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CONDOMINIUM  
DECLARATION FOR  
THE ELKHORN SPRINGS  
RESIDENTIAL  
CONDOMINIUMS

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**CONDOMINIUM DECLARATION FOR**  
**THE ELKHORN SPRINGS RESIDENTIAL CONDOMINIUMS**

THIS DECLARATION is made effective the 30<sup>th</sup> day of May, 2006, by CG-Elkhorn Hotel, LLC, a Delaware limited liability company ("Declarant").

**RECITALS**

Declarant is the Owner of real property located in the City of Sun Valley, Blaine County, Idaho, described in **Exhibit "A"** attached hereto and made a part hereof by this reference (the "Real Property"). Declarant has improved or intends to improve the Real Property by constructing improvements thereon consisting of multiple residential Units and related facilities. By this Declaration, Declarant intends to establish a plan of condominium ownership.

**DECLARATION**

Declarant declares that the Real Property is, and shall be, held, conveyed, hypothecated, encumbered, leased, rented, used and occupied subject to the following limitations, restrictions, easements, covenants, conditions, liens and charges, all of which are declared and agreed to be in furtherance of a plan of condominium ownership as described in the Condominium Property Act, Idaho Code §§55-1501, *et seq.*, for the subdivision, improvement, protection, maintenance, and sale of Condominiums within the Real Property, and all of which are declared and agreed to be for the purpose of enhancing, maintaining and protecting the value and attractiveness of the Real Property. All of the limitations, restrictions, easements, covenants, conditions, liens and charges shall run with the land, shall be binding on and inure to the benefit of all parties having or acquiring any right, title or interest in the Real Property, and shall be binding on and inure to the benefit of the successors in interest of such parties. The Development shall consist of eighteen (18) condominiums. Declarant further declares that it is the express intent that this Declaration satisfy the requirements of Idaho Code §55-1505. The Declarant further declares that the Declarant intends to annex the real property more particularly described in Blocks 3, 4 and 7 of the Elkhorn Springs Large Block Plat to the Development pursuant to Article 15 hereof.

## ARTICLE 1

### DEFINITIONS

- 1.1 “Act” shall mean the Condominium Property Act, Idaho Code §§55-1501, *et seq.*
- 1.2 “Articles” shall mean the Association’s Articles of Incorporation and their amendments. A copy of the Articles is attached hereto as **Exhibit “B”** and made a part hereof.
- 1.3 “Association” shall mean the Elkhorn Springs Residential Condominium Association, Inc., an Idaho nonprofit corporation, its successors and assigns.
- 1.4 “Association Rules” shall mean the rules and regulations regulating the use and enjoyment of the Common Area adopted by the Board from time to time.
- 1.5 “Board” shall mean the Board of Directors of the Association.
- 1.6 “Bylaws” shall mean the Association’s bylaws and their amendments. A copy of the Bylaws is attached hereto as **Exhibit “C”** and made a part hereof.
- 1.7 “Common Area” shall mean the entire Development, except the individual Units, as defined in this Declaration or as shown on the Condominium Plat. The percentage of ownership interest in the Common Area which is allocated to each Unit for purposes of tax assessment under Idaho Code §55-1514 and for purposes of liability determination as provided by Idaho Code §55-1515 is expressed as a percentage of the entire ownership interest in the Common Area in **Exhibit “D.”**
- 1.8 “Common Expenses” shall mean all expenses incurred for the upkeep, maintenance, repair, replacement, management and operation of the Common Area, including any reserve for maintenance and repairs, reinstatement, rebuilding and replacement of the Common Area; all charges for taxes on or relating to the Common Area (except Real Property and other taxes assessed separately on the Condominiums or on the personal property or any other interest of an Owner); the cost of insurance permitted or required herein to be procured and maintained by the Association; the cost of janitorial and similar services for the Common Area; wages; accounting and legal fees; management fees; water and sewer service charges; trash collection; common lighting and heating; any deficit remaining for a previous period; and any other expenses and liabilities incurred by the Association for the benefit of the Owners under or by reason of the Declaration.
- 1.9 “Condominium” shall mean an estate in Real Property, as defined in Idaho Code §55-101B, consisting of an undivided interest as a tenant-in-common in the Common Area, together with a fee interest in a Unit shown and described on the Condominium Plat.

1.10 “Condominium Plat” shall mean the Condominium Plat for the Hillside Terrace North Condominiums to be filed for record in the office of the County Recorder of Blaine County, Idaho consisting of a plat or survey map of the surface of the ground of the Real Property showing a survey and legal description thereof, the location of the building with respect to the boundaries of the Real Property together with diagrammatic floor plans of the building showing the boundaries of each Unit within the building, including horizontal and vertical locations and dimensions of all boundaries of each Unit, Unit numbers identifying the Units, together with such other information as may be included thereon in the discretion of the Declarant. A copy of the Condominium Plat is attached at **Exhibit “E”** and contains a legal description of each Unit in the Development and the identifying number of each Unit.

1.11 “Declarant” shall mean CG-Elkhorn Hotel, LLC, a Delaware limited liability company, and its successors and assigns, if such successors and assigns acquire record title to any portion of the Development for development purposes.

1.12 “Development” shall mean the Real Property divided or to be divided into Condominiums or owned by the Association, including all structures and improvements on it, and any additional real property annexed to this Declaration.

1.13 “Elkhorn Springs Large Block Plat” shall mean that plat recorded as Instrument No. 536008 records of the county recorder, Blaine County, Idaho.

1.14 “Initiation Date” shall mean the first day of the calendar month following the date on which the sale of the first Condominium to a purchaser is closed and recorded.

1.15 “Limited Common Areas” shall mean those Common Areas and facilities designated in the Condominium Plat or in the deed from the Declarant to each Owner for use of a certain Condominium Owner or Owners to the exclusion, limitation or restriction of others. These areas or facilities may include, but are not limited to, exterior storage closets, resident parking stalls, stairs, decks and patios.

1.16 “Manager” shall mean a professional managing agent appointed by the Association in accordance with Section 4.3.1.3 of this Declaration.

1.17 “Member” shall mean every person or entity that holds a membership in the Association.

1.18 “Mortgage” shall mean a mortgage or deed of trust encumbering a Condominium or other portion of the Development. A “Mortgagee” shall include the beneficiary under a deed of trust. An “institutional mortgagee” is a mortgagee that is bank or savings and loan association or mortgage company or other entity chartered or licensed under federal or state laws whose principal business is lending money on the security of real property, or any insurance company or any federal or state agency. A “first mortgage” or “first mortgagee” is one having priority as to



all other mortgages or holders of mortgages encumbering the same Condominium or other portions of the Development.

1.19 "Owner" shall mean each person or entity holding a record ownership interest in a Condominium including Declarant, and contract purchasers under recorded contracts. "Owner" shall not include persons or entities that hold an interest in a Condominium merely as security for the performance of an obligation.

1.20 "Real Property" shall mean that real property located in the City of Sun Valley, Blaine County, Idaho, more particularly described in **Exhibit "A"**

1.21 "Supplement" shall mean the recorded supplement to this Declaration filed in accordance with Article 15.

1.22 "Trustee" shall mean the entity appointed in accordance with Section 8.4 of this Declaration.

1.23 "Unit" shall mean the separate interest in a Condominium as bounded by the interior surfaces of the perimeter walls, floors, ceilings, windows and doors thereof as shown and numbered on the Condominium Plat, together with all fixtures and improvements contained therein. A Unit shall not be deemed to include bearing walls, columns, floors and roofs (except for the interior surface thereof), foundations, elevator equipment and shafts, central heating, central refrigeration and central air conditioning equipment, reservoirs, tanks, pumps and other central services, or pipes, vents, ducts, flues, chutes, conduits, wires, and other utility installations wherever located (except the outlets thereof when located within the Unit). The interior surfaces of a perimeter window or door means the points at which such surfaces are located when such windows or doors are closed; the physical windows and doors themselves are part of the Common Area. In case of combination of two or more adjoining Units, those portions of the partition walls, floors or ceilings between Units which are from time to time used as door or stairway openings between such Units shall be deemed to be divided in half, parallel to such partition wall, floor or ceiling, and each half shall constitute part of the Unit which it adjoins, as limited Common Area appurtenant to such Unit.

1.24 "Workforce Housing Unit" shall mean a Unit which has been deed restricted for affordable or workforce housing purposes by the City of Sun Valley or the Blaine Ketchum Housing Authority, or its successor or assignee.

## **ARTICLE 2**

### **DESCRIPTION OF COMMON INTERESTS, PROPERTY RIGHTS OF ENJOYMENT AND EASEMENTS**

2.1 Ownership of Condominium; Easements. Ownership of each Condominium within the Development shall include a separate interest in a Unit, an undivided interest in Limited Common Area appurtenant to that Unit, and an undivided interest in the Common Area

(which undivided interest is specified herein and which undivided interest cannot be altered or changed as long as the prohibition against severability of component interests in a Condominium remains in effect as provided in this Declaration), a membership in the Association, and any exclusive or non-exclusive easement or easements appurtenant to such Condominium over the Common Area as described in this Declaration or the deed to the Condominium.

2.2 Description of Condominium. Every contract for the sale of a Condominium and every other instrument affecting title to a Condominium may describe that Condominium by the number and letter shown on the Condominium Plat with the appropriate reference to the Condominium Plat and to this Declaration as each appears on the records of the County Recorder of Blaine County, Idaho, in the following fashion:

Condominium Unit \_\_\_\_\_ as shown on the Condominium Plat for the Hillside Terrace North Condominiums (or name of applicable condominium plat), recorded in the records of Blaine County, Idaho as Instrument No. \_\_\_\_\_ and as defined and described in that Condominium Declaration for the Hillside Terrace North Condominiums (or name of applicable condominium plat), recorded in the records of Blaine County, Idaho, as Instrument No. \_\_\_\_\_; and the use of limited Common Areas \_\_\_ and \_\_\_, to the exclusion, limitation or restriction of others.

The description of the Condominium shall also include reference to the recording of any amendments to the Condominium Plat or Declaration.

Such description will be construed to describe the Unit, together with the appurtenant undivided interest in the Common Area, and to incorporate all the rights incident to ownership of a Condominium and all the limitations on such ownership as described in this Declaration.

2.3 Owner's Non-Exclusive Easements of Enjoyment, Etc. Every Owner of an Condominium shall have a non-exclusive easement of use and enjoyment in, to and throughout the Common Area and for ingress, egress and support over and through the Common Area; however, such non-exclusive easements shall be subordinate to, and shall not interfere with, exclusive easements appurtenant to Units over the Common Area, if any. Each such non-exclusive easement shall be appurtenant to and pass with the title to every Condominium, subject to the following rights and restrictions:

2.3.1 The right of the Association to adopt and to enforce the Association rules.

2.3.2 The right of the Association to charge reasonable admission and other fees for the use of any unassigned parking and storage spaces and any recreational facility situated upon the Common Area.

2.3.3 The right of the Association to borrow money to improve, repair or maintain the Common Area.

2.3.4 The right of the Association to assign, rent, license or otherwise designate and control use of unassigned parking and storage spaces within the Common Area (other than those portions subject to exclusive easements appurtenant to Units, if any).

