unit and shall be the property of the Unit owner. The owner shall be responsible for the maintenance and upkeep of the furniture, fixtures and equipment of each Unit, all as defined in the Bylaws of the Association.

ARTICLE IV. EASEMENTS AND ENCROACHMENTS

- 1) Common Element Easements - a non-exclusive right of ingress and egress and support through the General Common Elements are appurtenant to each Unit and all the General Common Elements are subject to such rights. 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 Unit, and such other incidental uses permitted by this Declaration, which rights shall be appurtenant to and run with the whole Unit.
- 2) Easement for Utilities - Each Unit may have its air space penetrated by electrical wires and lines, cable, gas lines, hot and cold water lines, waste water lines and vents and other utility and mechanical lines, pipes or equipment. These lines, where they serve only one Unit shall be appurtenant to such Unit, but where they serve more than one Unit shall be part of the common elements, either limited or

general, depending upon how many Units are being served thereby as defined in Article II, Paragraph 8. Such items shall be so installed and maintained so that they shall not unreasonably interfere with the use of the Unit air space by the Owners of the same. A non-exclusive easement shall exist through, over and across each Unit for structural support of the utility lines and mechanical equipment and for the use, inspection, installation, maintenance, replacement and repair of such utility lines and mechanical equipment for the use of all of the Unit Owners or the Unit Owners being serviced by the air space being penetrated by such lines and/or equipment. After completion of construction of a Unit an easement for ingress and egress for the purpose of such inspection, installation, maintenance, replacement or repair of such easement rights shall only be exercised under the direction and approval and with the authority of the Association and/or the Manager unless an emergency exists in which event any action may reasonably be taken which is justified under the circumstances to minimize damage which would otherwise occur as a consequence of such emergency. There shall be easements to, through and over the Units and the Common Elements for the continuing maintenance and repair of all utilities in the Condominium. There shall exist easements of support with respect to any Unit interior wall that supports a Common Element. The foregoing easements are all permanently reserved to the Declarant, the Association and the Owners.

- 3) Easements for Public Utilities - The Declarant reserves the right at any time during the development and sales period of the Project or any additional phases of the Project to grant easements for utilities over, under and across the Project to appropriate governmental agencies or public utility companies and to transfer title of utilities to governmental agencies or to utility companies. Any such easement or transfer of title may be conveyed by the Developer without the consent of any Unit Owner, mortgagee or other person and shall be evidenced by an appropriate amendment to this Declaration and recorded in the Madison County records. All of the Unit Owners and mortgagees of Units and other persons interested or to become interested in the Project from time to time shall be deemed to have irrevocable and unanimously consented to such amendment or amendments of this Declaration as may be required to effectuate the foregoing grant of easement or transfer of title.
- 4) Grant of Easements by Association - The Association, acting through its lawfully constituted Board of Directors shall be empowered to grant such easements, licenses, rights-of-entry and rights-of-way over, under and across the Project for Utility purposes, access purposes or other lawful purposes as may be necessary for the benefit of the Association.
- 5) Easements for Maintenance, Repair and Replacement - The Declarant, the Association and all public or private utilities shall have such easements over, under, across and through the Condominium Project, including all Units and

Common Elements, as may be necessary to fulfill any responsibilities of maintenance, repair or replacements which they or any of them are required or permitted to perform under the Governing Documents or by law. These easements include, without any implication or limitation, the right of the Association to obtain access at all times to meters, controls, valves, pipes, conduits and other Common Elements located within or gained through any Unit or its appurtenant Limited Common Elements.

- 6) Specific Written Easements - The Lodges at Elkhorn may, by subsequent instrument, prepared and recorded in its sole discretion without the necessity of consent by any interested party, specifically define or amend by legal description the easements created by this Article IV, Paragraphs 6 and 7.
- 7) Right of Access - The Association shall have the irrevocable right, to be exercised by the Board or Manager, 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 emergency 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 an emergency repair within another Unit at the instance of the Association shall be designated Common Expenses by the Association and assessed accordance with such designation.

- 8) 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 Unit encroaches upon the general common elements, the limited common elements, or on the Units for the purpose of marketability of title 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.

**ARTICLE V.
OWNERSHIP AND EXPANSION**

- 1) Percentage of Interest. Each Unit Owner shall be entitled to the exclusive ownership, use and possession of his Unit and the percentage of undivided interest of each Unit Owner in the Common Elements as set forth below. Such percentage represents his ownership interest in the General Common Elements, his liability for Common Expenses, and the voting interest of the Unit Owner or Owners in all matters concerning the Association of Unit Owners. The percentage of interest was determined on the basis of the value of the Units as reflected by the relative square footage of each Unit. Such percentage of interest owned by each of the Units in the condominium is set forth below:

<u>UNIT NO.</u>	<u>SQUARE FOOTAGE*</u>	<u>PERCENTAGE OF INTEREST IN GENERAL COMMON ELEMENTS</u>
Building A:		
A101	2,220	9.89%
A102	2,006	8.93%
A103	2,157	9.61%
A201	2,218	9.88%
A202	2,007	8.94%
A203	2,188	9.75%
A301	3,226**	14.37%
A302	3,234**	14.40%
A303	3,195**	14.23%
	22,451	100.00***

* represents square footage of unit exclusive a garage/storage unit area.

** includes the third floor loft area in square footage

*** is subject to the expansion provisions below.

- 2) Floor Plans and Exhibits - The condominium consists of Property as described above, and a total of nine (9) separate Residential Units, which may be expanded to not to exceed thirty-six (36) Residential Units and a clubhouse with a caretaker residence. For identification and descriptive purposes the following exhibits are attached and by reference hereto incorporated into and made a part of this Declaration:

Exhibit A Legal description of the real estate initially included in the condominium.

Exhibit B Floor plans showing the layout of each of the Units of the condominium, the area of each, the dimensions and the designation of each Unit and the location of each Unit in the buildings and showing the common areas or limited common contained within or attached to the buildings.

Exhibit C Site plan of the condominium showing the property, the location of the buildings containing the condominium Units on the Property and the common areas to which each unit has access and the Unit designations and location of the units within the buildings.

- 3) Voting Interest For the purposes of this Declaration and the expanded Declaration as set forth below, the voting interest of the Unit Owner or Owners in all matters concerning the Association of the Unit Owners shall be equal to the other units in accordance with the Bylaws of the Association of the Unit Owners. For the present, each of the original 9 units shall have one vote per unit, for a total of 9 votes.

Expansion Provision

The Declarant intends from time to time to construct additional Units on the property, for a final total not to exceed 36 units. At such time as Declarant wishes to add such additional units, Declarant shall record in the office of Clerk and Recorder of Madison County, Montana, a Supplemental Declaration containing:

- a. A site plan showing the buildings or buildings to be constructed on the common elements as the same is set forth herein showing the site plan and common elements of the condominium, and

- b. A designation of the buildings to be constructed with the same numbers or letters to be shown on the site plan to be so recorded, and
- c. Floor plans showing the units to be contained within the additional buildings to be constructed and added to this condominium regime together with the numbers given to the specific units, and
- d. A description of the buildings and the materials of which they are constructed, and
- e. A schedule of the percentage of undivided ownership of the specific units to be added to the condominium regime in the general common elements, computed for each condominium unit which, when added to the number of units as a whole, will give the additional condominium units, as well as the previously existing condominium units, their respective percentage of interest in the expanded or new condominium regime.
- f. To be and remain in compliance with the provisions of Section 70-23-306, MCA, at the time of the filing of such amendment or amendments, floor plans and an architect's or engineer's certificate shall additionally be prepared and recorded, being additions to Exhibit B herein, certifying and showing that the said floor plans fully and accurately depict the layout of the units in the floors of the buildings and that construction of each such additional new building has been completed.
- g. A description of any and all limited common elements to the new units if there shall be any changes to the description contained in the existing Declaration or any of the amendments thereto.

At the time the Declarant, or its successors or assigns, elect to file such amendment to this Declaration all then existing condominiums owners hereby covenant and agree that they will, upon request, join in the execution of such amendment papers agreeing, consenting and joining in such amendment, and further agreeing to reduce their percentage of ownership in the general common elements.

The within agreement shall be a covenant running with the land, and shall be binding upon the owners of the then existing units, who upon acquiring title to such units, by this covenant agree and consent to the filing of such amendment and joining in the same, and by this covenant agrees to and consents to the appointment of the Declarant as their attorney-in-fact so that the Declarant may in its discretion simply file the Declaration on its own initiative, having been herein given the power and authority to make

such amendment for and on behalf of all subsequent condominium owners in Elkhorn Creek Lodges, a Condominium.

After the recording of such supplemental and amended Declarations, all owners of condominium units in the property shall have a nonexclusive right and license subject to the provisions herein, to use and enjoy all of the general common elements of the condominium regime by such amendment. In addition, the owners of the respective units shall further have the nonexclusive right and license to use and enjoy the limited common elements which are appurtenant and part of their respective units which may be added to the condominium regime which are limited to the use of less than all of the Unit Owners.

Except as otherwise specifically provided in this Declaration or in such Supplemental Declarations, all of the provisions, terms and definitions herein contained shall, upon recording of the same, be deemed expanded to include the additional units.

- 4) Exclusive Ownership - Each Owner or Owners shall be entitled to exclusive Ownership and possession of their 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.
- 5) Developer shall not be required to construct all proposed Units within any set time frame. Developer reserves the right to build the Units in accordance with the floor plans and site plan attached hereto and as the same may be amended in accordance with this Declaration. If there is any change in the floor plans or site plan or the Unit owner's percentage interest in the Common Elements, then the amendment shall include such changes.

Until a Unit is completed and the amendment is filed, the assessments levied against such uncompleted Unit by the Association shall be limited to assessments for the General Common Elements relating to the land, including real estate taxes and assessments, public liability insurance, and other assessments and costs relating to the General Common Element, but not including assessments for Building maintenance, fire and casualty insurance or other assessments and costs relating to the general or Limited Common Elements applicable to or servicing only the buildings and completed units.

- 6) Declarant shall have the right to execute, file and record any such amendments set forth in (D) and (E) above and such other documents required to accomplish such annexation. The Unit Owners, the Association, lien holders, mortgagees and all others acquiring any interest or lien on the Units or Common Elements

shall be bound by the foregoing rights of the Declarant to amend the Declaration (and Bylaws if required) and their consent is implied to such amendments by the acceptance or acquisition of any interest or lien in the Units or Common Elements and Developer is appointed the Unit Owner's and lien holders' agent to execute and record such amendments. These provisions shall be deemed a covenant running with the Units and Common Elements.

Upon the execution and recording of any such amendment, the Unit Owners, lien holders and mortgagees shall be bound and subject to the terms, provisions and conditions and consequences of such amendment. The recorded amendment shall be mailed to each Unit Owner and to the Association. Each Unit Owner shall mail a copy of the recorded amendment to any mortgagee or other lien holder of his or her respective Unit.

After the recording of such amendment, any transfer, conveyance deed, encumbrance, lien, mortgage or assessment shall reflect any new or changed percentage of interest in the Common Elements. A Unit's or Units' failure to accurately reflect or state the new percentage interest shall not void any document, and the error may, at any time, be corrected by the appropriate corrective document.

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

(A) The property may be used for lawful purposes. The Units shall only be used for lawful residential purposes including transient rentals, as limited by this Declaration and the Bylaws or Regulations adopted for the condominium regime. The owner(s) of a unit may conduct business from the unit so long as no employees, independent contractors, clients, consultants or any person receive, obtain or provide service in person with or receive personal service the unit owner(s) conducts business from the unit.

(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 order and repair his own Unit.

(C) Owners shall not cause or permit anything to be placed, hung or displayed from the inside of window displaying outward (i.e. signs or messages), on the outside of windows or placed on the outside of windows or placed on the outside of walls of a building, in any common or limited common area and no air conditioning, sign, awning, canopy, radio or television antennae, satellite dish, or other reception device shall be affixed to or placed upon the exterior walls or roof or any part thereof, without prior written consent of the Association, except as allowed by the Bylaws. All window coverings visible from the exterior of the Unit

shall be approved neutral in color and approved by the Board unless pre-approved covering are addressed and included the Rules and Regulations.

(D) Patio, porch and balcony use shall be consistent with the provision. The patios, porches and balcony of the Unit shall be kept in a clean, neat, sightly and orderly condition at all times and shall be not be used for overnight storage of garbage or for the drying of laundry. Furniture placed on the patios, porch or balcony shall be of a neutral color, consistent with the exterior of the building(s) and shall not detract from the condominium unit appearance.

(E) Charcoal briquette cooking, because of fire hazards, shall not be permitted on any patio, porch or balcony and/or any other location within the Elkhorn Creek Lodges, a Condominium.

(F) Each ground floor unit has the right to place, after applying for and obtaining approval of the Association, a hot tub, which maybe placed on the Units' Exterior patio. A Unit Owner shall submit all requests, including drawings depicting the plans for drainage, landscaping or screening to the Association. The installation of any hot tub shall minimize the visual effect on the surrounding units. Maintenance of an approved hot tub must be completed so as to not impact or negatively affect the other units and the general common elements.

(G) Nothing shall be done in any Unit or in, on or to the common elements which will impair the structural integrity of any building or which would structurally change any building, except as is otherwise provided herein.

(H) Nothing shall be altered or constructed in or removed from the common elements, except upon the prior written consent of the Association.

(I) No noxious or offensive activities shall be carried our on nor shall be anything done or place on or in any part of the Elkhorn Creek Lodges, a Condominium, which is or may become a nuisance or cause unreasonable embarrassment, disturbance or annoyance of other. No activity shall be conducted and no improvements shall be made or constructed that are or might be unsafe or hazardous to any person or property. No odor or noise shall be emitted that is noxious or offensive to others.

(J) The caretaker unit, which shall be located in the common building, shall be used for employee housing only. It shall not be sold as a separate unit. The caretaker, who may otherwise be referred to as the Association employee, part time employee or independent contractor who maintains the facilities and common areas, is responsible for the utility costs associated with the caretaker unit so long as the person responsible for care taker duties is residing in the caretaker unit. The Association shall only assume those costs during any period

of vacancy of the caretaker unit. The occupant of the caretaker unit may not allow other persons to reside in the caretaker unit without Association permission. Any rents collected from other occupants of the caretaker unit are due and owing to the Association and not to the caretaker. The occupant(s) of the caretaker unit shall be bound by these Declarations and the Rules and Regulations adopted by the Association.

ARTICLE VI.
THE ASSOCIATION

- 1) Membership - Any Owner of a Unit in the condominium shall automatically, upon becoming the Owner of said Unit, be a member of the Association, and shall remain a member of said Association until such time his ownership ceases, whereupon his membership in said Association will automatically cease. The membership shall be limited to Unit Owners as defined in this Declaration.

- 2) Function - It shall be the function of the Association to:
 - (A) Adopt Bylaws for the governance of the Association.
 - (B) Make provisions for the general management and/or repairs and maintenance of the Common Elements.
 - (C) Levy assessments, including capital assessment, as provided for in the Declaration, Bylaws and Unit Ownership Act.
 - (D) Adopt and implement a policy for the affairs of the Association.
 - (E) Enter into contracts to hire personnel for the management of the affairs of the Association and the maintenance and repair of the Common Elements.

- 3) Vote - On all matters, unless excluded by this Declaration, to be decided by the Association, each Owner shall have a vote equal to his percentage of interest in the Common Elements. When more than one (1) person owns any Unit, all such persons shall be members. The vote for such Unit shall be exercised as the Owners among themselves determine, but in no event shall more than the allocated percentage interest vote is cast with respect to any Unit. Meetings of the Association shall only be conducted when a quorum is present, as defined in the Association Bylaws. Except as otherwise provided in the Unit Ownership Act, this Declaration or the Bylaws, a majority of the aggregate voting interest present at any meeting or by proxy shall be sufficient to act on matters brought before the Association.

- 4) Failure to Comply - Attorney's Fees - Each Owner shall comply strictly with the provisions of this Declaration, the Bylaws, rules, regulations, decisions and resolutions of the Association adopted pursuant thereto as the same may be lawfully amended from time to time. 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 attorney's fees incurred in connection therewith, which action shall be maintainable by the Board or the Manager in the name of the Association, on behalf of the Owners or by an aggrieved Owner where there has been a failure of the Association to bring such action within a reasonable time.
- 5) Initial Board of Directors - The Declarant hereby appoints the following persons to serve on the Board of Directors until the first meeting of the Association, to-wit:
- | | | |
|-----------------|-----------|--|
| Mark Eklo | Chairman | 3360 Bavaria Road
Chaska, MN 55318 |
| Dan Russ | Treasurer | 51 Choctaw Circle
Chanhassen MN 55317 |
| Margie Toepffer | Secretary | Low Dog Road
Big Sky, Montana 59716 |
- 6) Maintenance by Owners Association - The Association shall maintain and keep in repair the Common Elements of the Condominium. 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. The Association shall do no act or any work that will impair the structural soundness or integrity of the Building or impair any easement.

Each Owner shall also keep all Limited Common Elements appurtenant to his Unit in a clean and sanitary condition. The right of the Association to repair, alter and remodel is coupled with the obligation to replace any finishing or other materials removed with similar type or kinds of materials.

ARTICLE VII ASSESSMENTS

- 1) Payment of Assessments - All assessments shall be due ten (10) days from the date of mailing notice of such assessments to the Owners. Assessments may be payable in installments, monthly or quarterly, at the option of the Board. The amount of the Common Expenses assessed against each Unit and the amount of limited expenses assessed against each Unit shall be the personal and individual debt of the Owner thereof. No Owner may exempt himself from liability for these

contributions toward the Common Expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of his Unit. All assessments that 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 Board or Manager shall have the responsibility of taking prompt action to collect any unpaid assessment that becomes delinquent. In the event of delinquency in the payment of the assessment the Unit Owner shall be obligated to pay interest at the rate to be determined by the Board on the amount of the assessment from the due date thereof, together with such late charges in the amount of ten percent (10%) of the delinquent assessment. 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, of the Association shall be distributed among, and charged to the Unit Owners according to the percentage of interest of each of the Common Elements.

- 2) Levying Assessments When Made - Purposes - The Association of Unit Owners shall levy assessments upon the Unit Owners in the following manner and for the following reasons:

(A) The Board shall establish and levy annual assessments in an amount that the Board estimates will be sufficient to raise the funds needed to perform the duties of the Association during each fiscal year. The Board at any time may levy a special assessment in order to raise funds for unexpected operating or other costs, insufficient operating or reserve funds, or such other purposes as the Board in its discretion considers appropriate. The Board may not impose an annual assessment on any Unit which is more than twenty percent (20%) greater than the annual assessment for the immediate preceding fiscal year, or levy special assessments which in the aggregate exceed five percent (5%) of the total budget of the Association for that fiscal year, without the vote or written consent of a majority of the aggregate voting interests of the Association. Notice of the assessment, whether regular or special, the amount thereof, and the purpose for which it is made, including an annual budget for expenditures and operation, for regular annual assessments, shall be served on all Unit Owners, by delivering a copy of the same to the Owner personally or by mailing a copy of the notice to the said Owners at their addresses of record at least ten (10) days prior to the due date for such meeting.

At the initial purchase of a Unit from the Declarant, the Unit owner shall pay a capital assessment of \$1,000.

- 3) Assessments shall be made for the maintenance, repair, replacement, insurance, management and administration of General Common Elements, fees, costs and

- expenses of the manager, taxes for Common Elements if any, utilities, reserves for contingent liabilities and other related items and assessments for the Unit Owner's percentage share of any Improvement or Utility Districts which may exist or be created. Assessments for General Common Element Expenses shall be based upon and computed by using the percentage of interest that each Unit Owner has in relation to the common elements.
- 4) Assessments shall also be made for the payment of maintenance, repair and replacement of the Limited Common Elements as if such Limited Common Elements were Common Elements.
 - 5) Assessments may also be made for any purpose contemplated by this Declaration and for any purpose set out in the Montana Unit Ownership Act.
 - 6) 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 share of the Common Expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore. However, 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 said unpaid assessments against the grantor due the Association and 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.
 - 7) The annual assessment shall also include a portion for reserves as the Board considers appropriate to adequately meet the costs of the future repair, replacement or additions to the major Common Element improvements and fixtures that the Association is obligated to maintain and repair. Reserves for General Common Elements shall be assessed according to the Unit's percentage interest. Reserves for Limited Common Elements shall be assessed to the Units to which they are appurtenant.
 - 8) Assessment to be paid by the Developer - During the period beginning with the recording of this Declaration and ending twelve (12) months after the closing of the first sale of a Unit the Developer shall not pay any assessments on the Units it owns, provided, however, that during this period the Developer shall reimburse the Association for any expenses the Association incurs which are not covered by the assessments of other Unit Owners.
 - 9) 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 tax and special assessment liens on the Unit in favor of any assessing authority, and all sums unpaid on a 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 Manager 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 of the Condominium Unit and a description of the Condominium Unit. Such notice shall be signed and verified by one of the officers of the Association or by the Manager, or his authorized agent, and shall be recorded in the office of the Clerk and Recorder of Madison County, Montana. Such lien shall attach from the date of recording such notice. Such lien may be enforced by the foreclosure of the defaulting Owner's Condominium Unit by the Association in the manner provided in the Unit Ownership Act and as provided by 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 Plaintiff in such foreclosure action 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.

- 10) Bidding at Foreclosure - The Board of Directors of the Association on behalf of the other Unit Owners shall have the power to bid on the Condominium Unit at a foreclosure or other legal sale and to acquire and hold, lease, mortgage and convey or otherwise deal with the same. Any lienholder holding a lien on a Condominium 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, such lienholder shall have a lien on said Unit for the amounts paid of the same rank as the lien of his encumbrance without the necessity of having to file a notice or claim of such lien.
- 11) Unpaid Assessments - Mortgagee - Where a lienholder or other purchaser of a Unit obtains title to the Unit as a result of foreclosure of the first mortgage or trust indenture, such acquirer of title, his 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 to such Unit by such acquirer. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectable from all of the Units including such acquirer, his successors and assigns.

ARTICLE VIII.
DEVELOPER'S RIGHT TO CHANGE

The Developer reserves the right to change the interior design and arrangement of all Units, so long as the Developer 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.

ARTICLE IX.
AMENDMENT

- 1) Amendment of this Declaration shall be made in the following manner: At any regular or special meeting of the Association of Unit Owners such amendment may be proposed as a resolution by any Unit Owner, or the Board or Manager. 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 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 the majority of the aggregate percentage of interest of the Unit Owners. If so approved, it shall be the responsibility of the Association to file the amendment with the Clerk and Recorder's Office of Madison County, Montana. Notwithstanding anything set forth in this Article IX, Paragraph 1, the Developer reserves the sole right to amend this Declaration the longer of so long as Developer is a Unit Owner or until the completion of all proposed phases of the Project.
- 2) The Developer hereby reserves the right at any time, on behalf of itself and on behalf of the Association, to amend this Declaration and the Governing Documents without approval of any Unit Owner or mortgagee for the purposes of correcting survey or other errors and for any other purpose unless the amendment would materially alter or change the rights of a Unit Owner or mortgagee, in which event Unit Owner and mortgagee consent shall be required as provided above. Such changes shall include adding additional phases contemplated in this Declaration.
- 3) Change in Percentage Value - The value of the vote of any Unit Owner and the corresponding proportion of Common Expenses assessed against such Unit Owner shall not be modified without the written consent of such Unit Owner and his mortgagee, nor shall the percentage of value assigned to any Unit be modified without like consent, except as provided in this Declaration in the Bylaws or pursuant to the Unit Ownership Act or by the annexation of additional Units in subsequent phases.

- 4) Approval of Developer and The Lodges at Elkhorn - No amendment shall adversely affect the rights or privileges of the Developer and of The Lodges at Elkhorn without their written consent.
- 5) Notwithstanding the procedure set forth above, the Declarant may amend this Declaration, or any other Governing Documents, prior to any sale or lease of a Unit or interest thereof.
- 6) Power of Attorney - Each Unit Owner hereby appoints the Developer as his or her attorney-in-fact, and grants the Developer all necessary authority so that the Developer may file any amendment authorized by the process described herein.

ARTICLE X.
ASSIGNMENT

Any or all of the rights and powers granted or reserved to the Developer or to The Lodges at Elkhorn in the Governing Documents or by law, including the power to approve or disapprove any act, use or proposed action or any other matter or thing, may be assigned by it to any other entity or to the Association. Any such assignment or transfer shall be made by appropriate instrument in writing duly recorded in the office of the Madison County Clerk and Recorder.

ARTICLE XI.
RESTRICTIONS

All of the Units and Common Elements in the Condominium shall be held, used and enjoyed subject to the following limitations and restrictions:

- 1) Use - The Units in the Condominium shall be used only for purposes of residential occupancy by Unit Owners, their families and their guests and invitees who do not pay consideration for such occupancy, consistent with the other restrictions contained in the Governing Documents, only for transient rental accommodation, limited by the restrictions of Section XI(2) and may not be used for any other purposes whatsoever.
 - A) Unit occupancy shall not exceed eight (8) persons for overnight accommodations within the Units on the ground/first floor and second floor. The Unit occupancy for the third floor units shall not exceed ten (10) persons for overnight accommodations within the unit.
 - B) Use of patios, porches and balconies shall be consistent with Article V, Section 7.

- 2) Leasing - A Unit may only be leased in a fashion consistent with the restrictions set forth in the Governing Documents. Owners shall be responsible for all violations of the Governing Documents or damages caused to the Common Elements by their tenants. A Unit Owner may not lease his Unit as a transient accommodation unless the Unit is leased through The Lodges at Elkhorn Creek, LLC, or a leasing agent designed by The Lodges at Elkhorn Creek, LLC, pursuant to The Lodges at Elkhorn Creek, LLC's or such leasing agent's standard property management agreement, and upon such terms and conditions as The Lodges at Elkhorn or such leasing agent may require, provided that said terms and conditions shall be substantially the same as for other similarly managed Units.
- 3) Alterations and Modifications - No Unit Owner shall make any alteration or modification of any Common Element. The Association shall only undertake such alterations and modifications if The Lodges at Elkhorn or the Developer has given approval. So long as The Lodges at Elkhorn or the Developer own any Unit in the Condominium or until all proposed phases are completed, 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 order and repair his own Unit.

Owners shall not cause or permit anything to be placed, hung or displayed on the outside of windows or walls of a building, and no air conditioning, sign, awning, canopy, radio or television antenna, satellite dish, or other reception device 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 as allowed by law.

Nothing shall be done in any Unit or in, on or to the common elements which will impair the structural integrity of any building or which would structurally change any building, except as is otherwise provided herein.

Nothing shall be altered or constructed in or removed from the common elements, except upon the prior written consent of the Association.

- 4) Activities - No immoral, improper, unlawful or offensive activity shall be carried on in any Unit or upon the Common Elements nor shall anything be done which may be or become an annoyance or a nuisance to the Unit Owners of the Condominium. No unreasonably noisy activity shall occur in or on the Common Elements or in any Unit. No Unit Owner shall do or permit anything to be done or keep or permit to be kept in his Unit or on the Common Elements anything that will increase the rate of insurance on the condominium without the written approval of the Board, and each Unit Owner shall pay to the Association the increased cost of insurance premiums resulting from any such activity or the maintenance of any such condition even if approved. Activities which are

deemed offensive and are expressly prohibited include, but are not limited to, the following: any activity involving the use of firearms, air rifles, pellet guns, B-B guns, bows and arrows, or other similar dangerous weapons, projectiles or devices.

- 5) Pets – No more than two (2) commonly recognized household pets, such as dogs, cats, and aquarium fish, may be maintained by any Unit Owner in his Unit or elsewhere in the Project. Any Unit Owner who causes any animal to be brought or kept upon the premises of the Condominium shall indemnify and hold harmless the Association from any loss, damage or liability that the Association may sustain as the result of the presence of such animal on the premises.
- 6) Aesthetics - The Common Elements shall not be used for storage of supplies, materials, personal property or trash or refuse of any kind, except as provided in duly adopted rules and regulations of the Association. No unsightly conditions shall be maintained on any patio, porch or deck and only furniture and equipment consistent with the normal and reasonable use of such areas shall be permitted to remain there during seasons when such areas are reasonably in use and no furniture or equipment of any kind shall be stored thereon during seasons when such areas are not reasonably in use. Trash receptacles shall be maintained in areas designated therefore at all times and shall not be permitted to remain elsewhere on the Common Elements except for such short periods of time as may be reasonably necessary to permit periodic collection of trash. The Common Elements shall not be used in any way for the drying, shaking or airing of clothing or other fabrics. In general, no activity shall be carried on nor condition maintained by a Unit Owner, either in his Unit or upon the Common Elements, which is detrimental to the appearance of the Condominium.
- 7) Advertising - No signs or other advertising devices of any kind shall be displayed which are visible from the exterior of a Unit or on the Common Elements, including "For Sale" signs.
- 8) No Owner shall park, store or maintain in or on the Property any boats, trailers, campers or commercial type trucks, or vehicles other than ordinary passenger cars, sports utility vehicles and three-quarter (¾) ton or smaller pick-up trucks outside of the designated garage space. The temporary parking outside of the designated garage of boats, trailers, campers or other vehicles not customarily used for means of general transportation for periods of short duration, but not to exceed four (4) hours within any forty-eight (48) hour period, as an incident to loading or unloading thereof, shall not be deemed a violation of this paragraph. No repairs to any vehicle may be made on the Property, except in case of strict emergency. No noisy, smoky or unlicensed vehicles shall be operated upon the Property. The Association may cause the removal of any vehicle wrongfully parked on the Property, including a vehicle owned by an Owner, their family

guests or tenants, in any manner allowed by law. The Association shall not be liable for any damages incurred by the vehicle owner, or any Owner, because of the removal in compliance with this section, or for any damage to the vehicle caused by the removal. Notwithstanding the foregoing, the Association may cause the removal, without notice, of any vehicle parked in a marked fire lane, within fifteen (15) feet of a fire hydrant, in a parking space designated for handicapped without proper authority or in a manner which interferes with any entrance to, or exit from, the Property or any Condominium, parking space or garage located thereon.