2.3.5 The right of the Association to suspend the right of an Owner to use any recreational or other facility upon the Common Area as provided in Section 4.3.1.2 of this Declaration.

2.3.6 The right of Declarant, its designer, contractor or other agent to enter on the Development, to construct the Development and to make repairs and remedy construction defects if such entry shall not interfere with the use of any occupied Unit unless authorized by the Unit Owner.

2.3.7 The right of the Association, or its agent to enter any Unit to perform its obligations under this Declaration, including obligations with respect to construction, maintenance or repair for the benefit of the Common Area or of the Owners in common, or to make necessary repairs that the Owner has failed to perform. The right shall be immediate in case of an emergency originating in or threatening such Unit, whether or not the Owner is present.

2.3.8 The right of any Owner, or his representatives, to enter the Unit of any other Owner to perform permissible installations, alterations or repairs to mechanical or electrical services, including installation of television antennae and related cables, if requests for entry are made in advance and such entry is at a time convenient to the Owner whose Unit is being entered, except that in case of emergency such right of entry shall be immediate.

2.4 Delegation of Use; Contract Purchasers; Tenants. Any Owner may delegate his rights of use and enjoyment in the Development, to his guests, and invitees, and to such other persons as may be permitted by the Bylaws and the Association rules. However, if an Owner of a Condominium has sold his Condominium to a contract purchaser or rented it, the Owner, his guests and invitees shall not be entitled to use and enjoy the Common Area of the Development while the Owner's Unit is occupied by such contract purchaser or tenant. Instead, the contract purchaser or tenant, while occupying such Unit shall be entitled to use and enjoy the Common Area of the Development and can delegate the rights of use and enjoyment in the same manner as if such contract purchaser or tenant were an Owner during the period of his occupancy. Each Owner shall notify the secretary of the Association of the names of any contract purchasers or tenants of such Owner's Condominium. Each Owner, contract purchaser or tenant also shall notify the secretary of the Association of the names of all persons to whom such Owner, contract purchaser, or tenant has delegated any rights to use and enjoyment in the Development and the relationship that each such person bears to the Owner, contract purchaser or tenant. Any delegated rights of use and enjoyment are subject to suspension to the same extent as are the rights of Owners.

2.5 Easements Granted by Association. The Association shall have the power to grant and convey to any third party easements and rights-of-way in, on, over or under the Common Area for the purpose of construction, erecting, operating or maintaining lines, cables, wires, conduits, or other devices of electricity, cable television, power, telephone and other purposes, public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities, and each purchaser, in accepting a deed to a Condominium expressly consents to such easement. However, no such easement can be granted if it would interfere with the use, occupancy or enjoyment of a Unit by any Owner.

2.6 Declarant's Rights Incident to Construction. Declarant and persons it shall select shall have the right to ingress and egress over, upon and across the Common Area, the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to complete the Development.

2.7 Owner's Rights With Respect to Interiors. Each Owner shall have the exclusive right to paint, repaint, tile, wax, paper or otherwise maintain, refinish and decorate the interior surfaces of the walls, ceilings, floors, windows and doors forming the boundaries of the Owner's Unit, and all walls, ceilings, floors and doors within such boundaries. An Owner shall obtain Board approval to change the type and/or color of window coverings that are visible from the outside. An Owner may not otherwise remodel any portion of the interior of a Unit without Board approval. The Board may require the Owner to provide a drawing with an engineer's stamp to insure that no structural component of the building is affected by the proposed remodel as part of the approval process.

2.8 Encroachments. Each Unit and all Common and Limited Common Areas are hereby declared to have an easement over all adjoining Units and Common and Limited Common Areas for the purpose of accommodating any encroachment due to engineering errors, or errors in original construction, reconstruction and repair of any portion of the Development, to shifting and settling, or any other similar cause, and any encroachment due to building overhang or projection so long as the physical boundaries of the Units are in substantial accord with the description of those boundaries in this Declaration. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner if the encroachment occurred due to the willful and wrongful act with full knowledge of said Owner. In the event a Unit or Common or Limited Common Area is partially or totally destroyed, and then repaired or rebuilt, the Owners agree that minor encroachments over adjoining Units and Common and Limited Common Areas shall be permitted, and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

## ARTICLE 3

### USE RESTRICTIONS

3.1 Residential Use. Each Unit shall be used for residential purposes only. Home office activity is permitted provided that the business activity does not generate vehicle or pedestrian traffic and is in conformance with city, state and federal law. Except as otherwise provided herein, no part of the Development shall be used or caused, allowed or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, merchantile, storing, vending or other non-residential purpose. For a period of ten (10) years from the date of recordation of this Declaration, units owned by Declarant may be used by Declarant or its designees as models, sales offices and construction offices for the purpose of developing, improving and selling Condominiums in the Development. Nothing in this Declaration shall prevent an owner from leasing or renting his Condominium. However, any lease or rental agreement shall be in writing and any tenant shall abide by and be subject to all provisions of this Declaration, the Articles, the Bylaws and the Association Rules. Any lease or rental agreement must specify that failure to abide by such provisions shall be a default under the lease or rental agreement.

3.2 Maintenance. Each Owner of a Condominium shall be responsible for maintaining his Unit, including the equipment and fixtures in the Unit and its interior walls, ceilings, windows, and interior and exterior doors in a clean, sanitary, workable and attractive condition. However, each Owner has complete discretion as to the choice of furniture, furnishings and interior decorating; but windows can be covered only by the window coverings installed by the Declarant or approved by the Board and cannot be painted or covered by foil, cardboard, or other similar materials. Each Owner also shall be responsible for repair, replacement and cleaning of the windows and glass of his Unit both exterior and interior, and any plumbing fixtures, water heaters, fans, heating equipment, lighting fixtures, fireplaces, refrigerators, dishwashers, ranges or other appliances that comprise a part of his or her Unit. Unless otherwise provided in this Declaration, each Owner shall clean and maintain any exclusive easement appurtenant to his Condominium. Water heater replacement is the sole responsibility of the Owner. All damage that may occur from a faulty or leaky water heater, within the Unit or adjacent Units, shall be the individual Owner's responsibility to repair. The Owner of the faulty or leaky hot water heater shall also be responsible for any and all payments of the Association's insurance deductible amounts.

3.3 Offensive Conduct; Nuisances. No noxious or offensive activities shall be conducted within the Development. Nothing shall be done on or within the Development that may be or may become a nuisance or that in any way interferes with the quiet enjoyment of occupants of Units.

3.4 Parking Restrictions. Unless otherwise permitted by the Board, no automobile shall be parked or left within the Development other than within an assigned parking stall or space. No boat, trailer, recreational vehicle, camper, truck or commercial vehicle shall be parked

or left within the Development other than in a parking area designated by the Board for the parking and storage of such vehicles. However, parking by commercial vehicles for the purpose of making deliveries shall be permitted in accordance with the Association rules. Any garages and carports shall be used for parking automobiles only and shall not be converted for living or recreational activities. Any garage doors shall remain closed at all times except when being used to enter or exit.

3.5 Antennae, External Fixtures, Etc. No television or radio poles, antennae, flag poles, clotheslines or other external fixtures other than those originally installed by Declarant or approved by the Board and any replacements, shall be constructed, erected or maintained on or within the Common Area or any structures on it. No wiring, installation, air conditioning, or other machinery or equipment other than that originally installed by Declarant or approved by the Board, and their replacements, shall be constructed, erected or maintained on or within the Common Area, including any structures on it.

3.6 Trash Disposal. Trash, garbage or other waste shall be kept only in sanitary containers. No Owner shall permit or cause any trash or refuse to be kept on any portion of the Common Area other than in Common Area trash enclosures, which shall be located only in places specifically designated for such purposes.

3.7 Structural Alterations. No structural alterations to the Common Area or Limited Common Area shall be made and no plumbing or electrical work within any bearing or common walls shall be performed by any Owner without the prior written consent of the Board.

3.8 Exterior Alterations. No Owner shall at his expense or otherwise make any alterations or modifications to the exterior of the buildings, fences, doors, railings, windows or walls situated within the Development without the prior written consent of the Board.

3.9 Fences, Etc. No fences, awnings, ornamental screens, screen doors, sunshades or walls of any nature shall be erected or maintained on or around any portion of any structure or elsewhere within the Development except those that are installed in accordance with the original construction of the Development, and their replacements or as are authorized and approved by the Board of Directors.

3.10 Animals. No animals, reptiles, rodents, birds, fish, livestock or poultry shall be kept in any Unit or elsewhere within the Development except that domestic dogs, cats, fish and birds inside bird cages may be kept as household pets within any Unit, provided they are not kept, bred or raised for commercial purposes. The Board can prohibit maintenance of any animal that constitutes a nuisance to any other Owner in the sole and exclusive opinion of the Board. Each person bringing or keeping a pet upon the Development shall be absolutely liable to other owners, their family members, guests, invitees, tenants and contract purchasers, and their respective family members, guests, and invitees for any damage to persons or property caused by any pet brought upon or kept upon the Development by such person or by members of his family, guests or invitees. Dogs or cats shall be limited to one (1) in number per residential Unit. The

Board shall establish rules, from time to time, regarding pets. Owners not complying with established pet rules are subject to fines as may be established by the Board, and upon request by the Board, shall immediately remove a pet from the Development.

3.11 Restricted Use of Recreation Vehicles, Etc. No boat, truck, trailer, camper, recreational vehicle or tent shall be used as a living area while located on the Development. However, trailers or temporary structures for use incidental to the initial construction of the Development or the initial sales of a Condominium may be maintained within the Development but shall be promptly removed on completion of all initial construction and all initial sales.

3.12 Outside Drying and Laundering. No exterior clothesline shall be erected or maintained and there shall be no exterior drying or laundering of clothes on balconies, patios, porches or other areas.

3.13 Compliance with Laws, Etc. Nothing shall be done or kept in any Unit or in the Common Areas that might increase the rate of or cause the cancellation of insurance for all or any portion of the Development, without the prior written consent of the Board. No Owner shall permit anything to be done or kept in his Unit that violates any law, ordinance, statute, rule or regulation of any local, county, state or federal body. No Owner shall allow furniture, furnishings or other personalty belonging to such Owner to remain within any portion of the Common Area except portions subject to exclusive easements over the Common Area appurtenant to such Owner's Condominium and except as may otherwise be permitted by the Board. Owners shall adhere to all rules established by the Board, from time to time, regarding storage and usage of decks. Owners shall keep their Limited Common Area decks and entries in a clean and sanitary condition. Any items, as determined by the Board or their authorized representative, found to be unsightly shall be immediately removed. Failure to comply with Board's request to remove unsightly items may result in fines issued for non-compliance as may be determined by the Association Rules.

3.14 Indemnification. Each Owner shall be liable to the remaining Owners for any damage to the Common Area that may be sustained by reason of the negligence of that Owner, his contract purchasers, tenants, guests or invitees, but only to the extent that any such damage is not covered by insurance. Each Owner, by acceptance of his deed, agrees for himself and his contract purchasers, tenants, guests or invitees, to indemnify each and every other Owner, and to hold him harmless from, and to defend him against, any claim of any person for personal injury or property damage occurring within the Unit of that particular Owner and within any exclusive easements over the Common or Limited Common Area appurtenant to the Owner's Condominium, unless the injury or damage occurred by reason of the negligence of any other Owner or person temporarily visiting in said Unit or portion of the Common or Limited Common Area subject to an exclusive easement appurtenant to the Condominium, or is fully covered by insurance.