- 9) Rules and Regulations - It is intended that the Board of Directors of the Association may make rules and regulations from time to time to reflect the needs and desires of the Unit Owners in common. Reasonable regulations consistent with the Act, this Declaration and the Bylaws concerning the use of the Property may be made and amended from time to time by any Board of Directors of the Association, including the first Board of Directors. Copies of all such rules, regulations and amendments thereto shall be furnished to all Unit Owners.

- 10) Right to Access of Association - The Association or its duly authorized agent shall have access to each Unit and any Limited Common Elements appurtenant thereto from time to time, during reasonable working hours, upon notice to the Unit Owner thereof, as may be necessary for the maintenance, repair or replacement of any of the Common Elements. The Association or its agent shall also have access to each Unit and any Limited Common Elements appurtenant thereto at all times without notice as may be necessary to make emergency repairs to prevent damages to the Common Elements or to another Unit. It shall be the responsibility of each Unit Owner to provide the Association means of access to this Unit and any Limited Common Elements appurtenant thereto during all periods of absence, and in the event of the failure of such Unit Owner to provide means of access, the Association may gain access in such manner as may be reasonable under the circumstances and shall not be liable to such Unit Owner for any necessary damage to his Unit and any Limited Common Elements appurtenant thereto caused thereby or for repair or replacement of any doors or windows damaged in gaining such access.

- 11) Reserved Rights of Developer - None of the restrictions contained in this Article shall apply to the commercial activities or signs or billboards, if any, of the Developer during the development and sales period or of the Association in furtherance of its powers and purposes set forth herein, as the same may be amended from time to time. Notwithstanding anything to the contrary elsewhere herein contained, Developer shall have the right to maintain a sales office, a business office, a construction office, model Units, storage areas and reasonable parking incident to the foregoing and such access to, from and over the Project as may be reasonable to enable development and sale of the entire Project by

Developer and may continue to do so during the entire development and sales period of all proposed phases.

ARTICLE XII
CHANGES, REPAIRS, LIENS

- 1) Alterations by Unit Owners - Notwithstanding any rights to remodel the Units, bearing walls may not be moved. No change in the boundaries of Units shall encroach upon the boundaries of the Common Elements except by amendment to this Declaration.
- 2) Maintenance by Unit Owner - An Owner shall maintain and keep in repair the interior of his own Unit. 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. 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 Unit in a neat, clean and sanitary condition. No acts of alteration, repairing or remodeling by the Owner shall impair in any way 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 Unit without the prior written approval of the Board of Directors of the Association and, so long as they own a Unit in the Condominium or until the completion of all proposed phases of the Project, The Lodges at Elkhorn or the Declarant.
- 4) Maintenance by Association - The Association shall take all necessary steps, including, but not limited to, painting, roof repairs, concrete, brick and stone repairs, repairs to walls, sidewalk maintenance, repair, upkeep and replacement or repair of all broken or worn parts, to ensure that the Common Elements do not unnecessarily deteriorate. The Board of Directors of the Association shall annual inspect the Common Elements 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 said lien holder and giving the Association a reasonable time to perform such work. Any lien holder or representative of the same, upon written request, shall have the right to joint in 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, his agent, his

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 and the Association from liens 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.

ARTICLE XIII.
INSURANCE

- 1) All insurance policies upon the condominium Property shall be purchased by the Association and shall be insured by an insurance company authorized to do business in Montana.

(A) *Named Insured - Personal Property* - The named insured shall be the Association individually as agent for the Unit Owners without naming them. 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 expense.

(B) *Copies to Mortgagees and Owners* - Upon written request by a mortgagee, the Association shall furnish one copy of each insurance policy and of all endorsements to each mortgagee of a Unit Owner.

- 2) Coverage

(A) *Casualty* - All buildings and improvements upon the Property shall be insured to any amount equal to the full insurable replacement value and all personal property included in the common elements shall be fully insured, with all such insurance to be based on current replacement value, as determined annually by the Board, the insurer and any first lienholder or their representatives, but subject to such deductible clauses as are required in order to obtain coverage at reasonable costs, and which coverage shall be increased by the Board as may be necessary to provide that the insurance proceeds will be sufficient to cover replacement, repairs or reconstruction. Such coverage shall afford protection against:

- (i) Loss or damage by fire and other hazards covered by a standard extended coverage endorsement; and

(ii) Specifically such other risks including floor and earthquake loss as from time to time shall customarily be covered with respect to buildings similar in construction, location and use as the building on the land.

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: air-handling 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 wall finishing.

(B) *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-Owner automobile coverage, if applicable, and with cross-liability endorsement to cover liabilities of the Unit Owners as a group to a Unit Owner.

(C) *Errors or Omissions Insurance* for the Directors, Officers and Managers, if the Association so desires, in amounts to be determined by the Board.

(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 use for other than a residence, 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 requesting notice.
- 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 interests may appear. Upon such election being made by the Board of Directors of the Association, the Board shall provide that all proceeds covering property losses shall be paid to such bank or escrow company in Montana 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 in the following shares, but which shares need not be set forth in the records of the insurance Trustee:

(A) *Unit Owners* - A share for each Unit Owner, such share being the same as the percentage interest in the Common Elements appurtenant to this Unit.

(B) *Mortgagees* - In the event a mortgagee endorsement has been issued as to 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 any 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.

5) Distribution of Proceeds - Proceeds of the insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the beneficial Owners in the following manner:

(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* - Any balance remaining shall be used for reconstruction and repair as hereafter 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 Owners. If the Unit or Units are destroyed and partially rebuilt distribution shall be made to Unit Owners or the Insurance Trustee, as their interests appear based on the reconstruction of the Units.

(D) After distribution of the insurance proceeds as set forth in subparagraphs (A), (B) and (C) above, any remaining proceeds shall be distributed to the Unit Owner(s) as such Owner(s) interest shall appear.

(E) *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 to Mortgagees - Certain provisions in this Article are for the benefit of mortgagees or trust indenture beneficiaries, 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) Notice to Lienholder - Upon written request by first lien holder the Owners Association will 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 thirty (30) days of such loss.
- 9) Reconstruction
 - (A) *Repair After Casualty* - If any part of the condominium Property shall be damaged by casualty, whether or not it shall be reconstructed or repaired, shall be determined in the following manner:
 - (i) Lesser Damage - 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 reconstructed or rebuilt as provided in the applicable provisions of the Unit Ownership Act.
 - (iii) In the event the Owners Association elects not to rebuild as herein provided and set forth in §70-23-802, M.C.A., the insurance proceeds shall be used to satisfy any outstanding liens or encumbrances on the property, and then disbursed as provided in §70-23-805, M.C.A.
 - (iv) Certificate - The Insurance Trustee may rely upon a certificate of the Association made by its President or Manager as to the determination whether or not the damaged property is to be reconstructed or rebuilt.
 - (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 aggregate voting interests of the Unit Owners, including the Owners of all Units of the plans for which are to be altered. Any

such reconstruction not in accordance with the original plans and specifications must be set forth in an amendment to the Declaration.

- (C) *Responsibility* - The responsibility for reconstruction or repair after casualty shall be the Owners Association who shall work with the Insurance Trustee to carry out the provisions of this Article.
- (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 to cover 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 Association 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.

ARTICLE XIV
REMOVAL OR PARTITION - SUBDIVISION

The Condominium 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 plans of removal, partition or sale, except for the rights reserved to The Lodges at Elkhorn or the Declarant. Such approval shall include the details of how any partition or sale, and the distribution of property or funds shall be accomplished.
- (B) The plan for removal, partition, subdivision, abandonment, termination or sale must be approved as provided in the Montana 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

aggregate percentage interests of the Owners. 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 a small Unit, nor any portion thereof sold or otherwise transferred, except as provided herein.

(D) The Common Elements of the Condominium shall not be abandoned, partitioned, subdivided, encumbered, or sold or transferred without compliance with all of the above requirements.

ARTICLE XV 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 subject to and under the provisions of the Unit Ownership Act.

ARTICLE XVI REMEDIES

All remedies provided for in this Declaration and Bylaws shall not be exclusive of any other remedies that may now be, or are hereafter, available to the parties hereto as provided for by law. In any action to enforce the Governing Documents, the prevailing party shall recover his attorney's fees and court costs.

ARTICLE XVII SEVERABILITY

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

ARTICLE XVIII MISCELLANEOUS

- 1) Expenditures - With the exception of expenditures required for emergency situations, no single expenditure or debt in excess of Ten Thousand Dollars (\$10,000.00) may be made or incurred by the Manager without the prior approval of the Board of Directors of the Association. The Board of Directors may modify the limitation on single expenditures without amendment to these Declarations.

- 2) 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.
- 3) Service of Process - The name and address of the person to receive service of process for the Condominium until another designation is filed of record shall be Susan B. Swimley, 1807 West Dickerson, Suite B, Bozeman, Montana 59715.
- 4) Notice of Lienholder - Upon request first lienholder 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 Governing Documents that is not cured within sixty (60) days.
- 5) Right to Examine Books - Every Unit Owner and first lienholder shall have the right to examine the books and records of the Owners Association by giving a written notice requesting such examination. Upon receipt of such notice the party receiving the notice shall schedule a mutually agreeable date and time during normal business hours for the examination which date shall be not more than ten (10) days following the receipt of the notice requesting the examination.
- 6) Warranties - 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. Estimates of Common Expenses are deemed accurate, but no warranty or guarantee is made or is intended, nor may one be relied upon.
- 7) BSOA - The project is subject to the Big Sky Owners Association Covenants and Bylaws. Each Unit Owner shall automatically become a member of the Big Sky Owners' Association upon the Developer conveying an Ownership interest in a condominium Unit to a third party.
- 8) Notices - All writings required or permitted to be given or delivered under this Declaration shall be deemed to have been given or delivered when deposited in the United States mail or by delivering it personally to an officer of the Association, Developer or Bella Terra, or directly to a Unit Owner:

The Lodges at Elkhorn Creek, LLC
5100 Eden Avenue, Suite 102
Edina, Minnesota 55436

Unit Owner: Address as shown on the records of the Association.

The Association, Developer or The Lodges at Elkhorn may change its address for the purposes of delivery of such writings by delivering written notice of such change to the Unit Owner in the manner above provided at least ten (10) days prior to the effective date of such change.

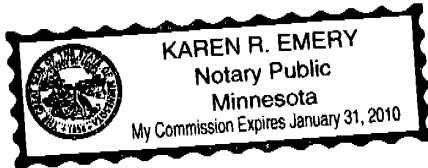
IN WITNESS WHEREOF, the Declarant has caused this Declaration to be made and executed according the provisions of the Montana Unit Ownership Act, §70-23-101, et seq.

THE LODGES AT ELKHORN CREEK, LLC

By: Mark Eklo
Its: MANAGER
Declarant

STATE OF MINNESOTA)
) ss.
County of HENNEPIN)

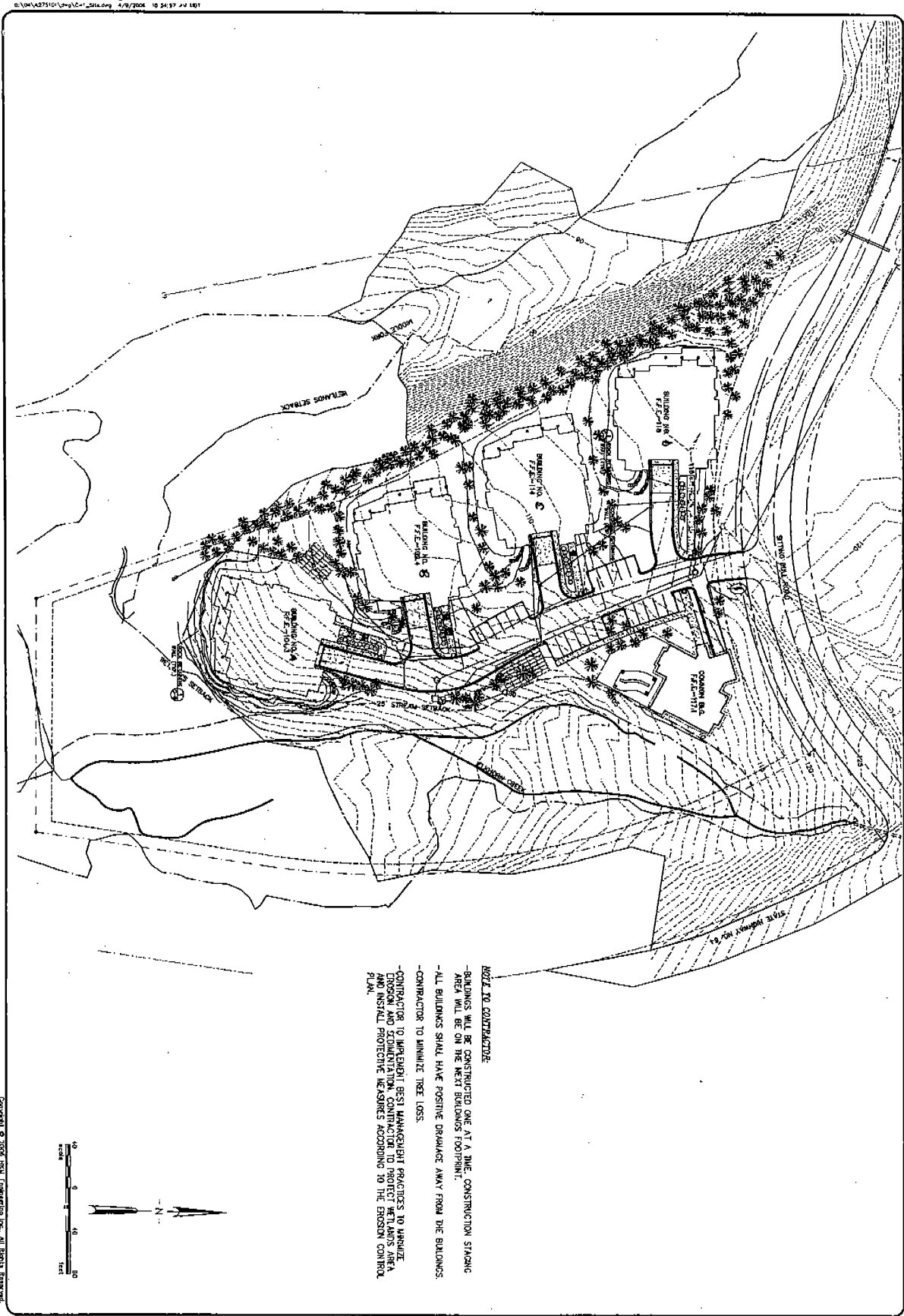
On this 24 day of AUGUST, 2006, before a notary public in and for said State, personally appeared MARK EKLO, known to me to be the person whose name is subscribed to the written document as of THE LODGES AT ELKHORN CREEK, LLC, and acknowledged to me that he executed this document on behalf of the LLC.



Karen R. Emery
Notary Public for the State of MINNESOTA
Printed Name: KAREN R. EMERY
Residing at MINNESOTA
My Commission expires: 1/31/2010

EXHIBIT "A"

Tract 1 in Block 1, Amended Cascade Subdivision, Mountain Village, Big Sky, Montana, as shown in Book 4 of Plats, Page 153-A, Madison County, Montana.



NOTE TO CONTRACTOR:
 -BUILDINGS WILL BE CONSTRUCTED ONE AT A TIME. CONSTRUCTION STAGING AREA WILL BE ON THE NEXT BUILDING FOOTPRINT.
 -ALL BUILDINGS SHALL HAVE POSITIVE DRAINAGE AWAY FROM THE BUILDINGS.
 -CONTRACTOR TO IMPLEMENT BEST MANAGEMENT PRACTICES TO MINIMIZE EROSION AND SEDIMENTATION. CONTRACTOR TO PROTECT REMAINING AREA WITH INSTALL PROTECTIVE MEASURES ACCORDING TO THE EROSION CONTROL PLAN.

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Sheet No. **C-1**
 of 10

HMM
 ENGINEERING
 McCheesney Professional Bldg
 601 Nikles Dr., Suite 2
 Bozeman, MT 59715
 Phone: (406) 596-8824
 Fax: (406) 596-1720



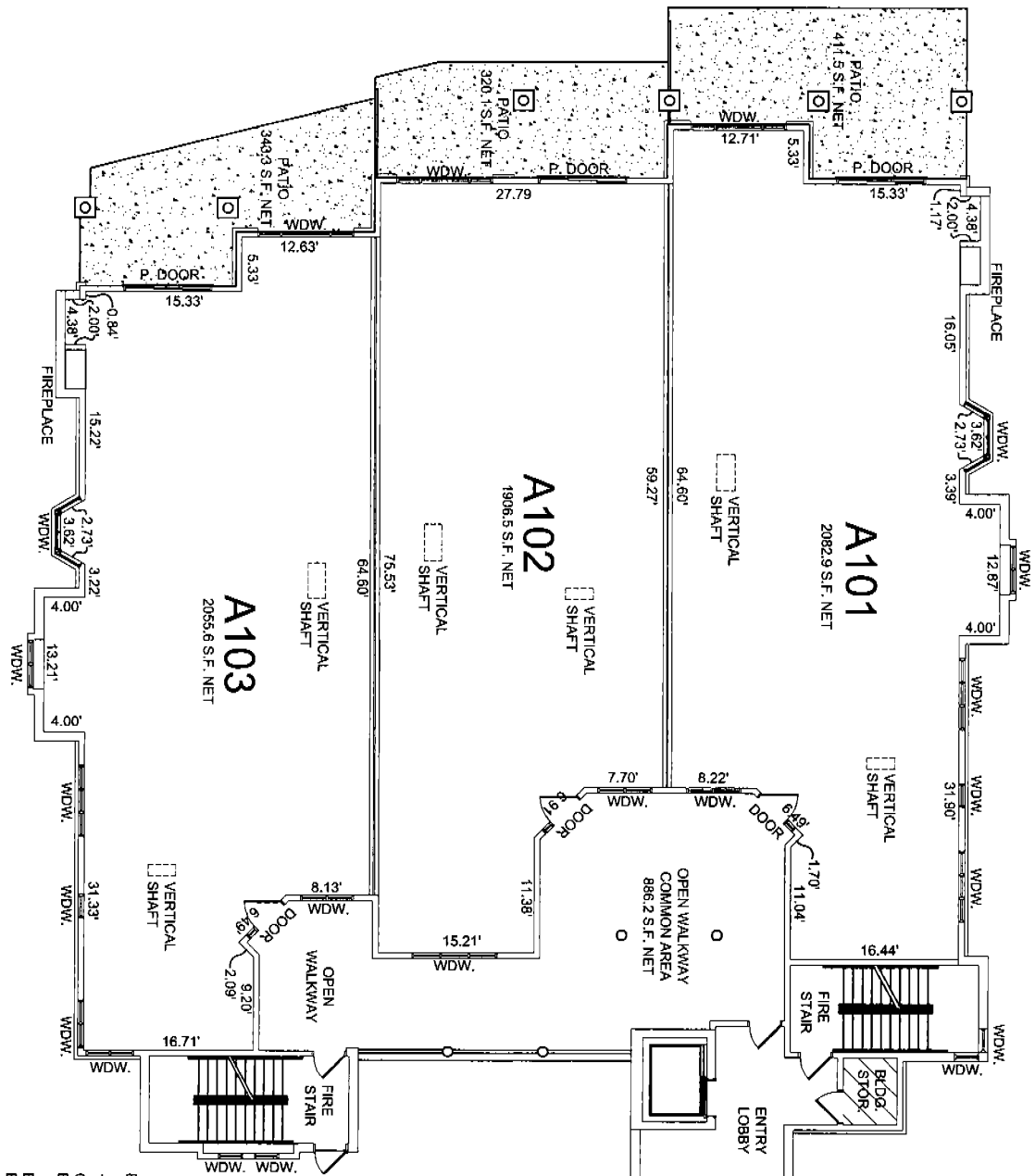
Project No. 044275.101 • SITE C-LDWG • Date FEB. 2006 • Designed PSV • Drawn HJV • Checked COL • Approved COL

**ELKHORN CREEK LODGES
 BIG SKY, MONTANA**

OVERALL SITE PLAN

WARNING
 IF THIS SEAL DOES NOT MATCH THE DRAWING IS NOT TO SCALE

No.	Revision	By	Date



BUILDING AREA, GROSS: 7196.7 S.F.
 TENANT AREAS, NET: 6045.0 S.F.
 COMMON AREAS, NET: 596.6 S.F.
 BUILDING SERVICE, NET: 34.8 S.F.
 EXTERIOR TENANT AREAS, NET: 1074.9 S.F.
 EXTERIOR COMMON AREA, NET: 886.2 S.F.

GENESIS

A WELSH COMPANY

7807 Creekridge Circle
 Minneapolis, MN 55439
 Tel: 952.897.7874
 Fax: 952.897.7740

THE LODGES AT ELKHORN CREEK
 7 SITTING BULL ROAD
 BIG SKY, MONTANA
 59716

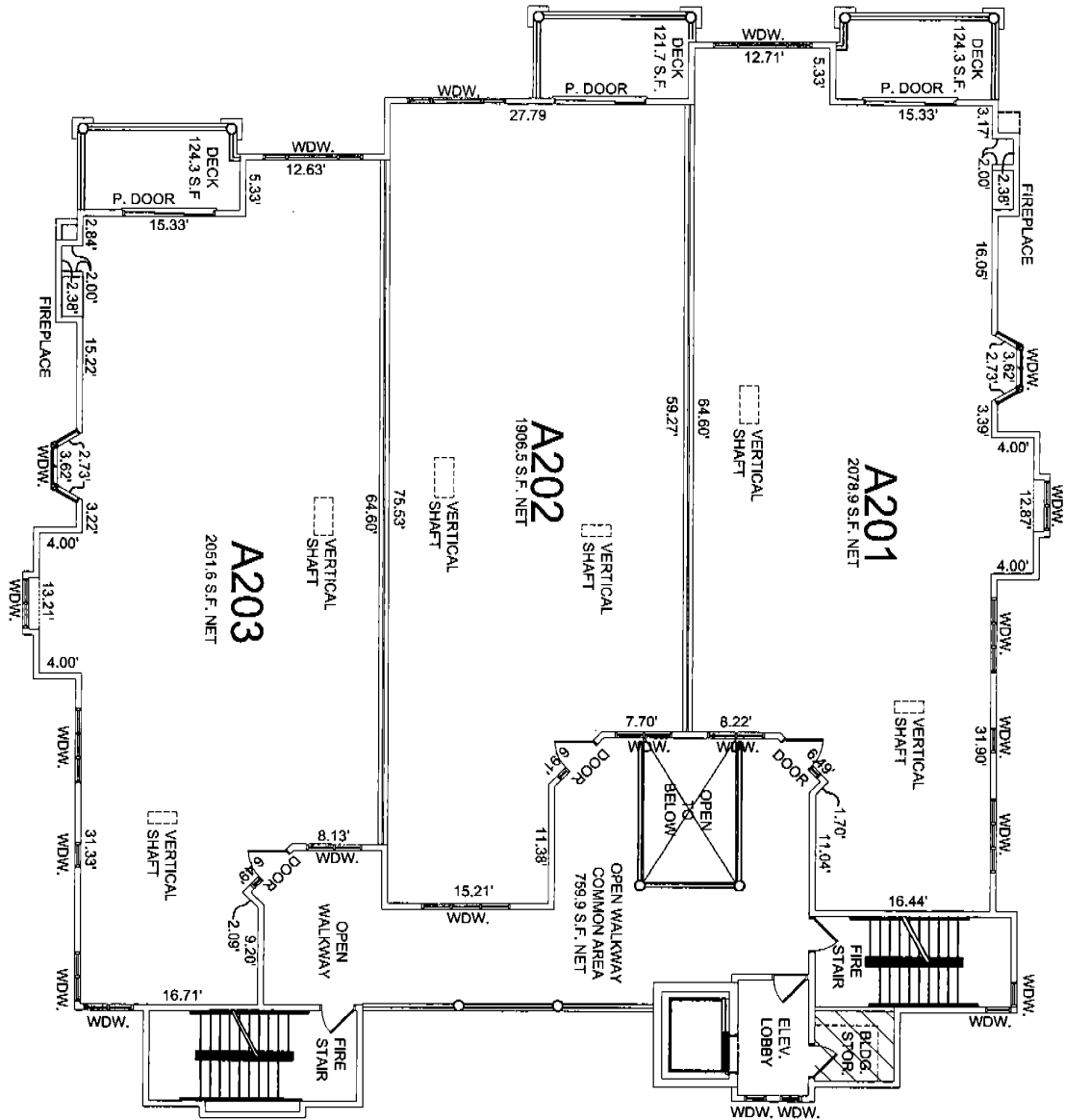
FIRST FLOOR PLAN
 CONDOMINIUM EXHIBIT

PROJECT: 2005.238.0
 DRAWN BY: JRC
 SCALE: 1/16" = 1'-0"
 DATE: JULY 27, 2006

REVISIONS:

SHEET

CD-2



BUILDING AREA, GROSS:	7020.3 S.F.
TENANT AREAS, NET:	6045.0 S.F.
COMMON AREAS, NET:	468.8 S.F.
BUILDING SERVICE, NET:	50.2 S.F.
EXTERIOR TENANT AREAS, NET:	1074.9 S.F.
EXTERIOR COMMON AREA, NET:	759.9 S.F.

GENESIS

A WELSH COMPANY

7807 Creekridge Circle
 Minneapolis, MN 55439
 Tel: 952.897.7874
 Fax: 952.897.7740

THE LODGES AT ELKHORN CREEK
 7 SITTING BULL ROAD
 BIG SKY, MONTANA
 59716

SECOND FLOOR PLAN
 CONDOMINIUM EXHIBIT

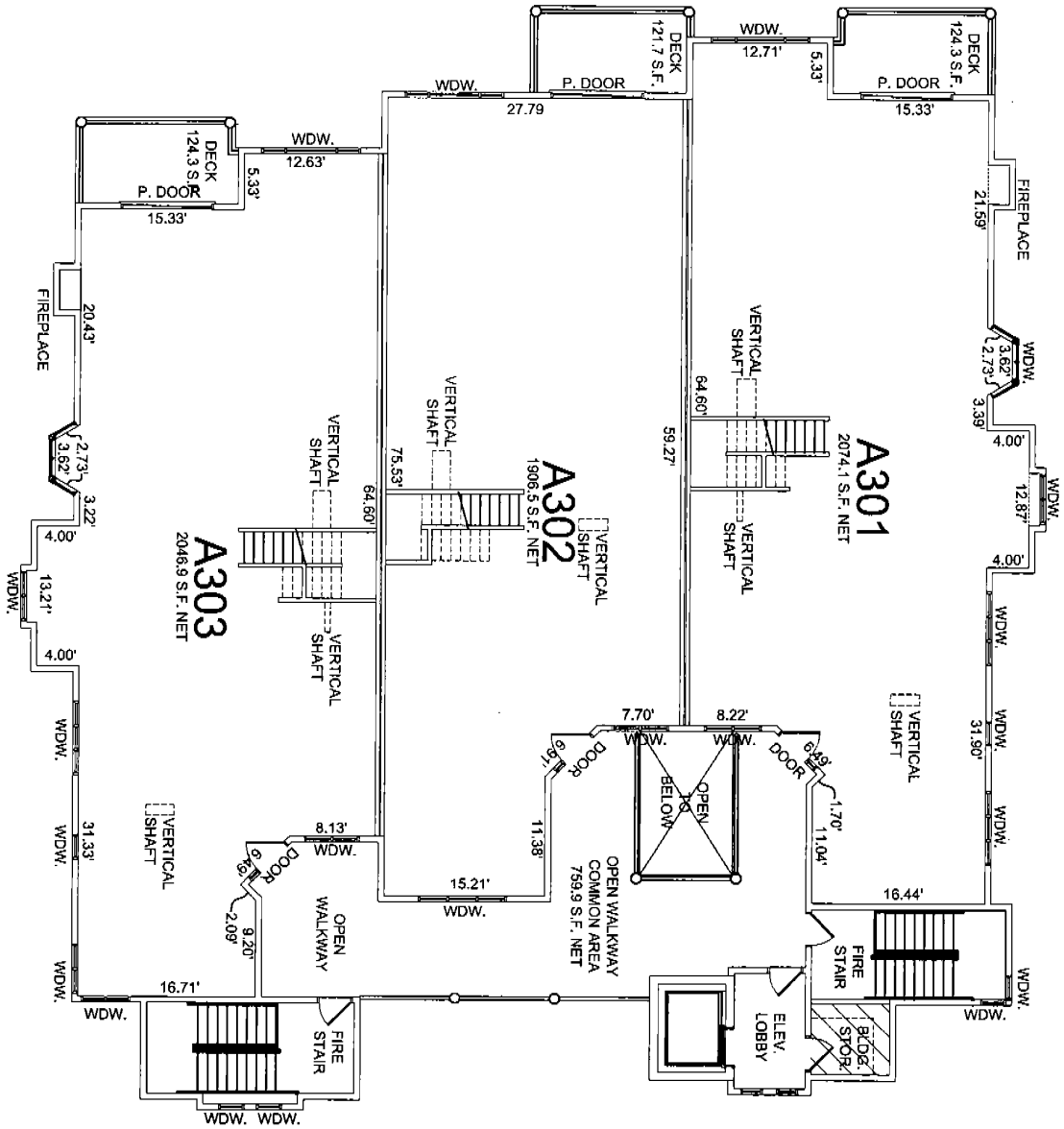
PROJECT: 2005.238.0
 DRAWN BY: JRC

SCALE: 1/16" = 1'-0"
 DATE: JULY 27, 2006

SHEET

REVISIONS:

CD-3



BUILDING AREA, GROSS: 7008.6 S.F.
 TENANT AREAS, NET: 8027.5 S.F.
 COMMON AREAS, NET: 468.9 S.F.
 BUILDING SERVICE, NET: 50.2 S.F.
 EXTERIOR TENANT AREAS, NET: 1074.9 S.F.
 EXTERIOR COMMON AREA, NET: 759.9 S.F.