3.15 Owner's Obligation for Taxes. To the extent allowed by law, all Condominiums, including their pro rata undivided interest in the Common Area and the membership of an Owner in the Association, shall be separately assessed and taxed so that all taxes, assessments and

charges which may become liens prior to first mortgages under local law shall relate only to the individual Condominiums and not to the Development as a whole. Each Owner shall be obligated to pay any taxes or assessments assessed by the Blaine County Assessor against his Condominium and against his personal property.

3.16 Mechanic's and Materialman's Liens. No labor performed or services or materials furnished with the consent of or at the request of an Owner or his agent or his contractor or subcontractor shall be the basis for the filing of a lien against the Condominium of any other Owner, or against any part thereof, or against any other property or any other Owner, unless such other Owner has expressly consented to or requested the performance of such labor or furnishing of such materials or services. Such express consent shall be deemed to have been given by the Owner of any Condominium in the case of emergency repairs thereto. Labor performed or services or materials furnished for the Development, if duly authorized by the Association, shall be deemed to be performed or furnished with the express consent of each Owner. Any Owner may remove his Condominium from a lien against two or more Condominiums or any part thereof by payment to the holder of the lien of the fraction of the total sum secured by such lien which is attributable to his Condominium.

3.17 Future Construction. Nothing in this Declaration shall limit the right of Declarant, its successors and assigns, to complete construction of improvements to the Common Area and to Condominiums owned by Declarant or to alter them or to construct additional improvements as Declarant deems advisable before completion and sale of the entire Development. The rights of Declarant in this Declaration may be assigned by Declarant to any successor to all or any part of any Declarant's interest in the Development, as developer, by an express assignment incorporated in a recorded deed that transfers any such interest to a successor.

3.18 Enforcement. The Declarant hereby declares and imposes as an equitable servitude and as a restrictive covenant running with the land and running with each Condominium, binding upon the Declarant and all persons claiming by, through or under it, that no Condominium shall be used, leased or subleased for any use specifically prohibited in this Article 3. The Declarant, its successors and assigns, the Association or any Owner may enforce the use covenants by an appropriate action, but failure to enforce a use covenant shall not be construed as a waiver thereof. The use covenants shall continue in force until a termination of the Association as described in this Declaration. The Declarant hereby declares and affirms that the use covenants are imposed as a limitation and burden upon each Condominium and upon the Declarant, its successors and assigns, and upon all future Owners of Condominiums. The failure of any Owner to comply with any provision of this Declaration, the Articles or the Bylaws shall give rise to a cause of action in the Association and/or any aggrieved Owner for the recovery of damages or for injunctive relief, or both against the party (including an Owner or the Association) failing to comply.



## ARTICLE 4

### THE ASSOCIATION

4.1 Formation. The Association is a nonprofit corporation formed under the laws of Idaho. Upon recordation of this Declaration, the Association shall be charged with the duties and invested with the powers set forth in the Articles, the Bylaws and this Declaration, including, but not limited to, control and maintenance of the Common Area and ownership of any facilities on the Common Area.

4.2 Association Action; Board of Directors and Officers; Members' Approval. Except as to matters requiring the approval of Members as set forth in this Declaration, the Articles or the Bylaws, the affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint. Such election or appointment shall be in accordance with this Declaration or the Bylaws, and their amendments. Except as otherwise provided in this Declaration, the Articles or the Bylaws, all matters requiring the approval of Members shall be deemed approved if Members holding a majority of the total voting rights assent to them by written consent as provided in the Bylaws or if approved by a majority vote of a quorum of Members at any regular or special meeting held in accordance with the Bylaws.

4.3 Powers and Duties of Association.

4.3.1 Powers. The Association shall act as the management body for the Development and shall have all the powers of a non-profit corporation organized under the Idaho Nonprofit Corporation Act subject only to such limitations on the exercise of such powers as are set forth in the Articles, the Bylaws and this Declaration. The Association shall have the power to do any lawful thing that may be authorized, required or permitted to be done by the Association under this Declaration, the Articles and the Bylaws, and to do and perform any act that may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association, including, without limitation, the following:

4.3.1.1 Assessments. The Association shall have the power to establish, fix and levy assessments against the Owners and to enforce payment of such assessments, in accordance with the provisions of this Declaration. However, the approval of Members may be required as to the amounts of some assessments as otherwise provided in this Declaration.

4.3.1.1.1 Workforce Housing Unit Assessments. Assessments referred to herein, through this Declaration, including Article 6, shall be limited to an assessment for the Workforce Housing Unit's interest in the Common Area owned by each Owner as set forth in **Exhibit "D"** for Common Area expenses for gas, electricity, water, sewer and janitorial services. A Workforce Housing Unit shall not be assessed any charge or fee for any other Common Expense, special assessment or capital improvement cost or charge.

4.3.1.2 Right of Enforcement. The Association in its own name and on its own behalf, or on behalf of any Owner who consents, can commence and maintain an action for damages or to restrain and enjoin any actual or threatened breach of any provision of this Declaration, the Articles or the Bylaws, or of the Association Rules, and can enforce by mandatory injunction, or otherwise, all of these provisions. In addition, the Association can suspend the voting rights, can suspend use privileges of the Common Area, or can assess monetary penalties against any Owner or other person entitled to exercise such rights or privileges for any violation of this Declaration, the Articles, Bylaws or Association Rules.

4.3.1.3 Delegation of Powers; Professional Management. The Association acting by and through the Board can delegate its powers, duties and responsibilities to a Manager, committees or employees. Any agreement for professional management of the Development shall be terminable by either party with or without cause and without payment of a termination fee on ninety (90) day's written notice. The term of any such agreement shall not exceed five (5) years, although such agreement may be renewed for a maximum of five (5) years by the Board.

4.3.1.4 Association Rules. The Board shall have the power to adopt, amend and repeal the Association Rules as it deems reasonable. The Association Rules shall govern the use of the Common Area by all Owners or their guests, invitees or by any contract purchaser, or tenant, or their respective guests or invitees. However, the Association Rules shall not be inconsistent with or materially alter any provisions of this Declaration, the Articles or the Bylaws. A copy of the Association Rules as adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner and a copy shall be posted in a conspicuous place within the Development. In case of any conflict between any of the Association Rules and any other provisions of this Declaration, the Articles or the Bylaws, the conflicting Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles or the Bylaws.

4.3.2 Duties of the Association. In addition to the powers delegated to it by the Articles or the Bylaws, and without limiting their generality, the Association, acting by and through the Board, or persons or entities described in Section 4.3.1.3, has the obligation to conduct business affairs of common interest to all Owners and to perform each of the following duties:

4.3.2.1 Operation and Maintenance of Common Area. To operate, maintain and otherwise manage or provide for the operation, maintenance and management of the Common Area, and all its facilities, improvements and landscaping, including any private driveways, and any other property acquired by the Association, including personal property, in a first-class condition and in a good state of repair. In this connection, the Association may enter into contracts for services or materials for the benefit of the Association or the Common Area, including contracts with Declarant. The term of any service contract shall not exceed one (1) year and shall be terminable by either party with or without cause and without payment of a termination fee upon ninety (90) days written notice.

4.3.2.2 Taxes and Assessments. To pay all real and personal property taxes and assessments and all other taxes levied against the Common Area and personal property owned by the Association or against the Association. Such taxes and assessments may be contested or compromised by the Association, provided that they are paid or that a bond insuring payment is posted before the sale or the disposition of any property to satisfy the payment of such taxes.

4.3.2.3 Water and Other Utilities. To acquire, provide and pay for water, sewer, garbage disposal, refuse and rubbish collection, electrical, telephone, gas and other necessary utility services for the Common Area and for Condominiums when the Condominiums are not separately billed. The term of any contract to supply any of the listed services shall not exceed one (1) year or, if the supplier is a regulated public utility, the shortest term not to exceed one (1) year for which the supplier will contract at the applicable regulated rate.

4.3.2.4 Insurance. To obtain, from reputable insurance companies, and maintain the insurance described in Article 8.

4.3.2.5 Enforcement of Restrictions and Rules. To perform such other acts, whether or not expressly authorized by this Declaration, that may be reasonably necessary to enforce any of the provisions of this Declaration, the Articles, the Bylaws and the Association Rules.

4.3.2.6 Budget. To prepare a budget for the Association at least annually, estimate the Common Expenses expected to be incurred, less any previous overassessment, and assess the Common Expenses to each Unit as provided in Section 6.5. As part of the budget process, the Association shall prepare a separate line item that shows the estimated cost of maintenance of and reasonable reserves for the easement premises for forty-four (44) parking spaces for the Elkhorn Village Condominiums and shall before adoption of the budget forward the estimated costs of maintenance and reserves to the Elkhorn Village Condominium Association, all of which is in accordance with the terms and conditions of the Grant of Parking Easement granted to the Elkhorn Village Condominium Association. Within thirty (30) days after adoption of any proposed budget for the Association, the Board shall provide a summary of the budget to all the Unit Owners and shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than fourteen (14) nor more than sixty (60) days after mailing of the summary. Unless at that meeting the Owners of Units to which a majority of the votes in the Association are allocated reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not given, the budget last ratified by the Owners shall be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Board. After adoption of the Association's budget, the Association shall submit the budgeted costs of maintenance and reserves to the Elkhorn Village Condominium Association for payment.

4.3.2.7 Reserve Funds. To make provision for creating, funding and maintaining reasonable reserves for contingencies and operations and for the maintenance, repair, replacement and acquisition of elements of the Common Area and Limited Common Area and to take into account any expected income and any surplus available from the prior year's operating fund. Said reserve shall also be sufficient to cover any deductible amounts which are included in the casualty and any flood insurance policy for the Development obtained by the Association. The Board shall calculate the contributions to the reserve fund so that there are sufficient funds therein to replace, or perform such major repair, to the Common Area covered by the fund at the end of the estimated useful life of each the Common Area. The initial Board, whether appointed by Declarant or elected by Unit Owners, may at any suitable time establish the first such estimate. If the sum estimated and budgeted at any time proves inadequate for any reason (including nonpayment for any reason of any Owner's assessment), the Board may at any time levy a further assessment. Similarly, if the sum estimated and budgeted, and being collected and/or already collected, at any time proves excessive, the Board may reduce the amount being assessed and/or apply existing funds (in excess of current needs and required reserves) against future assessments and/or refund such excess funds.

4.3.3 Limitations on Authority of Board. Except with the vote or written assent of Members of the Association holding fifty-one percent (51%) of the voting rights of the Members, the Board shall not take any of the following actions:

4.3.3.1 Incur aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year;

4.3.3.2 Sell in any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year; or

4.3.3.3 Pay compensation to Members of the Board or to officers of the Association for services performed in the conduct of the Association's business. However, the Board may cause a Member of the Board or an officer to be reimbursed for expenses incurred in carrying on the business of the Association.