GENESIS

A WELSH COMPANY

7807 Creekridge Circle

Minneapolis, MN 55439

Tel: 952.897.7874

Fax: 952.897.7740

THE LODGES AT ELKHORN CREEK

7 SITTING BULL ROAD

BIG SKY, MONTANA

59716

THIRD FLOOR PLAN
 CONDOMINIUM EXHIBIT

PROJECT: 2005.238.0
 DRAWN BY: JRC

SCALE: 1/16" = 1'-0"
 DATE: JULY 27, 2006

SHEET

REVISIONS:

CD-4

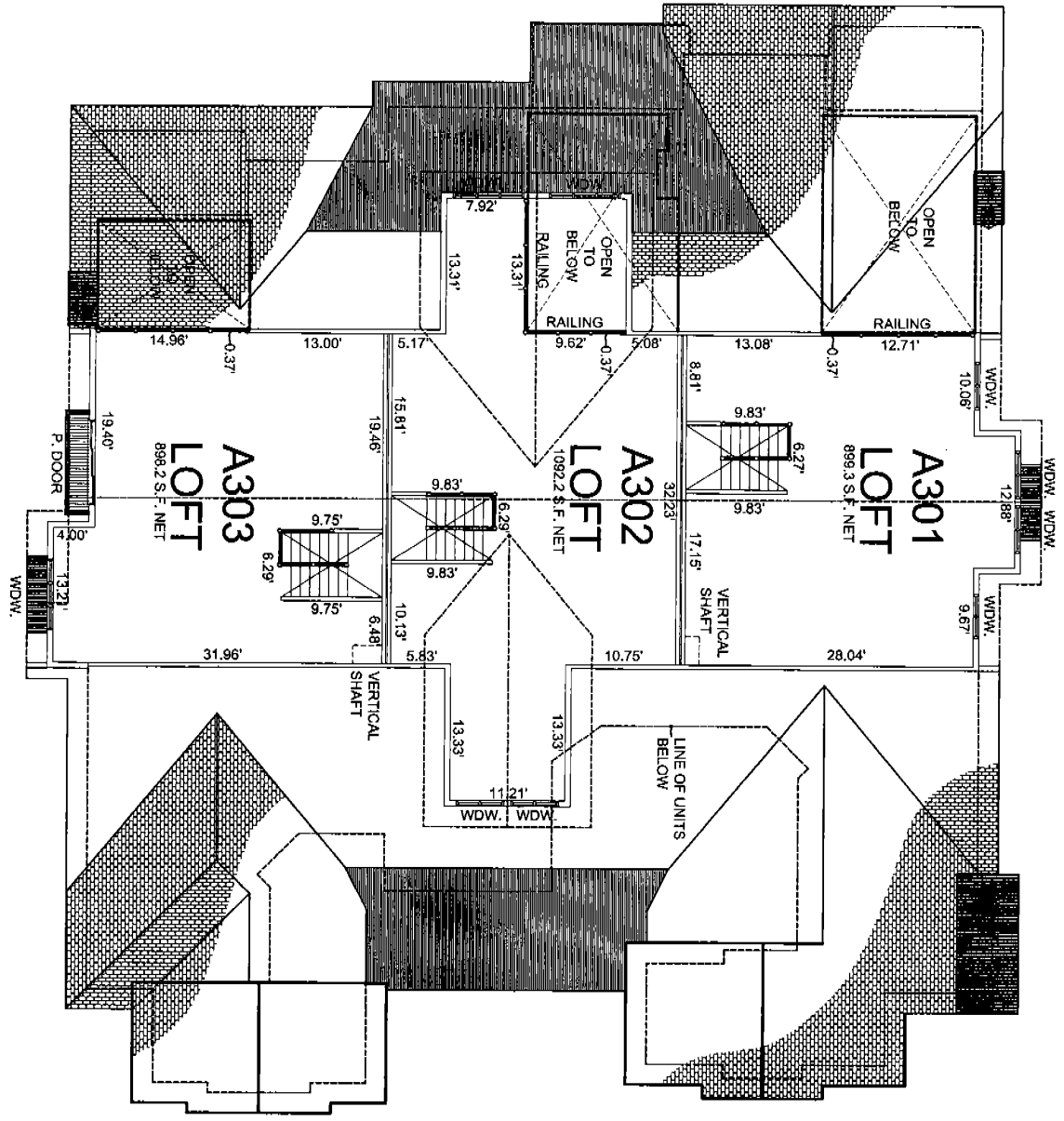
GENESIS
 A WELSH COMPANY
 7807 Creekridge Circle
 Minneapolis, MN 55439
 Tel: 952.897.7874
 Fax: 952.897.7740

THE LODGES AT ELKHORN CREEK
 7 SITTING BULL ROAD
 BIG SKY, MONTANA
 59716

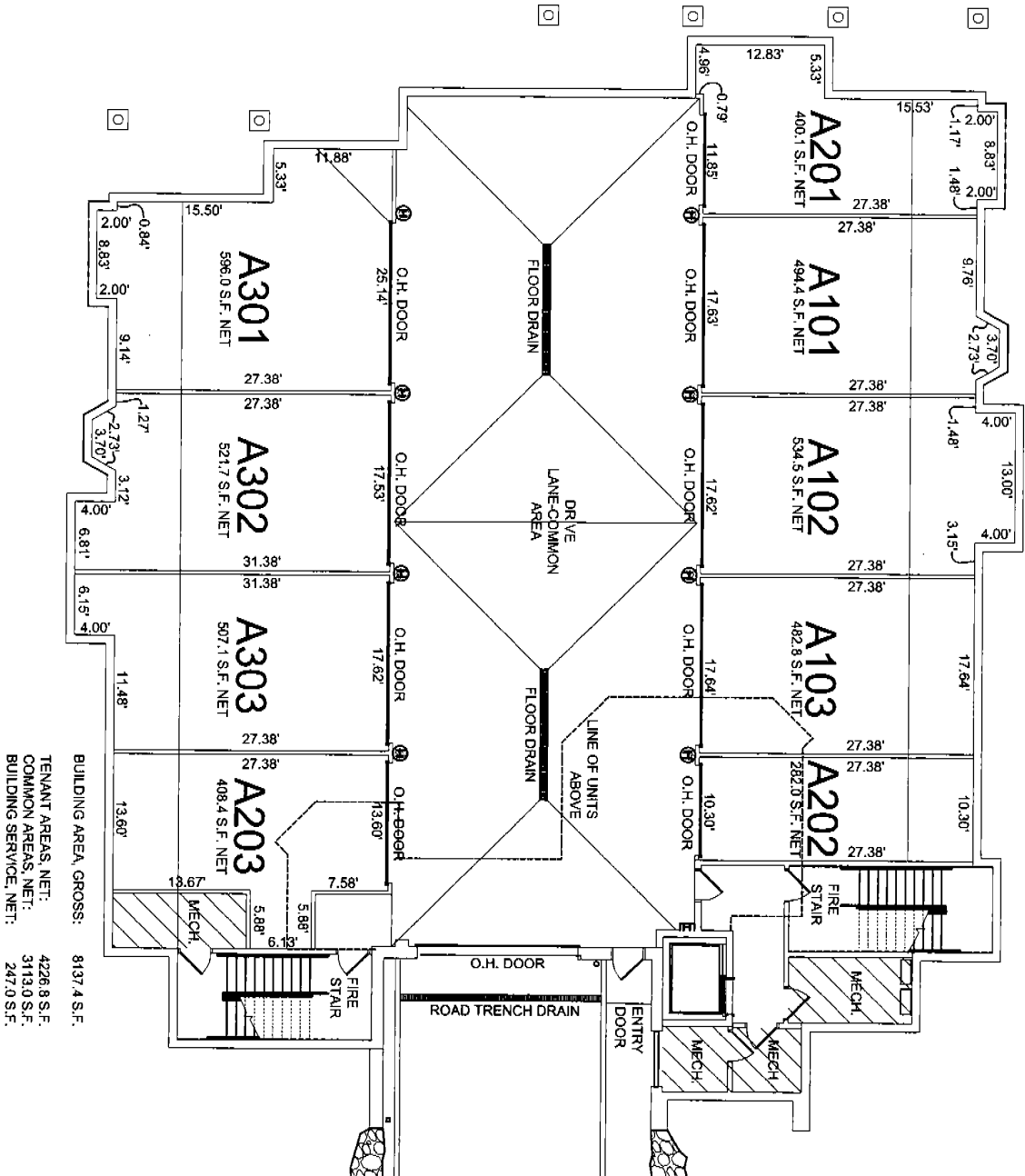
THIRD FLOOR LOFT PLAN
 CONDOMINIUM EXHIBIT

PROJECT: 2005.238.0
 DRAWN BY: JRC
 SCALE: 1/8" = 1'-0"
 DATE: JULY 27, 2006

SHEET
 CD-5



BUILDING AREA, GROSS: 3390.3 S.F.
 TENANT AREAS, NET: 2889.7 S.F.
 EXTERIOR TENANT AREAS, NET: 23.7 S.F.



BUILDING AREA, GROSS: 8137.4 S.F.
 TENANT AREAS, NET: 4226.8 S.F.
 COMMON AREAS, NET: 3113.0 S.F.
 BUILDING SERVICE, NET: 247.0 S.F.

GENESIS
 A WELSH COMPANY

7807 Creekridge Circle
 Minneapolis, MN 55439
 Tel: 952.897.7874
 Fax: 952.897.7740

THE LODGES AT ELKHORN CREEK
 7 SITTING BULL ROAD
 BIG SKY, MONTANA
 59716

GARAGE/PLAN
 CONDOP/UNITUM EXHIBIT

PROJECT: 2005.238.0
 DRAWN BY: JRC
 SCALE: 1/16" = 1'-0"
 DATE: JULY 27, 2006

REVISIONS:

SHEET
CD-1

American Land Title Company
3 Geyser Street/P.O. Box 1248
Ennis, Montana 59729-1248

Order No. L. 28909

American Land Title Company
1800 West Koch / P.O. Box 396
Bozeman, Montana 59715 / 59771-0396
Order No. ALT-PCS

119925 RECORDS Pages: 2
STATE OF MONTANA MADISON COUNTY
RECORDED: 05/10/2007 2:45 KOI: CV
Peggy Kaatz CLERK AND RECORDER
FEE: \$14.00 BY: [Signature]
TO: AMERICAN LAND TITLE CO PO BOX 396, BOZEMAN MT 59715

pm
pm

FIRST AMENDMENT TO THE DECLARATION

FOR

ELKHORN CREEK LODGES, A CONDOMINIUM

THIS FIRST AMENDMENT TO THE DECLARATION FOR ELKHORN CREEK LODGES, A CONDOMINIUM, is made this 3rd day of May, 2007, by THE LODGES AT ELKHORN CREEK, LLC, hereinafter referred to as "Declarant";

WITNESSETH:

WHEREAS, Declarant caused to be recorded the Declaration for Elkhorn Creek Lodges, a Condominium, as Document No. 115426 of Records, recorded in the office of the Madison County Clerk and Recorder on August 29, 2006; and

WHEREAS, Declarant desires to allow future phases to be designated for fractional ownership; and

WHEREAS, Declarant has entered into an Agreement with the owner of Unit # 1301, Marjorie T. Toepffer, Roger E. Schwer, dated April 25, 2007, and with the owner of Unit # 1102, Hitendra T. Patel, Inderbir Kaur, dated May 2, 2007 wherein owners have agreed to allow the Declarant to modify the Declaration to allow for fractional ownership of any or all of the units in each phase.

NOW, THEREFORE the Declarant modifies the following provisions of the Declaration for Elkhorn Creek Lodges, a Condominium as follows:

Article VIII., Developer's Right to Change, shall be amended as follows:

The Developer reserves the right, and must inform the owners, to change the interior design, the arrangement of the units and on all expansion phases, whether in whole or in part, to allow for and create fractional ownership in units, so long as the Developer owns the Units so altered.

Please return to:
Schwasinger & Fallaw, P.C.
517 South 22nd, Suite 2
Bozeman, MT 59718

138207 RECORDS Pages: 14
STATE OF MONTANA MADISON COUNTY
RECORDED: 11/05/2010 4:35 KOI: COVENANTS
Peggy Kaatz Stemler CLERK AND RECORDER
FEE: \$98.00 BY: *Peggy Kaatz Stemler*
TO: AMERICAN LAND TITLE CO PO BOX 496, BOZEMAN MT 59715

pm
✓

American Land Title Company
3 Geysler Street/P.O. Box 1248
Ennis, Montana 59729-1248

Order No. R-31518

✓
2374154

Page: 1 of 14 11/01/2010 02:44:33 PM Fee: \$98.00
Charlotte Mills - Gallatin County, MT MISC



AMENDMENT TO DECLARATION AND BYLAWS

FOR

ELKHORN CREEK LODGES, A CONDOMINIUM

COMES NOW, the undersigned being one hundred percent of the Unit Owners of the ELKHORN CREEK LODGES, A CONDOMINIUM and hereby enter into this Amendment to Declaration and Bylaws for Elkhorn Creek Lodges, a Condominium dated this 26 day of October, 2010. This Amendment amends that certain Declaration for Elkhorn Creek Lodges, a Condominium recorded with the County Clerk and Recorder of Madison County, Montana on August 29, 2006 as Document No. 115426 ("the Declaration"). This Amendment also amends those certain Bylaws of the Association of Unit Owners of Elkhorn Creek Lodges, a Condominium recorded with the County Clerk and Recorder of Madison County, Montana on August 29, 2006 as Document No. 115427 ("the Bylaws"). This Amendment is made pursuant to Article IX and other appropriate provisions of the Declaration:

1. Fractional or segmented ownership of any Unit so as to create a right to use and occupy a Unit on a periodic basis according to an arrangement allocating the use and occupancy rights between similar users of a Unit, or such similar timeshare arrangement is prohibited. The condominium shall not be submitted to the provisions of the Montana Timeshare Act. That certain First Amendment to the Declaration for Elkhorn Creek Lodges, a Condominium recorded on May 10, 2007 as Document No. 119925 in the office of the County Clerk and Recorder, Madison County, Montana is hereby revoked and rescinded in its entirety; said First Amendment shall be of no force and effect whatsoever.

2. Any references to a "clubhouse", "caretaker residence", and "caretaker unit" in the Declaration and Bylaws are hereby deleted from said Declaration and Bylaws. Neither the Association nor the Developer shall own or operate a separate business operation such as a clubhouse, restaurant, spa or health club.

3. The voting interest of each Unit in all matters concerning the Association and/or the Condominium shall be equal to the other Units with one (1) vote allocated to each Unit. Multiple owners of a single condominium Unit shall collectively have one (1)

vote. In the event that Unit Owners of the same Unit cannot agree as to how to vote that Unit's interest, said Unit's vote shall be suspended for that particular matter.

4. Except for costs of insurance required to be purchased by the Association pursuant to Article XIII of the Declaration, Common Expenses of the Condominium and Association shall be charged to the Units equally. Assessments for General Common Element Expenses (except for insurance costs) shall be apportioned equally to each Unit regardless of a Unit's percentage interest in the Common Elements. The costs for insurance required to be purchased by the Association pursuant to Article XIII of the Declaration shall continue to be assessed to each Unit based on that Unit's percentage interest in the Common Elements of the Condominium as set forth in Article V of the Declaration.

5. The costs for maintaining the following (even though the same may be Limited Common Elements) shall be considered Common Expenses allocated equally to each Unit: paths, sidewalks and walkways, any portion of the parking areas not specifically allocated to a particular Unit, the parking garage together with the floor heating pipes, all mechanical electrical, gas, telephone, water and sewer lines and connections serving all of the Units, cable, landscaping, plants and other materials and improvements separate from and outside of the Buildings containing the Units, equipment utilized for heating the garage floor, any irrigation system placed on the Property for landscape maintenance and any other area and improvements necessary for the safety, maintenance and existence of the Condominium as a whole.

6. Unit Owners are prohibited from leasing their Units for an initial term of less than thirty (30) days.

7. All provisions in the Declaration and Bylaws requiring a Unit to be leased only through The Lodges at Elkhorn Creek, LLC or any other designated leasing agent are hereby deleted and of no further force and effect. There shall be no requirement for a Unit to be rented only through a particular leasing agency.

8. Referencing the Expansion Provisions set forth in Article V of the Declaration:

A. Any future condominium Units and Buildings will be consistent with the initial Units in terms of quality of construction.

B. Reallocation of Unit Owners' percentage of undivided interest in the General Common Elements shall be calculated by taking the square footage of each Unit at the date of filing an expansion declaration and dividing it by the total square footage of all the Units having an interest in the General Common Elements of the Condominium.

9. The Association shall prepare and furnish, within two (2)

weeks of receipt of a written request, an audited financial statement of the Association for the immediately preceding year to the following requesting agencies/corporations: United States Department of Housing and Urban Development (HUD); United States Department of Veterans Affairs (VA); Federal National Mortgage Association (FNMA); and Federal Home Loan Mortgage Corporation (FHLMC).

10. A holder, insurer or guarantor of a first mortgage, upon written request to the Association, (such request to state the name and address of such holder, insurer or guarantor and the Unit number), will be entitled to timely written notice of:

(A) Any proposed amendment of the Condominium instruments effecting a change in:

- (i) the boundaries of any Unit or the exclusive easement rights appertaining thereto,
- (ii) the interests in the General Common Elements or Limited Common Elements appertaining to any Unit or the liability for Common Expenses appertaining thereto,
- (iii) the number of votes in the Association appertaining to any Unit, or
- (iv) the purposes to which any Unit or the Common Elements are restricted;

(B) Any proposed termination of the Condominium regime;

(C) Any condemnation loss or any casualty loss which affects a material portion of the Condominium or which affects any Unit on which there is a first mortgage held, insured or guaranteed by such eligible holder;

(D) Any delinquency in the payment of assessments or charges owed by an Owner of a Unit subject to the mortgage of such eligible holder, insurer or guarantor, where such delinquency has continued for a period of sixty (60) days;

(E) Any lapse, cancellation or material modification of any insurance policy maintained by the Association; and

(F) Any proposed action that requires the consent of a specified percentage of mortgagees.

11. In addition to the existing requirements of the Declaration and Bylaws, any restoration or repair of the Condominium after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with the Declaration and the original plans and specifications unless the approval of the eligible holders of first mortgages on Units to which at least fifty-one percent (51%) of the votes of Units subject to mortgages held by such eligible holders are allocated, is obtained.

12. In addition to the existing requirements of the

Declaration and Bylaws, any election to terminate the Condominium regime after substantial destruction or a substantial taking in condemnation of the Condominium property must require the approval of the eligible holders of first mortgages on Units to which at least fifty-one percent (51%) of the votes of Units subject to mortgages held by such eligible holders are allocated.

13. In addition to the existing requirements of the Declaration and Bylaws, no reallocation of interests in the General Common Elements resulting from a partial condemnation or partial destruction of the condominium project may be effected without the approval of the eligible holders of first mortgages on Units to which at least fifty-one percent (51%) of the votes of Units subject to mortgages held by such eligible holders are allocated.

14. In addition to the existing requirements of the Declaration and Bylaws, the approval of the eligible holders of first mortgages on Units to which at least sixty-seven percent (67%) of the votes of Units subject to a mortgage appertain shall be required to terminate the condominium regime.

15. In addition to the existing requirements of the Declaration and Bylaws, the approval of eligible holders of first mortgages on Units to which at least fifty-one percent (51%) of the votes of Units subject to a mortgage appertain, shall be required to materially amend any provisions of the Declaration and Bylaws or to add any material provisions thereto, which establish, provide for, govern or regulate any of the following:

- (A) Voting;
- (B) Assessments, assessment liens, priority of liens, or subordination of such liens;
- (C) Reserves for maintenance, repair and replacement of the Common Elements;
- (D) Insurance or fidelity bonds;
- (E) Rights to use of the Common Elements;
- (F) Responsibility for maintenance and repair of the several portions of the Condominium;
- (G) Expansion or contraction of the Condominium regime or the addition, annexation or withdrawal of property to or from the regime;
- (H) Boundaries of any Unit;
- (I) The interests in the General Common Elements or Limited Common Elements;
- (J) Convertibility of Units into Common Elements or of Common Elements into Units;
- (K) Leasing of Units;
- (L) Imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer, or otherwise convey his or her Unit in the Condominium;
- (M) Establishment of self-management by the Condominium association where professional management has been required by any of the federal department of Housing and Urban Development, the federal Veterans Administration, the Federal National Mortgage Association, or the Federal Home Loan

Mortgage Corporation;

(N) Partition or subdivision of any Unit;

(O) Abandonment, partition, subdivision, encumbrance, sale or transfer of any Common Elements, other than the granting of easements for public utilities or other public purposes consistent with the intended use of the Common Elements; and

(P) Any change in the procedure when handling any losses or proceeds from condemnation, destruction, or liquidation of all or a part of the condominium project or from termination of the project.

16. In addition to the existing requirements of the Declaration and Bylaws, the approval of eligible holders of first mortgages on Units to which at least fifty-one percent (51%) of the votes of Units subject to a mortgage appertain, shall be required to amend any provisions included in the Declaration and Bylaws of the Condominium which are for the express benefit of holders or insurers of first mortgages on Units in the Condominium.

17. The Association and any aggrieved Unit Owner has a right of action against Unit Owners for failure to comply with the provisions of the Declaration and/or Bylaws or with decisions of the Association which are made pursuant to authority granted the Association by the Declaration and Bylaws. Unit Owners also have a right of action against the Association for failing to comply with the provisions of the Declaration and/or Bylaws.

18. Any lien of the Association for Common Expense charges and assessments becoming payable on or after the date of recordation of the first mortgage, shall be subordinate to the first mortgage on the Unit. Such a lien for Common Expense charges and assessments shall not be affected by any sale or transfer of a Unit, except that a sale or transfer of a Unit pursuant to a foreclosure of a first mortgage shall extinguish a subordinate lien for Common Expense charges and assessments which became payable prior to such sale or transfer. Any such sale or transfer pursuant to a foreclosure shall not relieve the purchaser or transferee of a Unit from liability for, nor the Unit so sold or transferred from the lien of, any Common Expense charges thereafter becoming due.

19. Referencing Article XIII. Insurance set forth in the Declaration, the following provisions shall apply:

A. Insurance for Fire and Other Perils. The Association shall obtain, maintain, and pay the premiums upon, as a Common Expense, a "master" or "blanket" type policy of property insurance covering all of the Common Elements and Limited Common Elements, (except land, foundation, excavation and other items normally excluded from coverage) including fixtures, to the extent they are part of the Common Elements of the Condominium, building service equipment and supplies, and other common personal property belonging to the Association. All references herein to a "master" or "blanket"

type policy of property insurance, are intended to denote single entity condominium insurance coverage. In addition, any fixtures, equipment or other property within the Units which are to be financed by a mortgage to be purchased by FNMA or FHLMC (regardless of whether or not such property is a part of the Common Elements) must be covered in such "blanket" or "master" policy. Such insurance policy must be consistent with state and local insurance laws and at least equal to such coverage as is commonly required by prudent institutional mortgage investors in Madison County, Montana. The policy shall be in an amount equal to 100% of current replacement cost of the Condominium exclusive of land, foundation, excavation and other items normally excluded from coverage. Certificates of insurance shall be issued to each Unit Owner and mortgagee upon request. Such policies shall contain the standard mortgage clause, or equivalent endorsement (without contribution), which is commonly accepted by private institutional mortgage investors in the area in which the property is located and which appropriately names FNMA and FHLMC if such corporations are holders of first mortgages on Units within the Condominium. Such policies must also provide that they may not be cancelled or substantially modified, without at least 10 days' prior written notice to the Association and to each holder of a first mortgage listed as a scheduled holder of a first mortgage in the policies. Policies are unacceptable where: (i) under the terms of the insurance carrier's charter, by-laws, or policy, contributions or assessments may be made against borrowers, FNMA, FHLMC, or the designee of FNMA or FHLMC; or (ii) by the terms of the carrier's charter, by-laws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members, or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent FNMA, FHLMC, or the borrowers from collecting insurance proceeds. The policies must also provide for the following: recognition of any, Insurance Trust Agreement; a waiver of the right of subrogation against Unit Owners individually; that the insurance is not prejudiced by any act or neglect of individual Unit Owners which is not in the control of such Owners collectively; and that the policy is primary in the event the Unit Owner has other insurance covering the same loss. The requirements stated in this paragraph are generally provided by the insurer in the form of a "Special Condominium Endorsement" or its equivalent. The insurance policy shall afford, as a minimum, protection against the following:

- (1) loss or damage by fire and other perils normally covered by the standard extended coverage endorsement;
- (2) in the event the condominium contains a steam boiler, loss or damage resulting from steam boiler equipment accidents in an amount not less than \$50,000 per accident per location (or such greater amount as deemed prudent based on the nature of the Property);
- (3) all other perils which are customarily covered with

respect to condominiums similar in construction, location and use, including all perils normally covered by the standard "all-risk" endorsement, where such is available.

If available and commonly required by prudent institutional mortgage investors in Madison County, Montana, such policies shall also include an "Agreed Amount Endorsement" and an "Inflation Guard Endorsement".

B. Liability Insurance. The Association shall maintain comprehensive general liability insurance coverage covering all of the Common Elements, commercial space owned and leased by the Association, and public ways of the condominium project. Coverage limits shall be in amounts generally required by private institutional mortgage investors for projects similar in construction, location, and use. However, such coverage shall be for at least \$1,000,000 for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage under this policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Elements, and legal liability arising out of lawsuits related to employment contracts of the Association. Such policies must provide that they may not be cancelled or substantially modified, by any party, without at least 10 days' prior written notice to the Association and to each holder of a first mortgage on any Unit in the Condominium which is listed as a scheduled holder of a first mortgage in the insurance policy.

C. For all insurance policies, the Association shall only use generally acceptable insurance carriers.

20. For all condemnation issues concerning the Condominium, the Association shall represent the Unit Owners in the condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Elements, or part thereof, by the condemning authority. Each Unit Owner hereby appoints the Association as attorney-in-fact for such purpose.

21. An adequate reserve fund, as determined by the Board, shall be established in the name of the Association for the periodic maintenance, repair and replacement of the General Common Elements, which fund shall be maintained out of regular assessments for Common Expenses. The Association shall be responsible for administering the reserve fund. Assessments paid into the reserve fund are the property of the Association and are not refundable to sellers or Unit Owners.

22. The Association shall make available, for inspection upon request during normal business hours, to Unit Owners, lenders, prospective purchasers, and the holders and insurers of the first mortgage on any Unit, current copies of the Declaration, Bylaws and

other rules governing the Condominium, and other books, records and financial statements of the Association.

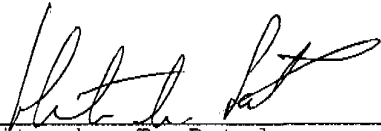
23. The approval by a holder, insurer or guarantor of a first mortgage that may be required as set forth herein shall be deemed implied when an eligible holder, insurer or guarantor of a first mortgage fails to submit a response to any written request for consent within sixty (60) days after it receives proper notice of the request, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.


24. No Unit Owner or any other party shall have priority over any rights of the first mortgagee of the Unit pursuant to its mortgage in the case of payment made directly to the Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of condominium Units and/or Common Elements.

25. Except as amended as set forth above, the Declaration and Bylaws for Elkhorn Creek Lodges, a Condominium, shall be in full force and effect. In the event of any conflict between the terms of the Declaration and Bylaws for Elkhorn Creek Lodges, a Condominium and the terms of this Amendment, the terms of this Amendment shall control.

[SIGNATURES ON FOLLOWING PAGES]

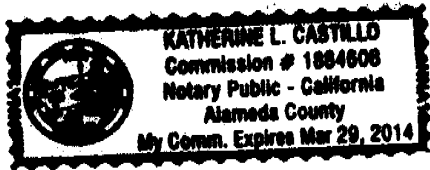
Owners of Unit A102 of The Lodges
at Elkhorn Creek, a Condominium



Hitendra T. Patel


Inderbir Kaur

STATE OF California)
County of Alameda) : ss.

On this 21st day of October, 2010, before me, a Notary Public in and for said State, personally appeared HITENDRA T. PATEL and INDERBIR KAUR, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.



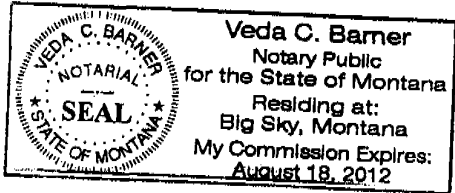

Printed Name: Katherine L Castillo
Notary Public for the State of California
Residing at 747 52nd Street, Oakland, CA 94609
My commission expires: March 29, 2014

Owner of Unit A302 of The Lodges
at Elkhorn Creek, a Condominium

Mark D Eklo
Mark D. Eklo

STATE OF Montana)
: ss.
County of Gallatin)

On this 13th day of October, 2010, before me, a Notary Public in and for said State, personally appeared MARK D. EKLO, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.