4.4 Personal Liability. No member of the Board, member of any committee of the Association, officer of the Association, Manager, or the Declarant or any agent of Declarant, shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of any such person or entity if such person or entity has, on the basis of such information as may be possessed by him or it, acted in good faith without willful or intentional misconduct.

4.5 Financial Statements of the Association. The Board shall prepare, or cause to be prepared, annual financial statements, including a balance sheet and operating statement, and copies of those statements shall be available to each Member of the Association.

4.6 Association Books and Records and Inspection. The Association shall retain current copies of the Declaration, the Articles, the Bylaws and the Association Rules. All financial and other records, including, but not limited to, checks, bank records and invoices, shall be the property of the Association. All of the items referred to in this Section and the Association's books, records and financial statements shall be made available for examination and copying by a Unit Owner, a Unit Owner's authorized agents and all mortgagees, insurers and guarantors of any Mortgage on any Unit during normal business hours.

## ARTICLE 5

### MEMBERSHIP AND VOTING RIGHTS

#### 5.1 Membership.

5.1.1 Qualifications. Each Owner of a Condominium, including Declarant, shall be a Member of the Association. Ownership of a Condominium or interest in it shall be the sole qualification for membership in the Association. Each Owner shall remain a Member of the Association until his ownership or ownership interest in all Condominiums in the Development ceases at which time his membership in the Association shall automatically cease. Persons or entities that hold an interest in a Condominium merely as a security for performance of an obligation are not to be regarded as Members.

5.1.2 Members Rights and Duties. Each Member shall have the rights, duties and obligations set forth in this Declaration, the Articles, the Bylaws and the Association Rules, as the same may from time to time be amended.

5.1.3 Liability for Unsold Units. If and so long as the Declarant owns any Units in or added to the Development, the Declarant shall be the Unit Owner with respect to such Unit and as such shall enjoy the same rights and be subject to the same duties as would be held or assumed by any other person owning such Unit.

5.1.4 Transfer of Membership. The Association membership of each person or entity who owns, or owns an interest in, one or more Condominiums shall be appurtenant to each such Condominium, and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except on a transfer of title to each such Condominium or interest in it and then only to the transferee. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Condominium or interest in it shall operate automatically to transfer the appurtenant membership rights in the Association to the new Owner.

## 5.2 Voting.

5.2.1 Number of Votes. The Association shall have two (2) classes of voting membership:

Class A: Class A members are all Owners, with the exception of Declarant. There shall be only one (1) vote for any one (1) Condominium.

Class B: The Class B members shall be the Declarant who shall be entitled to two (2) votes for each Condominium owned, and until platted, eighty (80) votes for Block 3 of the Elkhorn Springs Large Block Plat, thirty six (36) votes for Block 4 of the Elkhorn Springs Large Block Plat and eighty-eight (88) votes for Block 7 of the Elkhorn Springs Large Block Plat. Upon recordation of a condominium plat for Blocks 3, 4 and 7 of the Elkhorn Springs Large Block Plat, the votes of the Class B membership shall decrease by 2 votes upon the conveyance of title for each Condominium within Blocks 3, 4 and 7. The Class B membership shall cease and be converted to Class A membership on the happening of one of the following events, whichever occurs earlier.

5.2.1.1 When the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership; or

5.2.1.2 On the tenth anniversary of the recordation of the Condominium Plat.

As long as two classes of members in the Association exist, no action by the Association that must have the prior approval of the Members shall be deemed approved by the Members unless approved by the appropriate percentage of both classes of Members.

5.2.2 Joint Owner Votes. The voting rights for each Condominium may not be cast on a fractional basis. If the joint Owners of a Condominium are unable to agree among themselves as to how their voting rights shall be cast, they shall forfeit the vote on the matter in question. If any Owner exercises the voting rights of a particular Condominium, it will be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Condominium. If more than one (1) person or entity exercises the voting rights for a particular Condominium, their votes shall not be counted and shall be deemed void.

## ARTICLE 6

### ASSESSMENTS

6.1 Agreement to Pay. The Declarant, for each Condominium owned by it in the Development that is expressly made subject to assessment as set forth in this Declaration, covenants and agrees, and each Owner of a Condominium by acceptance of a deed therefor,

whether it be so expressed in the deed, shall be deemed to covenant and agree to pay to the Association regular assessments and special assessments, such assessments to be established, made and collected as provided in this Declaration.

6.2 Personal Obligations. Each assessment or installment, together with any late charge, interest, collection costs and reasonable attorneys' fees, shall be the personal obligation of the person or entity who was an Owner at the time such assessment or installment became due and payable. If more than one person or entity was the Owner of a Condominium, the personal obligation to pay such assessment or installment respecting such Condominium shall be both joint and several. No Owner may exempt himself from payment of assessments or installments by waiver of the use or enjoyment of all or any portion of the Common Area or by waiver of the use or enjoyment of or by abandonment of his Condominium.

6.3 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the Members of the Association, the improvement, replacement, repair, operation and maintenance of the Common Area, and the performance of the duties of the Association as set forth in this Declaration.

6.4 Assessments.

6.4.1 Regular Assessments. Not more than sixty (60) days nor less than thirty (30) days before the beginning of each fiscal year of the Association, the Board shall meet for the purpose of establishing the regular annual assessment of Common Expenses of the Development for the forthcoming fiscal year. At such meeting the Board shall review written comments received and any other information available to it and, after making any adjustments that the Board deems appropriate, without a vote of the Members of the Association, establish the regular assessment for the forthcoming fiscal year; provided, however, that the Board may not establish a regular assessment for any fiscal year of the Association which is more than one hundred ten percent (110%) of the regular assessment of the prior fiscal year of the Association (unless the prior fiscal year of the Association was less than twelve (12) months) without the approval by vote or written consent of Members holding fifty-one percent (51%) of the voting rights of Members. The Board may from time to time during each fiscal year make reasonable adjustments in the assessments on the basis of actual costs incurred. As soon as practicable after the end of each fiscal year, the aggregate amount of Common Expenses actually incurred for said year shall be determined by the Board. Unless the Association or its assessment income shall be exempt from federal or state income taxes, to the extent possible, all reserves shall be accounted for and handled as contributions to the capital of the Association or in such other manner authorized by law or regulations of the Internal Revenue Service as will prevent such funds from being taxed as income of the Association.

6.4.2 Special Assessments. If the Board determines that the estimated total amount of funds necessary to defray the Common Expenses of the Association for a given fiscal year is or will become inadequate to meet expenses for any reason, including, but not limited to, unanticipated delinquencies, costs of construction, unexpected repairs to or replacements of

capital improvements on the Common Area, the Board shall determine the approximate amount necessary to defray such expenses, and if the amount is approved by a majority vote of the Board, it shall become a special assessment. The Board may, in its discretion, pro rate such special assessment over the remaining months of the fiscal year or levy the assessment immediately against each Condominium. Unless exempt from federal or state income taxation, all proceeds from any special assessment shall be segregated and deposited into a special account and shall be used solely for the purpose(s) for which it was levied or it shall be otherwise handled and used in a manner authorized by law or regulations of the Internal Revenue Service to avoid, if possible, its taxation as income of the Association.

6.4.3 Limitation Respecting Special Assessments. Any special assessment in excess of twenty percent (20%) of the budgeted gross expense of the Association for the fiscal year in which a special assessment is levied shall require approval by vote or written consent of fifty-one percent (51%) of the holders of voting rights of Members, except in case of a special assessment against an Owner as a remedy utilized by the Board to reimburse the Association for costs incurred in bringing the Member or his Condominium into compliance with the provisions of this Declaration. In that case, no approval by the Members shall be necessary.

6.5 Uniform Rate of Assessment and Apportionment. Except as otherwise specifically provided in this Declaration, including Sections 4.3.1.1.1, 4.3.1.2, 6.4.3 and 9.6, regular and special assessments must be fixed at a uniform rate for all Condominiums and shall be apportioned among all Owners of Units in proportion to the interest in the Common Area owned by each Owner as set forth in **Exhibit "D."**

6.6 Assessment Period/Fiscal Year. The initial regular assessment period shall commence on the Initiation Date and shall terminate on the following October 31. The first regular assessment shall be adjusted according to the number of months between the Initiation Date and the following October 31 and shall be payable in equal monthly installments unless the Board adopts some other basis for collection. Thereafter, the regular assessment period or fiscal year for the Association shall commence on November 1 of each year and shall terminate on October 31 of the following year, and regular assessments shall be payable in equal monthly installments unless the Board adopts some other basis for collection.

6.7 Notice and Assessment Installment Due Dates. A single fifteen (15) day prior written notice of each annual regular assessment and each special assessment shall be given to any Owner of every Condominium subject to assessment in which the due dates for the payments of installments normally shall be established by the Board. Each installment of regular assessments and special assessments shall become delinquent if not paid within fifteen (15) days after its due date. There shall accrue with each delinquent installment a late charge of twenty five dollars (\$25.00) together with interest at the rate of eighteen percent (18%) per annum calculated from the due date to and including date full payment is received by the Association.

6.8 Estoppel Certificate. The Board or its authorized representative, on not less than twenty (20) days prior written request, shall execute, acknowledge and deliver to the party



making such request a statement in writing stating whether to the knowledge of the Association, a particular Owner is in default as to his Condominium under the provisions of this Declaration and further stating the dates to which installments of assessments, regular or special, have been paid as to such Condominium. Any such certificate may be relied on by any prospective purchaser or Mortgagee of the Condominium, but reliance on such certificate may not extend to any default not involving the payment of assessments of which the signer had no actual knowledge.

## ARTICLE 7

### COLLECTION OF ASSESSMENTS; LIENS

7.1 Right to Enforce. The right to collect and enforce assessments is vested in the Board acting for and on behalf of the Association. The Board or its authorized representative, including any Manager, can enforce the obligations of the Owners to pay assessments provided for in this Declaration by commencement and maintenance of a suit at law or in equity, or the Board may foreclose by judicial proceedings or through the exercise of the power of sale pursuant to Section 7.2 to enforce the lien rights created. Suit to recover a money judgment for unpaid assessments together with all other amounts described in Section 6.2 shall be maintainable without foreclosing or waiving the lien rights.

7.2 Creation of Lien. If there is a delinquency in the payment of any assessment or installment of an assessment on a Condominium, any amounts that are delinquent, together with late charges, interest, costs and reasonable attorney fees, shall be a lien against such Condominium upon the recordation in the office of the Blaine County Recorder of a notice of assessment as provided in Idaho Code '55-1518. The notice of assessment shall not be recorded unless and until the Board or its authorized representative has delivered to the delinquent Owner(s), not less than fifteen (15) days before the recordation of the notice of assessment, a written notice of default and a demand for payment, and unless such delinquency has not been cured within the fifteen (15) day period. The lien shall expire and be void unless, within one (1) year after recordation of the notice of assessment, the Board or its authorized representative records a notice of default as provided hereinafter or institutes judicial foreclosure proceedings with respect to such lien.