Veda C Barner
Printed Name: Veda C Barner
Notary Public for the State of Montana
Residing at Big Sky, MT
My commission expires: August 18, 2012

After recording please return to:

Kenneth S. Frazier
Felt, Martin, Frazier & Weldon, P.C.
PO Box 2558
Billings, MT 59103

American Land Title Company
3 Geyser Street/P.O. Box 1248
Ennis, Montana 59729-1248

Order No. DEE

139847 RECORDS Pages: 4
STATE OF MONTANA MADISON COUNTY
RECORDED: 03/02/2011 4:20 KOI: COVENANTS
Peggy Kaatz Stemler CLERK AND RECORDER
FEE: \$28.00 BY: *Peggy Kaatz Stemler*
TO: AMERICAN LAND TITLE CO PO BOX 390 BOZEMAN MT 59715

**THIRD AMENDMENT TO
DECLARATION FOR ELKHORN CREEK LODGES, A CONDOMINIUM**

This THIRD AMENDMENT TO DECLARATION FOR ELKHORN CREEK LODGES, A CONDOMINIUM ("Third Amendment") is made by Rocky Mountain Bank, successor in interest to The Lodges at Elkhorn Creek, LLC, as the "Declarant" and the "Developer". The Declaration is hereby amended as follows:

1. The attached Certificate shall be added as Exhibit D to the Declaration.

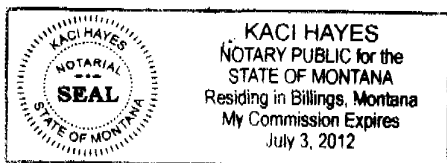
Except as modified in this Third Amendment, all terms and conditions of the Declaration remain in full force and effect. The undersigned Developer hereby certifies that this Third Amendment has amended the Declaration in accordance with Article IX of the Declaration in that the Developer may amend the Declaration for any purpose so long as the Developer is a Unit Owner.

Dated this 1st day of March 2011.

"Declarant"/"Developer"
ROCKY MOUNTAIN BANK
[Signature]
By: Danny Skarda
Its: President & CEO


STATE OF MONTANA)
 : ss.
County of Yellowstone)

On this 1st day of March 2011, before me, Kaci Hayes, a Notary Public for the State of Montana, personally appeared Danny Skarda known to me to be the President and CEO of the corporation that executed the within instrument, and acknowledged to me to that such corporation executed the same. In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



[Signature]
Signature

Dated this 23rd of February 2011.

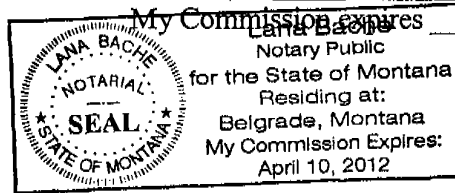


(Seal)

State of Montana
County of Gallatin

On this 23rd day of February 2011, before me, Lana Bache, a Notary Public for the State of Montana, personally appeared Roger Davis. In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Lana Bache
Notary Public for the State of Montana
Residing at _____, MT



American Land Title Company
 1800 West Koch / P.O. Box 396
 Bozeman, Montana 59715 / 59771-0396
 After recording return to: *CS*

Kenneth S. Frazier
 FELT, MARTIN, FRAZIER & WELDON, P.C.
 P.O. Box 2558
 Billings, Montana 59103

139848 RECORDS Pages: 6
 STATE OF MONTANA MADISON COUNTY
 RECORDED: 03/02/2011 4:20 KOI: ASSIGN
 Peggy Kaatz Stemler CLERK AND RECORDER
 FEE: \$42.00 BY: *Peggy Kaatz Stemler*
 TO: AMERICAN LAND TITLE CO PO BOX 396, BOZEMAN MT 59715

*pm
pm*

ASSIGNMENT OF DEVELOPMENT RIGHTS

THIS ASSIGNMENT OF DEVELOPMENT RIGHTS (the "Agreement") is entered into as of the 22nd day of February, 2011, ("Effective Date"), by and between **Rocky Mountain Bank – Bozeman**, a Montana banking corporation ("Bank and Assignor") and Elkhorn Creek Condo, LLC, a Wyoming limited liability ("Assignee") (each, a "Party" and collectively, the "Parties") with respect to certain rights relating to Elkhorn Creek Lodges, a Condominium.

RECITALS

A. The Lodges at Elkhorn Creek, LLC (the "LLC"), owned the following real property located in Madison County, Montana (the "Real Property"):

Tract 1 in Block 1, Amended, Cascade Subdivision, Mountain Village, Big Sky, Montana, as shown in Book 4 of Plats, Page 153-A, Madison County, Montana, including the Units of Elkhorn Creek Lodges Condominium, located on Tract 1 in Block 1, Amended, Cascade Subdivision, Madison County, Montana, according to the official plat thereof on file and of record in the office of the County Clerk and Recorder, Madison County, Montana, recorded in Book 4 of Plats, Page 153-A, records of Madison County, Montana.

TOGETHER WITH an undivided interest in the common elements appertaining to said units. The Declaration for Elkhorn Creek Lodges, a Condominium, recorded August 29, 2006, Document No. 115426, and as subsequently amended, records of Madison County, Montana. The use of the condominium shall be for residential purposes only.

B. The LLC granted to the Bank a security interest in and to the Real Property to secure repayment of obligations the LLC owed to the Bank.

C. The LLC began construction a condominium project on the Real Property pursuant to The Declaration for Elkhorn Creek Lodges, a Condominium dated August 24, 2006, (the "Declaration"), which was filed of record with the office of the Clerk and Recorder of Madison County, Montana, on August 29, 2006, as Document No. 115426.

D. The Declaration, in Article X, provides that any or all of the rights and powers granted to or reserved by the Developer may be assigned by it to any other entity.

E. In 2009, the Bank commenced a judicial foreclosure action against the LLC to foreclose its mortgage lien on the Real Property. The action was styled *Rocky Mountain Bank v. The Lodges at Elkhorn Creek, LLC, et al.*, DV 29-09-39 (the "Civil Action"). In settlement of the Civil Action, the LLC executed and delivered to the Bank a Deed in Lieu of Foreclosure under which the LLC transferred and assigned to the Bank all of its right, title, and interest in and to the Real Property, including its development rights under the Declaration as set forth in Article V of said Declaration to allow the creation of additional condominium units.

F. The Bank is now interested in assigning to the Assignee the right to develop the Real Property under the Declaration and the Assignee is interested in accepting all such rights and assuming all risks of developing the Real Property subject to the conditions set forth in the Declaration and this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Bank and the Assignee hereby agree as follows:

1. Incorporation of Recitals. Each of the above recitals and the documents recited therein are expressly incorporated into this Agreement.

2. Assignment of Development Rights. The Bank hereby sells, assigns, grants, transfers, and conveys to Assignee all of the Bank's development rights with respect to the Real Property under the Declaration, to the full extent of its right, title, and interest, if any, in such development rights.

3. Consideration. In consideration of the Bank's assignment of the development rights to the Real Property, the Assignee agrees to pay to the Bank the sum of six hundred and twelve thousand dollars (\$612,000.00) upon execution of this Agreement, the receipt of which is hereby acknowledged by the Bank.

4. Bank's Representation and Warranties. Bank represents and warrants as follows:

- A. Authority. The Bank has the requisite authority to execute and deliver this Agreement, and to perform its obligations hereunder. No third party consents or approvals are required in order to convey the development rights to Assignee.
- B. Due Execution. The Bank's execution, delivery, and performance of this Agreement and all documents required hereunder are within the powers of the Bank and do not contravene any law, including without limitation any laws governing bankruptcy or insolvency, or any contractual restrictions. Furthermore, the Bank has received all necessary governmental approval, if any, to execute, deliver, and perform this Agreement and the transactions contemplated herein.
- C. No Previous Transfer. The Bank has not previously conveyed any interest in the development rights to any other party, whether absolutely, conditionally, as

collateral or otherwise, and will defend its title to the development rights against the claims and demands of all persons claiming by or through it.

- D. Reliance. The Bank warrants, represents, and agrees that it is not relying on the advice or representation of Assignee, or anyone associated with Assignee, as to legal, factual, tax, or other consequences of any kind arising out of this Agreement.

The Bank does not make, and has not made, any other representation to Assignee regarding the development rights or its interests thereto.

5. Assignee's Representations and Warranties. Assignee represents and warrants as follows:

- A. Authority. Assignee has the requisite authority to execute and deliver this Agreement, and to perform its obligations hereunder. No third party consents or approvals are required in order for Assignee to accept and receive the development rights.
- B. Due Diligence. Assignee has received accurate and complete copies of the Declaration and all other of all agreements and documents relating to the development rights. Assignee has carefully read the Declaration and all other agreements and documents relating to the development rights and has discussed, or has had the opportunity to discuss their meaning, consequences, and legal effect with its attorneys, understand the contents thereof, and signs this Agreement of its own free will and accord.
- C. As Is. Assignee has reviewed and is familiar with the development rights, and accepts and assumes the development rights "as is" and without any other warranty or representation of any kind or character. Assignee acknowledges that this Agreement and the transactions contemplated hereunder do not and are not intended to transfer in any way the Real Property or any portion thereof.
- D. Reliance. Assignee warrants, represents, and agrees that it is not relying on the advice or representation of the Bank, or anyone associated with the Bank, as to legal, factual, tax, or other consequences of any kind arising out of this Agreement.
- E. Assumption of Risk. Assignee hereby assumes all risks related to the development rights. Assignee further acknowledges that it is solely responsible for its activities and any liabilities arising out of its activities and agreements on the Real Property from and after the Effective Date.

6. Additional Documentation; Cooperation. The Parties shall execute and deliver such assignments, transfers, and other instruments and documents, if any, as may be reasonably necessary to transfer to Assignee the development rights as of the execution of this Agreement. The Parties shall also take such other actions as a Party may reasonably request, and generally

cooperate, to better effect the intent of this Agreement and fully accomplish the conveyance of the development rights to Assignee.

7. Choice of Law. The validity of this Agreement, its construction, interpretation and enforcement, the rights of the parties hereunder, shall be determined under, governed by, and construed in accordance with the internal laws of the State of Montana governing contracts only to be performed in Montana.

8. Attorneys' Fees. If any party commences a legal action or other proceeding related to this Agreement, the losing party shall pay the prevailing party's actual attorneys' fees and expenses incurred in the preparation for, conduct of or appeal or enforcement of judgment from the proceeding. The phrase "prevailing party" shall mean the party who is determined in the proceeding to have prevailed or who prevails by dismissal, default, settlement or otherwise.

9. Binding Agreement. This Agreement shall be binding on, and shall inure to the benefit of, each of the Parties and their respective past, present and future predecessors, successors, subsidiaries, affiliates, officers, directors, employees, attorneys, insurers, agents, representatives, and assigns.

10. Integration. This Agreement incorporates all negotiations of the parties hereto with respect to the subject matter hereof and is the final expression and agreement of the parties hereto with respect to the subject matter hereof.

11. Severability. In case any provision in this Agreement shall be invalid, illegal or unenforceable, such provision shall be severable from the remainder of this Agreement and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.


12. Modification. This Agreement may not be amended, waived, or modified in any manner without the written consent of the party against whom the amendment, waiver, or modification is sought to be enforced.

13. Counterparts. This Agreement may be executed in any number of counterparts and by different parties and separate counterparts, each of which when so executed and delivered, shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by fax, Email, or other similar method of electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

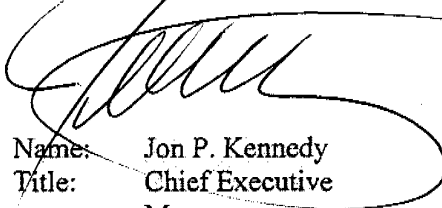
14. Headings. The headings of this Agreement are inserted for the convenience of the parties only and shall not constitute a part of the Agreement nor be used in construing any provision thereof.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first set forth above.

“Bank / Assignor”
ROCKY MOUNTAIN BANK-
BOZEMAN
A Montana banking corporation

By: 
Name: Danny Skarda
Title: President & CEO

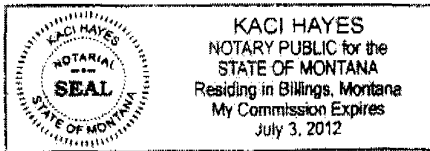
“Assignee”
ELKHORN CREEK CONDO, LLC
A Wyoming limited liability company

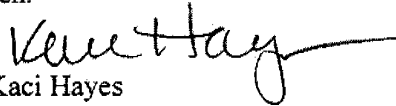
By: 
Name: Jon P. Kennedy
Title: Chief Executive
Manager

ACKNOWLEDGMENTS

STATE OF MONTANA)
 : ss.
County of Yellowstone)

On this 22nd day of February, 2011, before me, Kaci Hayes, a Notary Public for the State of Montana, personally appeared Danny Skarda, known to me to be the President & CEO of the corporation that executed the within instrument, and acknowledged to me to that such corporation executed the same. In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

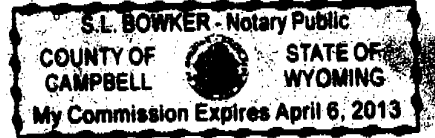



Kaci Hayes

STATE OF Wyoming)
 : ss.
County of Campbell)

On this 23rd day of February, 2011, before me, Sharrie Bowker, a Notary Public for the State of Wyoming, personally appeared Jon P. Kennedy, known to me to be the Chief Executive Manager of the corporation that executed the within instrument, and acknowledged to me to that such corporation executed the same. In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

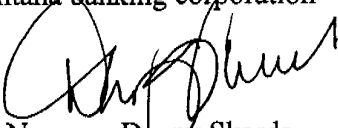
Signed 
RESIDING IN CAMPBELL COUNTY

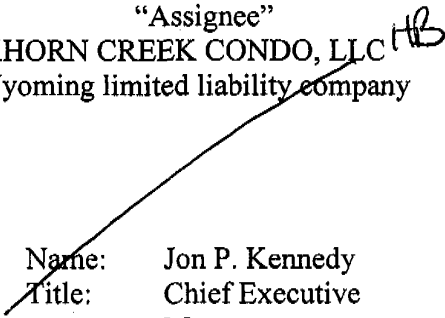


IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first set forth above.

“Bank / Assignor”
ROCKY MOUNTAIN BANK-
BOZEMAN
A Montana banking corporation

“Assignee”
ELKHORN CREEK CONDO, LLC ^{HB}
A Wyoming limited liability company

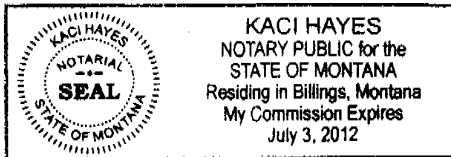
By: 
Name: Danny Skarda
Title: President & CEO


By: 
Name: Jon P. Kennedy
Title: Chief Executive
Manager

ACKNOWLEDGMENTS

STATE OF MONTANA)
 : ss.
County of Yellowstone)

On this 22nd day of February, 2011, before me, Kaci Hayes, a Notary Public for the State of Montana, personally appeared Danny Skarda, known to me to be the President & CEO of the corporation that executed the within instrument, and acknowledged to me to that such corporation executed the same. In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.