7.3 Notice of Default; Foreclosure. Not more than one (1) year nor less than fifteen (15) days after the recording of the notice of assessment, the Board or its authorized representative can record a notice of default and can cause the Condominium with respect to which a notice of default has been recorded to be sold in the same manner as a sale is conducted under a power of sale in a deed of trust, or in any other manner permitted by law, or through judicial foreclosure. However, as a condition precedent to the holding of any such sale, appropriate publication shall be made. In connection with any sale, the Board is authorized to appoint its attorney, any officer or director, or any title insurance company authorized to do business in Idaho as trustee for purpose of conducting the sale. If a delinquency is cured before sale, or before completing a judicial foreclosure, the Board or its authorized representative shall

cause to be recorded in the office of the Blaine County Recorder a certificate setting forth the satisfaction of such claim and release of such lien upon payment of actual expenses incurred, including reasonable attorneys' fees, by any delinquent Owner. During the pendency of any foreclosure proceeding, whether judicial or by power of sale, the Owner shall be required to pay to the Association any assessments against the Condominium which shall become due, and such accruing assessments shall be secured by the lien and paid from the proceeds of any sale pursuant to the foreclosure proceedings. On becoming delinquent in the payment of any assessments or installments, each delinquent Owner shall be deemed to have absolutely assigned all rent, issues and profits of his Condominium to the Association and shall further be deemed to have consented to the appointment of a receiver (which appointment may, at the election of the Association, be enforced by the Association through specific performance). The Association, acting on behalf of the Owners, shall have the power to bid upon the Condominium at foreclosure sale and to acquire, hold, lease, mortgage and convey the Condominium.

7.4 Waiver of Exemptions. For any liens created pursuant to this Article 7, each Owner, to the extent permitted by law, waives the benefit of any homestead or exemption laws of Idaho in effect at the time any assessment or installment becomes delinquent or any lien is imposed.

7.5 Lien Survives Sale. The Association's assessment lien shall not be affected by the sale or transfer of a Unit except in the event of sale by foreclosure, trustee's sale or contract forfeiture. Such foreclosure, trustee's sale or contract forfeiture shall extinguish the Association's assessment lien for all assessments due and payable prior to the date of such foreclosure, trustee's sale or forfeiture except to the extent of the priority of the Association's assessment lien, but in doing so shall not relieve subsequent Unit Owners of the foreclosed Unit from paying assessments levied thereafter. For assessments subject to the provisions of Section 6.8, a grantee or purchaser of a Condominium shall be jointly and severally liable with the seller for all unpaid assessments against the Condominium up to the time of conveyance, without prejudice to the rights of the grantee or purchaser to recover from the seller the amount paid by the grantee or purchaser for such assessments.

## ARTICLE 8

### INSURANCE

8.1 Liability Insurance. The Association shall obtain and maintain comprehensive public liability insurance insuring the Association, any Manager, the Declarant and the Owners and occupants of Condominiums, and their respective family members, guests, invitees, and the agents and employees of each, against any liability incident to the ownership or use of the Common Area and including, if obtainable, a cross liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than \$1,000,000 covering all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance shall include coverage against water damage liability, liability for non-owned and hired automobiles, liability for

property of others and any other liability or risk customarily covered with respect to projects similar in construction, location and use.

8.2 Fire and Extended Coverage Insurance. The Association also shall obtain and maintain a master or blanket policy of fire insurance for the full insurable value of all of the improvements with the Development. The form, content and term of the policy and its endorsements and the issuing company must be satisfactory to all institutional first mortgagees. If more than one institutional first mortgagee has a loan of record against a Condominium in the Development, the policy and endorsements shall meet or exceed the minimum standards of the various institutional first mortgagees represented in the Development. The policy shall contain an agreed amount endorsement or its equivalent, an increased cost of construction endorsement, vandalism, malicious mischief coverage, a special form endorsement and a determinable cash adjustment clause or a similar clause to permit cash settlement covering full value of the improvements in case of partial destruction and a decision not to rebuild. The policy shall provide amounts of coverage as shall be determined by the Board. The policy shall name as insured the Association, the Owners and Declarant, as long as Declarant is the Owner of any Condominium, and all mortgagees as their respective interests may appear and may contain a loss payable endorsement in favor of the Trustee.

8.3 Individual Fire Insurance Limited. Except as provided in this Section, no Owner shall separately insure the Owner's Unit against loss by fire or other casualty covered by any insurance carrier under Section 8.2. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable under policies described in Section 8.2 that results from the existence of such other insurance will be chargeable to the Owner who acquired other insurance and such Owner will be liable to the Association to the extent of any such diminution. An Owner can insure his personal property against loss. In addition, any improvements made by an Owner within the Owner's Unit may be separately insured by the Owner, but the insurance is to be limited to the type and nature of coverage commonly known as "tenant's improvements" or "betterments and improvements." All such insurance that is individually carried must contain a waiver of subrogation rights by the carrier as to other Owners, the Association, Declarant and institutional first mortgagee of such Condominium.

8.4 Trustee. All insurance proceeds payable under Sections 8.2 and 8.3, subject to the rights of mortgagees under Section 8.8, may be paid to the Trustee, to be held and expended for the benefit of the Owners, mortgagees and others, as their respective interests shall appear. The Trustee shall be a commercial bank or other legal entity doing business in the county in which the Development is located that agrees in writing to accept such a trust. If repair or reconstruction is authorized, the Board shall have the duty to contract for such work as provided for in this Declaration.

8.5 Other Insurance. The Board may and, if required by any institutional first mortgagees, shall purchase and maintain demolition insurance in adequate amounts to cover demolition in case of total or partial destruction and a decision not to rebuild. The Board also shall purchase and maintain worker's compensation insurance, to the extent that it is required by

law, for all employees or uninsured contractors of the Association. If required by the Board or any mortgagee, the Board also shall purchase and maintain fidelity bonds or insurance (which shall be in an amount not less than 15% of each year's estimated annual operating expenses and reserves and shall contain an endorsement of coverage of any person who may serve without compensation) sufficient to meet the requirements of any institutional first mortgagee. The Board shall purchase and maintain such insurance on personal property owned by the Association, and any other insurance, that it deems necessary or that is required by any institutional first mortgagee.

8.6 Owner's Insurance. An Owner may carry whatever personal liability and property damage insurance with respect to their Condominium that is desired. However, any such policy shall include a waiver of subrogation clause acceptable to the Board and to any institutional first mortgagee.

8.7 Adjustment of Losses. The Board is appointed attorney-in-fact by each owner to negotiate and agree on the value and extent of any loss under any policy carried pursuant to Section 8.1, 8.2 and 8.5. The Board is granted full right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.

8.8 Distribution to Mortgagees. Any mortgagee has the option to apply insurance proceeds payable on account of a Condominium in reduction of the obligation secured by the Mortgage of such mortgagee.

## ARTICLE 9

### DESTRUCTION OF IMPROVEMENTS

9.1 Destruction; Proceeds Exceed Eighty-Five Percent (85%) of Reconstruction Costs. If there is a total or partial destruction of the improvements in the Development, and if the available proceeds of the insurance carried pursuant to Article 8 are sufficient to cover more than eighty-five percent (85%) of the costs of repair and reconstruction, the improvements shall be promptly rebuilt unless, within ninety (90) days from the date of destruction, Members then holding at least sixty-seven (67%) of the total voting power of the Members entitled to vote, in person or by proxy, at a duly constituted meeting, determine that such repair and reconstruction shall not take place and this Declaration shall terminate. If repair and reconstruction is to take place, the Board shall be required to execute, acknowledge and record in the Blaine County Recorder's Office not later than one hundred twenty (120) days from the date of such destruction, a certificate declaring the intention of the Members to rebuild.

9.2 Destruction; Proceeds Less than Eighty-Five Percent (85%) of Reconstruction Costs. If the proceeds of insurance are less than eighty-five percent (85%) of the costs of repair and reconstruction, repair and reconstruction may nevertheless take place if, within ninety (90) days from the date of destruction, Members then holding at least sixty-seven (67%) of the total

voting power of the Members entitled to vote, in person or by proxy, at a duly constituted meeting, determine that such repair and reconstruction shall take place. If repair and reconstruction is to take place, the Board shall execute, acknowledge and record in the Blaine County Recorder's Office not later than one hundred twenty (120) days from the date of such destruction a certificate declaring the intention of the Members to rebuild.

9.3 Rebuilding Procedures. If the Members determine to rebuild, pursuant to Sections 9.1 and 9.2, each Owner shall be obligated to contribute his proportionate share of the cost of reconstruction or restoration over and above the available insurance proceeds. The proportionate share of each Owner shall be equal to the percentage interest in the Common Area appurtenant to such Owner's Condominium. If any Owner fails or refuses to pay his proportionate share, the Board may levy a special assessment against the Condominium of such Owner which may be enforced under the lien provisions contained in Article 7 or in any other manner provided in this Declaration. If any Owner disputes the amount of his proportionate liability under this Section, such Owner may contest the amount of his liability by submitting to the Board, within ten (10) days after notice to the Owner of his share of the liability, written objections supported by cost estimates or other information that the Owner deems to be material and may request a hearing before the Board at which the Member may be represented by counsel. Following such hearing, the Board shall give written notice of its decision to all Owners, including any recommendation that adjustments be made with respect to the liability of any Owners. If such adjustments are recommended, the notice shall include a schedule for a special meeting of Members for the purpose of acting upon the Board's recommendation, including making further adjustments, if deemed by the Members to be necessary or appropriate. All adjustments shall be affirmed or modified by a majority of the total voting power of Members present and entitled to vote, in person or by proxy. If no adjustments are recommended by the Board, the decision of the Board shall be final and binding on all Owners, including any Owner filing objections.

9.4 Rebuilding Contract. If the Members determine to rebuild, the Board or its authorized representative shall obtain bids from at least two (2) reputable contractors and shall award the repair and reconstruction work to the lowest responsible bidder. The Board shall have the authority to enter into a written contract with the contractor for such repair and reconstruction, and the insurance proceeds held by the Trustee shall be disbursed to the contractor according to the terms of the contract. It shall be the obligation of the Board to take all steps necessary to assure the commencement and completion of authorized repair and reconstruction at the earliest possible date.

9.5 Rebuilding Not Authorized. If the Members determine not to rebuild, then, subject to the rights of mortgagees under Section 8.8, any insurance proceeds then available for such rebuilding shall be distributed to the Owner of each Condominium in proportion to his respective percentage undivided interest in the Common Area. The Board shall have the duty, within one hundred twenty (120) days from the date of such destruction, to execute, acknowledge and record in the office of the County Recorder of Blaine County, a certificate declaring the intention of the Members not to rebuild.

9.6 Minor Repair and Reconstruction. The Board shall have the duty to repair and reconstruct improvements, without the consent of Members and irrespective of the amount of available insurance proceeds, in all cases of partial destruction when the estimated cost of repair and reconstruction does not exceed Twenty Thousand Dollars (\$20,000). The Board is expressly empowered to levy a special assessment for the cost of repairing and reconstructing improvements to the extent insurance proceeds are unavailable, such assessment to be levied as described in Section 9.3 (but without the consent or approval of Members, despite any contrary provisions in this Declaration).

9.7 Revival of Right to Partition. On recordation of a certificate described in Section 9.5, the right of any Owner to partition through legal action as described in Article 11 shall revive immediately.

9.8 Association to Represent Owners. The Association shall represent the Unit Owners in any proceedings, negotiations, settlements or agreements regarding a total or partial destruction of the Development, and any insurance proceeds shall be payable to the Association for the benefit of the Owners of affected Units and their mortgagees, and, by acquiring Units subject to this Declaration, each Owner appoints the Association as the Owner's attorney-in-fact for such purposes. Should the Association not act on the Owners' behalf, the affected Owners may individually or jointly act on their own behalf.

## ARTICLE 10

### CONDEMNATION

10.1 Sale on Unanimous Consent. If an action for condemnation of all or a portion of the Development is proposed or threatened by any governmental agency having the right of eminent domain, then, on unanimous written consent of all of the Owners and after written notice to all mortgagees, all or a portion of the Development may be sold by the Board acting as irrevocable attorney-in-fact of all of the Owners for a price deemed fair and equitable by the Board but in no event less than the aggregate unpaid balance of all mortgages encumbering Condominiums in the Development.

10.2 Distribution of Proceeds of Sale. On a sale occurring under Section 10.1, the proceeds shall be distributed to the Owner and the mortgagees of each Condominium as their respective interests may appear in proportion to each Owner's respective percentage undivided interest in the Common Area and shall be equally distributed on a per Unit basis.

10.3 Distribution of Condemnation Award. If all or a portion of the Development is not sold but is instead taken, the judgment of condemnation shall by its terms apportion the award among the Owners and their respective mortgagees.

10.4 Revival of Right to Partition. On sale or on taking that renders more than fifty percent (50%) of the Units in the Development unusable as residential spaces, the right of any Owner to partition through legal action shall revive immediately.

10.5 Partial Taking. In the event that less than the entire Development is taken or condemned, or sold or otherwise disposed in lieu of or in avoidance thereof, the Condominium ownership hereunder shall not terminate. Each Owner shall be entitled to a share of the condemnation award to be determined in the following manner by the Association:

10.5.1 The total amount allocated to taking of or injury to the Common Area shall be apportioned among the Owners according to the percentage interest in the Common Area appurtenant to the Condominiums of such Owners.

10.5.2 The total amount allocated to severance damages shall be apportioned to those Condominiums which were not taken or condemned according to the percentage interest in the Common Areas appurtenant to the Condominiums of such Owners.

10.5.3 The respective amounts allocated to the taking of or injury to a particular Condominium and/or improvements the Owner has made within his Condominium, and any relocation, moving expenses or other allowance of a similar nature designated to facilitate relocation, shall be apportioned to the particular Condominium involved.

10.5.4 The total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in these circumstances.

10.6 Association to Represent Owners. The Association shall represent the Unit Owners in any proceedings, negotiations, settlements or agreements regarding a condemnation of any part of the Development, and any condemnation proceeds shall be payable to the Association for the benefit of the Owners of affected Units and their mortgagees, and, by acquiring Units subject to this Declaration, each Unit Owner appoints the Association as the Owner's attorney-in-fact for such purposes. Should the Association not act on the Owners' behalf in a condemnation process, the affected Owners may individually or jointly act on their own behalf.

## ARTICLE 11

### PARTITION

11.1 Suspension. The right of partition is suspended pursuant to Idaho law as to the Development. Partition of the Development can, however, be had on a showing that the conditions of such partition as stated in Sections 9.7 or 10.4 have been met. Nothing in this Declaration shall prevent partition or division of interest between joint or common Owners of any Condominium.

11.2 Distribution of Proceeds. Proceeds of property resulting from a partition shall be distributed to and among the respective Owners and their mortgagees as their interests appear in proportion to each Owner's respective undivided percentage interest in the Common Area.

11.3 Power of Attorney. Each of the Owners hereby grants the Association an irrevocable power of attorney to sell the Development for the benefit of the Owners when partition can be had. Exercise of said power is subject to the approval of Members and their institutional first mortgagees.

## **ARTICLE 12**

### **NON-SEVERABILITY OF COMPONENT INTERESTS IN A CONDOMINIUM**

12.1 Prohibition Against Severance. An Owner shall not be entitled to sever his interest in any Condominium from his membership in the Association, and shall not be entitled to sever his Unit and his membership from his undivided interest in the Common Area for any purpose. None of the component interests in a Condominium can be severally sold, conveyed, encumbered, hypothecated or otherwise dealt with, and any violation or attempted violation of this provision shall be void. The suspension of such right of severability will not extend beyond the period set forth in Article 11 respecting the suspension of partition. It is intended hereby to restrict severability.

12.2 Conveyances. After the initial sales of the Condominiums, any conveyance of a Condominium by an Owner shall be presumed to convey the entire Condominium. However, nothing contained in this Section shall preclude the Owner of any Condominium from creating a cotenancy or joint tenancy in the ownership of the Condominium with any other person or persons.

## **ARTICLE 13**

### **TERM OF DECLARATION**

This Declaration shall run with the land and shall continue in full force and effect for a period of fifty (50) years from the date on which this Declaration is executed. After that time, this Declaration and all covenants, conditions, restrictions and other provisions shall be automatically extended for successive ten (10) year periods unless this Declaration is revoked in accordance with this Declaration.

## **ARTICLE 14**

### **PROTECTION OF MORTGAGEES**

14.1 Mortgage Permitted. Any Owner may encumber his Condominium with a Mortgage.



14.2 Subordination. Any lien created or claimed under the provisions of this Declaration is expressly made subject and subordinate to the rights of any Mortgage that encumbers all or a portion of the Development, or any Condominium, made in good faith and for value. No such lien shall in any way defeat, invalidate, or impair the obligation or priority of such Mortgage unless the mortgagee expressly subordinates his interest, in writing, to such lien.

14.3 Amendment. The prior written consent of seventy five percent (75%) of the first mortgages (based upon one vote for each first mortgage held) shall be required for any material amendment to this Declaration; however, before a first mortgagee shall be given said right of consent, it shall have provided written notice to the Association of its mailing address. Any mortgagee who has been mailed a proposed material amendment to the Declaration and who has not responded to the Association in writing within thirty (30) days after it receives proper notice of the proposal delivered by certified or registered mail, with a "return receipt" requested, shall be deemed to have approved the proposed amendment. As used in this Section 14.3, the term "material amendment" is defined to mean amendments to provisions of this Declaration governing the following subjects:

14.3.1 The purpose for which the Development may be used;

14.3.2 Voting;

14.3.3 Increases in assessments that raise the previously assessed amount by more than twenty-five percent (25%), collection of assessments, creation and subordination of assessment liens, or the priority of assessment liens;

14.3.4 Reductions in reserves for maintenance, repair and replacement of Common Area and improvements thereon;

14.3.5 Responsibility for maintenance and repairs of Common Area and improvements thereon;

14.3.6 Casualty and liability insurance requirements;

14.3.7 Rights of use to and in the Common Area;

14.3.8 Any provision, which by its terms, is specifically for the benefit of first mortgagees or specifically confers rights on first mortgagees.

14.4 Restrictions on Certain Changes. Unless the holders of seventy five percent (75%) of the first mortgages (based upon one vote for each first mortgage held) have given their prior written approval in the manner provided in Section 14.3, above, neither the Association nor the Owners shall be entitled:

14.4.1 By act or omission to seek to abandon or terminate the Development, except for abandonment provided by statute in case of substantial loss to the Units and Common Area;

14.4.2 To change the method of determining the obligations, assessments, dues or other charges which may be levied against Owners, or to change the pro rata interest or obligations of any Condominium for purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards or for determining the pro rata share of ownership of each Owner in the Common Area;

14.4.3 To partition or subdivide any Unit;

14.4.4 By act or omission to seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area by the Association or the Owners shall not be deemed to be a transfer within the meaning of this clause;

14.4.5 To use hazard insurance proceeds for losses to Units or Common Area improvements in the Development or to any other Association property, for other than the repair, replacement or reconstruction of such improvements or property except as provided by statute in case of substantial loss to the Units or Common Area of the Development; and

14.4.6 By act or omission to change, waive or abandon the provisions of this Declaration, or the enforcement thereof, pertaining to architectural design or control of the exterior appearance of structures in the Development, the maintenance of the Common Area, walks or fences and driveways, or the upkeep of lawns and plantings in this Development.

14.5 Right to Examine Books and Records. First mortgagees can examine the books and records of and can require the submission of financial data concerning the Association or the Development, including annual audit reports and operating statements as furnished by the Association.

14.6 Distribution of Insurance and Condemnation Proceeds. No Owner, or any other party, shall have priority over any right of first mortgagees of Condominiums pursuant to their Mortgages in case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of Units or Common Area. Any provisions to the contrary in this Declaration or in the Bylaws or other documents relating to the Development is to such extent void. All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses naming the mortgagees, as their interests may appear.

14.7 Notices to Mortgagees of Record. A mortgagee of a Unit (and any insurer or guarantor of such Mortgage) shall be entitled to receive timely written notice:

14.7.1 That the Owner/Mortgagor of the Unit has for more than sixty (60) days is in default of any provision of this Declaration, the Bylaws or the Association Rules; and

14.7.2 Of any condemnation loss or casualty loss affecting a material portion of the Development or the Unit on which it holds a Mortgage.

To be entitled to receive such notices, the mortgagee (or mortgage insurer or guarantor) must send a written request for such information to the Association stating both its name and address and the Unit number or address of the Unit on which it has (or insures or guarantees) the Mortgage.

14.8 Voting Rights on Default. In case of default by any Owner in any payment due under the terms of any first mortgage encumbering such Owner's Condominium, or the promissory note secured by the Mortgage, the mortgagee or his representative, on giving written notice to such defaulting Owner(s), and placing of record a notice of default, is hereby granted a proxy and can exercise the voting rights of such defaulting Owner attributable to such Condominium at any regular or special meeting of the Members held during such time as such default may continue.

14.9 Effect of Breach. No breach of any provision of this Declaration shall invalidate the lien of any Mortgage in good faith and for value, but all of the provisions of this Declaration shall be binding on any Owner whose title is derived through foreclosure sale, trustees's sale or otherwise.

14.10 Foreclosure. If any Condominium is encumbered by a Mortgage made in good faith and for value, the foreclosure of any lien created by any provision set forth in this Declaration for assessments or installments of assessments shall not operate to affect or impair the lien of the Mortgage. On foreclosure of the Mortgage, the lien for assessments or installments that has accrued up to the time of foreclosure shall be subordinate to the lien of the Mortgage, with the foreclosing-purchaser taking title to the Condominium free of the lien for assessments or installments that has accrued up to the time of the foreclosure sale. On taking title to the Condominium, the foreclosing-purchaser shall only be obligated to pay assessments or other charges levied or assessed by the Association after the foreclosure-purchaser acquired title to the Condominium. The subsequently levied assessments or other charges may include previously unpaid assessments provided all Owners, including the foreclosure-purchaser, and his successors and assigns are required to pay their proportionate share as provided in this Section.

14.11 Non-Curable Breach. Any mortgagee who acquires title to a Condominium by foreclosure or by deed in lieu of foreclosure or assignment-in-lieu of foreclosure shall not be obligated to cure any breach of this Declaration that is non-curable or of a type that is not practical or feasible to cure.

14.12 Loan to Facilities. Any Mortgage given to secure a loan to facilitate the resale of a Condominium after acquisition by foreclosure or by a deed-in-lieu of foreclosure or by an

assignment-in-lieu of foreclosure shall be deemed to be a loan made in good faith and for value and entitled to all of the rights and protections of this Article 14.