Kaci Hayes

STATE OF _____)
 : ss.
County of _____)

On this ____ day of February, 2011, before me, _____, a Notary Public for the State of _____, personally appeared Jon P. Kennedy, known to me to be the Chief Executive Manager of the corporation that executed the within instrument, and acknowledged to me to that such corporation executed the same. In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Signed

115427 RECORDS Pages: 10
STATE OF MONTANA MADISON COUNTY
RECORDED: 08/29/2006 3:10 KOI: CV
Peggy Kaatz CLERK AND RECORDER
FEE: \$72.75 BY: 
TO: BIG SKY PROPERTIES PO BOX 160515, BIG SKY MT 59716

115427

BYLAWS OF THE ASSOCIATION OF UNIT OWNERS
OF
ELKHORN CREEK LODGES,
A CONDOMINIUM

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BYLAWS OF THE ASSOCIATION OF UNIT OWNERS
OF
ELKHORN CREEK LODGES,
A CONDOMINIUM

I. PURPOSE AND APPLICATION

These Articles are and shall be the Bylaws of the Association of Unit Owners of ELKHORN CREEK LODGES, A CONDOMINIUM. These Bylaws shall, upon being recorded with the Clerk and Recorder of Madison County, State of Montana, govern and control the administration of ELKHORN CREEK LODGES, A CONDOMINIUM. All Unit Owners, their employees, business invitees, guests and any renters or sublessees, present and future, shall have the rights and responsibilities described in these Bylaws and shall be subject to the provisions thereof.

The acquisition of an ownership interest in a unit in ELKHORN CREEK LODGES, A CONDOMINIUM signifies that the Owner accepts, ratifies and agrees to comply with these Bylaws.

II. MEMBERSHIP

Persons owning a Unit in ELKHORN CREEK LODGES, A CONDOMINIUM or an interest in a unit, or owning a unit in any real estate tenancy relationship recognized by the State of Montana, shall be a member of the Association of Unit Owners ("Association"). An owner may not decline membership in the Association. Membership begins concurrently with the acquisition of an ownership interest and terminates at the time such ownership interest is terminated. Such termination shall not relieve any owner of liability for obligations incurred while a member of the Association; further, membership in the Association does not in any way negate or impair any owner's legal remedies, right to bring legal action, or defenses to any and all actions involving the Association, other Unit Owners, or the Management, which may arise from or be incidents of unit ownership.

In addition to the membership in the Association of Unit Owners for Elkhorn Creek Lodges, A Condominium, owners of a Unit shall also be members of the Big Sky Owners' Association, Inc. ("BSOA"), subject to all applicable Bylaws, rules, and other regulations for such Association, including liability for assessments thereto. Membership in the BSOA shall be appurtenant to, and may not be separate from, ownership of a Unit.

III. OBLIGATIONS

Each Unit Owner shall be obligated to comply with these Bylaws, the Declaration, and the laws of the County of Madison, and the State of Montana. Such obligations shall

include, but not be limited to, the paying of assessments levied by the Association, and the adherence to the protective covenants, which are a part of the Declaration. Failure of any owner to abide by these Bylaws, and all rules made pursuant thereto, the declaration, and the laws of County of Madison, and the State of Montana, shall be grounds for appropriate legal action by the Association of Unit Owners or by an aggrieved Unit Owner against such noncomplying owner.

IV. MEETING AND VOTING

There shall be a regular meeting of the Association annually on the second Monday in September of each year, commencing in the year ELKHORN CREEK LODGES, A CONDOMINIUM=s regime is established, or on such other date properly announced by the Association.

Pursuant to these Bylaws, the Association may at any time hold special meetings. Such special meetings may be called on the initiative of the Chairman of the Association, by the Board of Directors, a signed request of the Manager, or a petition signed by fifty-one percent (51%) of the Unit Owners. Notice of any special meeting must specify the reason for such meeting and the matters to be raised. Only matters set forth in the petition or request may be brought before such meeting unless more than fifty-one percent (51%) of the aggregate interest present agree otherwise.

A. Notice.

Notice of all meetings, regular or special, shall be mailed by the Association=s Secretary to every Unit Owner of record at his address of record at least ten (10) business days prior to the time for holding such meeting. Such notice shall specify the date, time and place of the meeting and shall make provisions to allow for the voting of each Unit Owner=s interest by proxy at the discretion of the owner. The mailing of a notice in the manner provided in this paragraph or the personal delivery of such notice by the Secretary of the Association shall be considered as notice served.

B. Quorum.

No meeting, regular or special, shall be convened to conduct business unless a quorum is present in person or by proxy. A quorum shall consist of fifty-one percent (51%) of the total aggregate interest of ELKHORN CREEK LODGES, A CONDOMINIUM. At any time, during any meeting, that quorum is not present, such meeting shall be adjourned forthwith. Members may be present telephonically.

V. VOTING INTEREST

Each Unit at Association meetings shall have an equal voting interest as set forth in the Declaration, a copy of which is being filed concurrently with the filing of these Bylaws with the Clerk and Recorder of Madison County, State of Montana.

Each Unit shall thus have an equal voting interest on all matters affecting the

general business of ELKHORN CREEK LODGES, A CONDOMINIUM, on all matters affecting the common elements, assessments for the common elements, and on all matters upon which the Association has agreed to have voting on the general common elements= interests. Voting upon matters affecting limited common elements and assessments for limited expenses shall be only by owners having a unit or interest in units located in the building affected.

Whenever a quorum is present at a meeting of the Association or the Board of Directors, those present may do any and all acts they are empowered to do unless specific provisions of these Bylaws, the Declaration or the laws of the State of Montana direct otherwise.

VI. BOARD OF DIRECTORS

The governance of ELKHORN CREEK LODGES, A CONDOMINIUM shall be by a Board of three (3) Directors, elected among the Unit Owners. Such Board shall have all powers and responsibilities attendant to the general administration and control of the condominium. Additionally, the Board shall have the authority necessary to carry into effect the powers and duties specified by these Bylaws.

VII. OFFICERS OF THE BOARD OF DIRECTORS

The Association shall elect, after the transfer of 75% of the units from the Declarant to a third party, from its membership a Board of Directors of three persons, who shall serve for a term of two (2) years. The manner of election of the Board of Directors shall be as follows:

At the first and all subsequent annual meetings of the Association, nominations for positions on the Board shall be accepted from any of the Unit Owners present. Voting will be noncumulative, with each Association member having a vote equal to his/her percentage of interest in the general common elements, for as many persons as there are Directors to be elected. Board members shall be elected by majority vote of the interests present or voting by proxy at any annual or special meeting. The first Board consisting of three (3) persons, as listed below, shall serve until the first annual meeting of the Association, at which time a new Board shall be elected.

VIII. POWERS AND DUTIES OF THE BOARD OF DIRECTORS

The Board of Directors shall have the following powers and duties:

- A. To call annual meetings of the Association and give due notice thereof.
- B. To conduct elections of the Board of Directors.
- C. To enforce the provisions of the Declaration, Bylaws and protective

covenants of ELKHORN CREEK LODGES, A CONDOMINIUM by appropriate action.

- D. To promulgate and adopt rules and regulations for the use of the common elements and for the occupancy of the units so as not to interfere with the peace and quiet of all the residents. Such rules must be approved by a majority of the unit owners at any regular or special meeting of the Association.
- E. To provide for the management of ELKHORN CREEK LODGES, A CONDOMINIUM by hiring or contracting with suitable and capable management and personnel for the day-to-day operation, maintenance, upkeep and repair of the general common and limited common elements.
- F. To levy assessments as allowed by the Declaration, these Bylaws and the State of Montana, and to provide for the collection, expenditure and accounting of said assessments.
- G. To pay for the expenses of the maintenance, repair and upkeep of the general common elements and the limited common elements, and to approve payment vouchers either at regular or special meetings.
- H. To delegate authority to the Manager for the routine conduct of condominium business, however, such authority shall be precisely defined with ultimate authority at all time residing in the Board of Directors.
- I. To provide a means of hearing grievances of Unit Owners and to respond appropriately thereto.
- J. To meet at regularly scheduled times and to hold such meetings open to all Unit Owners or their agents.
- K. To prepare an annual budget for the condominium in order to determine the amount of the assessments payable by the Unit Owners to meet the general common and limited common expenses, and allocate and assess such charges among the Unit Owners according to their respective interests in the general common and limited common elements.
- L. To levy and collect special assessments whenever, in the opinion of the Board, it is necessary to do so in order to meet increased operating or maintenance expenses, costs, or additional capital expenses, or because of emergencies.
- M. To take appropriate legal action to collect any delinquent assessments, payments or amounts due from Unit Owners, or from any person or persons owing money to the condominium, and to levy a penalty and to charge interest on unpaid amounts due and owing. However, other than for the

collection of delinquent assessments or accounts, the Board shall not initiate any litigation or lawsuit without prior approval of a majority of the aggregate interest of the Unit Owners in the condominium.

- N. To defend in the name of the Association any and all lawsuits wherein ELKHORN CREEK LODGES, A CONDOMINIUM is a party defendant.
- O. To enter into contracts necessary to carry out the duties herein set forth.
- P. To establish a bank account for ELKHORN CREEK LODGES, A CONDOMINIUM, and to keep therein all funds of the Association. Withdrawal of monies from such accounts shall only be by checks signed by such persons as are authorized by the Board of Directors.
- Q. In general, to act for and carry on the administration and affairs of the Association as authorized and prescribed by the Declaration, and to do all those things which are necessary and reasonable in order to carry out the governance and operation of ELKHORN CREEK LODGES, A CONDOMINIUM.
- R. To make repairs, alterations, additions and improvements to the general common and limited common elements consistent with managing the condominium in a first-class manner and in the best interest of the Unit Owners.
- S. To provide for the perpetual maintenance of the general common open area and landscaping, the parking areas and driving lanes, and any stream/ditch and irrigation canals, and to make any assessments necessary for such maintenance as provided herein. Such maintenance shall specifically include the control of County declared noxious weeds.
- T. To arrange, keep, maintain and renew the insurance for the Association as set forth in the Declaration.
- U. To receive and make payment for common utility expenses, including the power bill, for all of the condominium units. The pro rata portion of the utility expenses shall be paid by the unit owners as part of, or in addition to, their condominium assessment, with the method of payment to be determined by the Board.
- V. To carry out the duties and responsibilities of the Board in all other matters as may be authorized, needed or required by the Declaration.

IX. VACANCIES AND REMOVAL

Should a vacancy occur on the Board of Directors, the Board, subject to the exception described below, shall appoint a member of the Association to serve for the

unexpired term. Such vacancy shall be filled no later than the next regular Board meeting after which it occurs. Should such vacancy not be filled by the Board at the next regular meeting of the Association, the Association may fill such vacancy.

At any regular or special meeting of the Association, any member of the Board may be removed by a majority of the aggregate interest in ELKHORN CREEK LODGES, A CONDOMINIUM. Such vacancy shall be filled by the Association. Such removal matter must be announced in the notice of such regular or special meeting. The personal delivery of such notice by the Secretary of the Association shall be considered notice served.

X. COMPENSATION

No member of the Board of Directors shall receive any compensation for acting as such. Nothing herein, however, shall be construed to preclude compensation being paid to Managers who are hired by the Board of Directors.

XI. MANAGERS

The Manager shall be appointed and/or removed by the Board of Directors. The Manager (or any member of the Board or Association handling Association funds or having power to withdraw or spend such funds) shall be bonded if required by the Board of Directors, and shall maintain the records of the financial affairs of the condominium. Such records shall detail all assessments made by the Association and the status of payments of said assessments by all Unit Owners. All records shall be available for examination during normal business hours to any Unit Owner or his assigned representative. All functions and duties herein provided for the Manager may be performed by the Board, or the Chairman, if the Board should decide not to have a Manager.

- A. Accounts: The receipts and expenditures of the Association shall be under the direction of the Manager and be classified as appropriate into general common expenses and limited common expenses, and shall include a provision for current expenses which shall include all receipts and expenditures to be made within the year for which the budget is made, including a reasonable allowance for contingencies and working funds, except expenditures chargeable to reserves or betterments. The balance in this fund at the end of each year shall be applied to reduce the assessments for current expenses for the succeeding year. Other budget items may be provided for in the discretion of the Manager.
- B. Budget: The Manager shall prepare and submit to the Board each calendar year, a budget, which must be approved and adopted by the Board. The budget shall include the estimated funds required to defray the general common and limited common expenses and to provide and maintain funds for the foregoing accounts according to good accounting practices.

Copies of the budget and proposed assessments shall be transmitted to each member on or before December 15 of the year preceding the year for which the budget is made. If the budget is subsequently amended, a copy of the amended

budget shall be furnished to each member.

C. Financial Report: An audit and financial report of the accounts of the Association may be made annually by a Certified Public Accountant, if required by the Board of Directors, and a copy of the report shall be furnished to each member no later than March 1st of each year for which the audit is made.

The Manager shall generally operate and manage the condominium for and on behalf of the Unit Owners and shall have such other powers and authority as the Board may designate. If there is no Manager or the Manager resigns, is terminated or his contract expires, the Board shall perform all the duties of the Manager.

XII. AMENDMENT OF BYLAWS

These Bylaws may be amended at any regular or special meeting of the Association providing that a copy of the proposed revision is included in the notice of such meeting. Upon a vote of over fifty percent (50%) of the aggregate interest in the condominium, the amendment shall be declared adopted. The Secretary shall as soon as practicable after adoption, prepare a copy of these Bylaws as amended for certification by the Chairman and Secretary of the Association. Such amended and certified Bylaws shall then be filed and recorded in the office of the Clerk and Recorder of Gallatin County, State of Montana. Bylaws as amended shall become effective at the time of such recording.

XIII. ASSESSMENTS

In accordance with the percentage of interest in the general common elements as set forth in the Declaration, each Unit Owner shall be assessed for general common expenses. Such assessments, and assessments for limited common expenses, shall be collected and paid according to the terms and under the procedures more particularly set forth in the Declaration. The amount of assessments described above and any other assessments allowed by these Bylaws, the Declaration, and by the State of Montana, shall be fixed by the Board of Directors. Notice of each owner's assessments shall be mailed to said owner at his address of record.

XIV. THE DECLARATION

The undersigned has filed, along with these Bylaws, a Declaration whereby the properties known as ELKHORN CREEK LODGES, A CONDOMINIUM are submitted subject to Title 70, Chapter 23, M.C.A. The Declaration shall govern the acts, powers, duties and responsibilities of the Association of Unit Owners, and in the event these Bylaws and the Declaration are in conflict, the Declaration shall prevail.

The definition of terms set forth in the Declaration shall be applicable throughout these Bylaws and the interpretation thereof.

By virtue of these Bylaws and the Declaration, each Unit Owner has the right to membership in the Association of Unit Owners and any Unit Owner may be on the Board of