14.13 Appearance at Meetings. Because of its financial interest in the Development, any mortgagee may appear (but cannot vote except under the circumstances set forth in Section 14.8) at meetings of the Members and the Board to draw attention to violations of this Declaration that have not been corrected or made the subject of remedial proceedings and assessments.

14.14 Right to Furnish Information. Any mortgagee can furnish information to the Board concerning the status of any Mortgage.

14.15 Contracts with Declarant. Any agreement between the Association and Declarant pursuant to which the Declarant agrees to provide services shall provide for termination by either party without cause or payment of a termination fee on thirty (30) days written notice and shall have a maximum contract term of one (1) year; provided that the Board can renew any such contract on a year-to-year basis.

14.16 Mortgagee to Notify Board of Owner's Default. Upon the happening of a default under the terms of a Mortgage of a Condominium which would permit the holder to declare the entire principal sum due, notice of the intention of the holder to do so shall be given to the Board.

14.17 Rights of Association with Respect to Mortgages in Default. The Association shall have the following rights, powers and privileges with respect to Mortgages in default:

14.17.1 By and with the consent of the holder thereof, to remedy the defaults existing under the terms of the Mortgage and to put the same in good standing. In the event the Board shall make the advances necessary to remedy the defaults, the Association shall be deemed to hold a junior participating interest in the obligation and Mortgage for the sum of principal together with interest, costs, disbursements, attorney fees, insurance, taxes or other charges so advanced with the right to foreclosure of such junior participating interest against the defaulting Unit Owner for the benefit of the remaining Unit Owners. The holder of the Mortgage shall in no event be required or have the obligation to collect the junior interest so created on behalf of the Association.

14.17.2 To acquire such Mortgage by assignment from the holder thereof either before or after the institution of a foreclosure action. The Mortgage shall be acquired in the name of the Association with all the powers and rights of the holder against the defaulting Unit Owner including the right to foreclose the same for the benefit of the remaining Owners.

14.17.3 To accept from the defaulting Unit Owner a deed transferring the Unit and its common interest and, by and with the consent of the holder of the Mortgage, to remedy the defaults existing under the terms thereof for the benefit of the other Unit Owners.

14.17.4 To continue any pending action or to institute an action to foreclose any Mortgage taken by assignment under subsection 14.17.2, above, or to take a deed in lieu of such foreclosure. In no event shall a Unit Owner be relieved from liability already incurred for past due common expenses and charges or be relieved from personal liability on the bond, note or other obligation by reason of any conveyance made under the provisions set forth above.

14.18 Association Shall be Necessary Party in All Mortgage or other Lien Foreclosures. The Association shall be a necessary party in every action brought to foreclose any Mortgage or other lien affecting a Condominium. The Association shall be entitled to bid at any sale, and to purchase any Condominium at such sale for such amount as shall be approved by the Board taking into consideration the amount due, the costs and disbursements, and all other charges affecting the Condominium. The Association shall not, however, be limited in its bidding to such amount or total but may bid any higher sum it finds necessary in order to protect the interests of the other Unit Owners.

## ARTICLE 15

### ANNEXATION OF ADDITIONAL PROPERTY

Real property more particularly described in Blocks 3, 4 and 7 of the Elkhorn Springs Large Block Plat may be annexed to the Development and made subject to this Declaration at the written election of the Declarant made at any time and from time to time within ten (10) years from the recording of this Declaration with the Blaine County Recorder. Such election shall be made by the recording of a Supplement. The Supplement shall describe the real property to be annexed and shall state that it is being affected pursuant to the terms of this Declaration for the purpose of annexing the property described in the Supplement. Any Supplement recorded in accordance with the terms of this Article shall be conclusive in favor of all persons who relied on it in good faith. Upon filing the Supplement in accordance with the provisions of this Declaration, the real property described in the Supplement shall be part of the Development and subject to the provisions of this Declaration, and to the rights and powers of the Association pursuant to the terms of this Declaration and the Bylaws, and thereafter all of the Owners of condominiums constituting a portion of said annexed real property shall automatically be Members of the Association, with voting rights commencing on the date regular assessments commence. Regular and special assessments with respect to the annexed real property shall commence at the time and to the extent described in Article 6, and the assessment percentage of ownership interest in Common Area described in **Exhibit "D"** shall be modified by the Declarant to take into account the greater number of condominiums in the Development, using the same method for calculating such ratios as described in **Exhibit "D."** Declarant in such Supplement shall expressly reserve for the benefit of all property which may from time to time be covered by this Declaration, reciprocal easements of use, enjoyment, access, ingress and egress. Such easements may be used by Declarant, its successors, purchasers and all Owners of condominiums, their guests, tenants and invitees for sidewalks, walkways, vehicular access and such other purposes reasonably necessary to the use and enjoyment of all condominiums in the development. The Supplement may contain such complementary additions, amendments and

modifications to this Declaration as may be necessary to reflect the different character, if any, of the real property being annexed as are not inconsistent with the general scheme of this Declaration or which are required by any institutional first mortgagee to make condominiums in the development eligible for mortgage purchase, guarantee or insurance.

## ARTICLE 16

### AMENDMENT

16.1 Amendment or Revocation of Declaration. This Declaration may be amended or revoked by the vote or written consent of the Members then holding seventy-five percent (75%) of the voting rights of the Association. In addition, the written consent of Declarant shall be required for any such amendment or revocation until at least eighty percent (80%) of the Condominiums in the Development shall have been sold by Declarant. In the event an amendment to the rate of assessment, as described in Section 6.5 of this Declaration is proposed, any vote of an amendment must be a separate vote and cannot be voted on in conjunction with any other proposed amendment to this Declaration. This Declaration shall be amended or revoked by an instrument recorded in the office of the Blaine County Recorder. The instrument with a certificate, signed and sworn to by two officers of the Association, that Owners holding at least seventy-five percent (75%) of all the Condominiums in the Development or mortgagees, if applicable, have either voted for or consented in writing to an amendment or revocation, when recorded, shall be conclusive evidence of such fact.

16.2 Conflict with Article 14 or Other Provisions of this Declaration. To the extent any provisions of this Article 16 conflict with the provisions of Article 14 or any other provision of this Declaration, except those contained in Section 16.3, the provisions of Article 14 or the other provisions of this Declaration shall control.

16.3 Reliance on Amendments. Any amendments made in accordance with the terms of this Declaration shall be presumed valid by anyone relying on them in good faith.

16.4 Amendments to Section 4.3.1.1.1. The provisions of Section 4.3.1.1.1 of this Declaration may be amended or revoked only upon the express written consent of the City of Sun Valley acting through the Mayor and City Council, or through the Blaine Ketchum Housing Authority, or its successor or assignee.

## ARTICLE 17

### GENERAL PROVISIONS

17.1 Headings. The headings used in this Declaration are for convenience only and are not to be used to interpret the meaning of any of the provisions of this Declaration.

17.2 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provisions or portions of it shall not invalidate any other provisions.

17.3 Cumulative Remedies. Each remedy provided for in this Declaration shall be cumulative and not exclusive. Failure to exercise any remedy provided for in this Declaration shall not, under any circumstances, be construed as a waiver thereof.

17.4 Violations as Nuisance. Every act or omission in violation of the provisions of this Declaration shall constitute a nuisance and, in addition to all other remedies herein set forth, may be abated or enjoined by any Owner, any member of the Board, the Manager or the Association.

17.5 Access to Books. Any Owner may, at any reasonable time and upon reasonable notice to the Board or Manager at his own expense, cause an audit or inspection to be made of the books and financial records of the Association.

17.6 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision thereafter.

17.7 Notification of Sale of Condominium. Concurrently with the consummation of the sale of any Condominium under circumstances whereby the transferee becomes an Owner thereof, or within five (5) business days thereafter, the transferee shall notify the Board in writing of such sale. Such notification shall set forth the name of the transferee and his mortgagee and transferor, the common address of the Condominium purchased by the transferee, the transferee's and the mortgagee's mailing address and the date of sale. Prior to the receipt of such notification, any and all communications required or permitted to be given by the Association, the Board or the Manager shall be deemed to be duly made and given to the transferee if duly and timely made and given to said transferee's transferor. Mailing addresses may be changed at any time upon written notification to the Board. Notices shall be deemed received forty-eight (48) hours after mailing if mailed to the transferee, or to his transferor if the Board has received no notice of transfer as above provided, by first class U.S. mail at the mailing address above specified. Notice shall also be deemed received twenty-four (24) hours after being sent by telegram or upon personal delivery to any occupant of a Condominium over the age of eighteen (18) years.

17.8 Number; Gender. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine, and neuter shall each include the masculine, feminine or neuter, as the context requires.

17.9 Exhibits. All exhibits referred to are attached to this Declaration and incorporated by reference.

17.10 Easements Reserved and Granted. Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to this Declaration in a deed to any Condominium.

17.11 Binding Effect. This Declaration shall inure to the benefit of and be binding on the successors and assigns of the Declarant, and the heirs, personal representatives, grantees, tenants, successors, and assigns of the Owners.

17.12 Unsegregated Real Estate Taxes. Until such time as real property taxes have been segregated by the Blaine County Assessor, they shall be paid by the respective Owners of Condominiums. The proportionate share of the taxes for a particular Condominium shall be determined by dividing the initial sales price or offered initial sales price of the Condominium by the total initial sales prices and offered initial sales prices of all Condominiums within the Development (the term "offered initial sales price" means the price at which an unsold Condominium is then being offered for sale by Declarant). If, and to the extent, taxes are not paid by any Owner of a Condominium and are allowed to become delinquent, they shall be collected from the delinquent Owner by the Association in the same manner as provided in this Declaration for the collection of assessments.

17.13 Designation of Person to Receive Service. Declarant, as the Owner of the Development and every part thereof, and for all subsequent Owners of Condominiums, has pursuant to Idaho Code §55-1512 executed a Designation of Person to Receive Service, a copy of which is attached hereto as **Exhibit "F"** and made a part hereof. This Designation shall be filed with the recorder of Blaine County, Idaho. Upon termination of the authority to receive service of the person designated herein, the Board shall prepare and file with the recorder a new such Designation naming another person to receive service.

17.14 Consent to Recordation. Declarant, as the Owner of the fee simple title to the Real Property, hereby consents to the recordation of this Condominium Declaration and the Condominium Plat in the records of Blaine County, Idaho. Further, Declarant hereby certifies that all holders of recorded liens or other security interests in the Real Property have also consented to the recordation of such documents by virtue of the fully executed Certificates of Consent attached hereto as **Exhibit "G"** and made a part hereof, all as required by Idaho Code §55-1504(c) (iii).

17.15 No Discrimination. No Owner shall execute or cause to be recorded any instrument which imposes a restriction upon the sale, leasing or occupancy of the Owner's



Condominium on the basis of race, color, religion, sex, handicap, familial status or national origin.

Declarant has executed this instrument as of the 30<sup>th</sup> day of May, 2006.


CG-ELKHORN HOTEL, LLC,  
a Delaware Limited Liability Company

By   
Its: **Barry P. Marcus**  
**Senior Vice President**

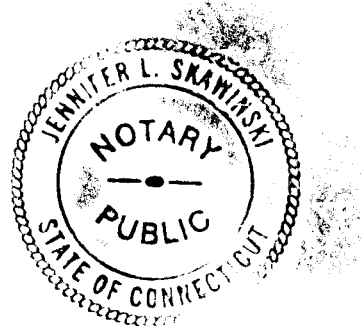
STATE OF Connecticut )  
County of Fairfield ) ss.

On this 30<sup>th</sup> day of May, in the year 2006, before me, a Notary Public for the State of Connecticut, personally appeared Barry P. Marcus known or identified to me to be member of CG-Elkhorn Hotel, LLC, a Delaware limited liability company, the limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company, and acknowledged to me that such limited liability company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

  
Notary Public for \_\_\_\_\_  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

**JENNIFER L. SKAWINSKI**  
*Notary Public*  
**Fairfield Cty. CT**  
**My Commission Expires 5-31-08**



## REAL PROPERTY DESCRIPTION

### EXHIBIT "A"

All of the real property contained within and described by the Hillside Terrace North Condominiums Plat, recorded as Instrument No 536010, records of the county recorder, Blaine County, Idaho.

**ARTICLES OF INCORPORATION**

**EXHIBIT "B"**

FILE EFFECTIVE

2006 MAY 24 AM 8:44

SECRETARY OF STATE  
STATE OF IDAHO

ARTICLES OF INCORPORATION  
OF  
THE ELKHORN SPRINGS RESIDENTIAL  
CONDOMINIUM ASSOCIATION, INC.

COPY

I, the undersigned, acting as the Incorporator of a corporation under the Idaho Non-profit Corporation Act, Idaho Code Section 30-3-1, *et seq.*, adopt the following Articles of Incorporation for such corporation:

I.

The name of the corporation is ELKHORN SPRINGS RESIDENTIAL CONDOMINIUM ASSOCIATION, INC.

II.

The Corporation shall be a non-profit membership corporation where pecuniary profit is not an objective.

III.

The period of duration of the Corporation is perpetual.

IV.

The Corporation is organized and shall be operated as the management body for the Elkhorn Springs Residential Condominium Association, Inc., as defined in Idaho Code Section 55-1503(f), and shall perform the functions and provide the services contemplated in the Condominium Declaration for the Elkhorn Springs Residential Condominiums (the "Declaration").

V.

Subject to the purposes declared in Article IV, above, and any limitations herein expressed, the Corporation shall have and may exercise each and all of the following powers and privileges:

(a) The power to do any and all things that the Corporation is authorized or required to do under the Declaration, as the same may from time to time be amended, including, without limitation, the specific power to fix, levy and collect the charges and assessments provided for in the Declaration;

IDAHO SECRETARY OF STATE  
05/24/2006 05:00  
CK: 1504 CT: 154279 BH: 956404  
1 @ 30.00 = 30.00 INC NONP H 2

© 167048

(b) The power to purchase, acquire, own, hold, lease, mortgage, sell and dispose of any and all kinds and character of real, personal and mixed property, and while the owner of any of the foregoing, to exercise all rights, powers and privileges appertaining thereto; and

(c) The power to do any and all things that a non-profit corporation may now or hereafter do under the laws of the State of Idaho.

VI.

The street address of the initial registered office of the corporation shall be 115 Second Avenue So., Hailey, ID 83333, and the initial mailing address of the Corporation is: 115 Second Avenue So., Hailey, ID 83333, and the name of its initial registered agent at such address is Ned Williamson.

VII.

The corporation shall have members.

VIII.

Upon dissolution, the Corporation's assets shall be distributed to its members.

IX.

The number of Directors constituting the initial Board of Directors of the corporation is three (3), and the names and addresses of the persons who are to serve as Directors until the first annual meeting of the members or until their successors are elected and shall qualify are:

	<u>NAME</u>	<u>MAILING ADDRESS</u>
1)	David Hennessy	c/o Hennessy Company P.O. Box 1056 Sun Valley, Idaho 83354
2)	Craig Knight	c/o Hennessy Company P.O. Box 1056 Sun Valley, Idaho 83354
3)	Suzanne Finch Williams	c/o Sun Valley Real Estate P.O. Box 2277 Ketchum, Idaho 83340

X.

The name and street address of the Incorporator is: Ned C. Williamson, 115 Second Ave. So., Hailey, Idaho 83333.

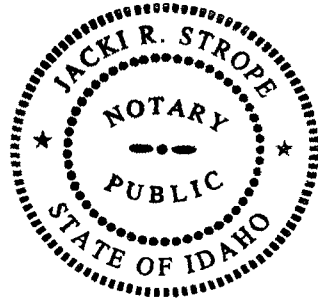
DATED this 23rd day of May, 2006.

Ned Williamson

Ned C. Williamson  
Incorporator

STATE OF IDAHO    )  
                              )    ss.  
County of Blaine    )

I, Jacki R. Strope, a notary public, do hereby certify that on this 23rd day of May, 2006, personally appeared before me Ned C. Williamson, who, being by me first duly sworn, declared that he is the Incorporator of Hillside Terrace North Condominium Association, Inc., that he signed the foregoing document as Incorporator of the corporation, and that the statements therein contained are true.



Jacki R. Strope

Notary Public for Idaho  
Residing at: Hailey, Idaho  
Commission expires: 09/03/06

**BYLAWS**  
**EXHIBIT "C"**

**BYLAWS**  
**OF**  
**ELKHORN SPRINGS RESIDENTIAL CONDOMINIUM**  
**ASSOCIATION, INC.**

ARTICLE I

General Provisions

Section 1. Name. The name of the Corporation is the Elkhorn Springs Residential Condominium Association, Inc.

Section 2. Definitions. Unless expressly indicated to the contrary, the terms used herein shall have the following meanings:

(a) Declaration. "Declaration" means that certain Condominium Declaration for the Elkhorn Springs Residential Condominiums dated May \_\_\_\_\_, 2006, and recorded as Instrument No. \_\_\_\_\_ in the office of the Blaine County Recorder, Hailey, Idaho.

(b) Additional Terms. The balance of the terms defined in the Declaration shall have the same meaning when used in these Bylaws as when used in the Declaration.

Section 3. Purpose. The Corporation has been formed for the purpose of exercising the powers and performing the duties of the Corporation set forth in these Bylaws, the Corporation's Articles of Incorporation, and the Declaration.

Section 4. Conflicts. In case any of these Bylaws conflict with the provisions of the Declaration, the provisions of the Declaration shall control.

Section 5. Application. All present and future owners, mortgagees, tenants and occupants of Condominiums, and any other persons who may use the Condominiums in any manner are subject to these Bylaws, the Declaration and the Rules and Regulations adopted by the Corporation pursuant to the Declaration. The acceptance of a conveyance or the act of occupancy of a Condominium shall constitute an agreement that these Bylaws, the Rules and Regulations, and the provisions of the Declaration, as they may be amended from time to time, are accepted, ratified and will be complied with.



## ARTICLE II

### OFFICES

The principal office of the Corporation in the State of Idaho shall be located at 251 First Avenue, Ketchum, Idaho 83340. The Corporation may have such other offices either within or without the State of Idaho, as the Board of Directors may determine or as the affairs of the corporation may require from time to time.

The Corporation shall have and continuously maintain in the State of Idaho a registered office, and a registered agent whose address is identical with such registered office, as required by the Idaho Nonprofit Corporation Act. The registered office may be, but need not be, identical with the principal office in the State of Idaho, and the address of the registered office may be changed from time to time by the Board of Directors.

## ARTICLE III

### Membership and Voting Rights

#### Section 1. Membership.

(a) Qualifications. Each owner of a condominium, including the Declarant as shown in the Condominium Declaration for the Elkhorn Springs Residential Condominiums, shall be a member of the Association. Ownership of a condominium or interest in it shall be the sole qualification for membership in the Association. Each owner shall remain a member of the Association until his membership or ownership interest in any condominiums in the development ceases at which time his membership in the Association shall automatically cease. Persons or entities who hold an interest in a condominium merely as security for performance of an obligation are not to be regarded as members.

(b) Member's Rights and Duties. Each member shall have the rights, duties and obligations set forth in the Declaration, the Articles, Bylaws and the Association's Rules, as the same may from time to time be amended.

(c) Transfer of Membership. The Association membership of each person or entity who owns, or owns an interest in, one or more condominiums shall be appurtenant to each such condominium, and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except on a transfer of title to each such condominium or interest in it and then only to the transferee. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a condominium or interest in it shall operate automatically to transfer the appurtenant membership rights in the Association to the new owner.

## Section 2. Voting.

(a) Number of Votes. Unless otherwise provided in the Declaration, each Owner shall be entitled to one vote for each condominium he owns on all matters coming before the membership of the Association.

(b) Joint Owner Votes. The voting rights for each Condominium may not be cast on a fractional basis. If the joint owners of a Condominium are unable to agree among themselves as to how their voting rights shall be cast, they shall forfeit the vote on the matter in question. If any owner exercises the voting rights of a particular Condominium, it will be conclusively presumed for all purposes that he was acting with the authority and consent of all other owners of the same Condominium. If more than one (1) person or entity exercises the voting rights for a particular Condominium, their votes shall not be counted and shall be deemed void.

## ARTICLE IV

### Meetings of Members

Section 1. Annual Meeting. There shall be a regular meeting of the members at least once each year at such reasonable place or time as may be designated by notice from the Board given to the members by depositing the same in the United States Mail, postage prepaid, first class, not less than thirty (30) nor more than fifty (50) days prior to the date fixed for said meeting.

Section 2. Special Meetings. Special meetings of the members may be called by the President, the Board of Directors, or members having not less than a majority of the votes entitled to be cast at such meeting.

Section 3. Place of Meeting. The Board of Directors may designate any place, either within or without the State of Idaho, as the place of meeting for any annual meeting or for any special meeting called by the Board of Directors. If all of the members shall meet at any time and place, either within or without the State of Idaho, and consent to the holding of a meeting, such meeting shall be valid without call or notice, and at such meeting any corporate action may be taken.

Section 4. Notice of Meetings. Written or printed notice stating the place, day and hour of any special meeting of members shall be delivered either personally or by mail, to each member entitled to vote at such meeting, by or at the direction of the President, or the Secretary, or the Officers or persons calling the meeting. In case of a special meeting or when required by statute or by these Bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the member at his/her address as it appears on the records of the Corporation, with postage thereon prepaid.

Section 5. Informal Action by Members. Any action required by law to be taken at a meeting of the members, or any action which may be taken at a meeting of members, may be taken without a meeting if a consent in writing setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof.

Section 6. Quorum. The members holding fifty-one percent (51%) or more of the votes which may be cast at any meeting shall constitute a quorum at such meeting. If a quorum is not present at any meeting of members, a majority of the members present may adjourn the meeting to a time not less than five (5) days nor more than thirty (30) days from the date of the original meeting.

Section 7. Proxies. At any meeting of the members, a member entitled to vote may vote by proxy executed in writing by the member or by his duly authorized attorney-in-fact. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy.

Section 8. Voting by Mail. Where Directors or Officers are to be elected by members, such election may be conducted by mail in such manner as the Board of Directors shall determine.

Section 9. Order of Business. At all annual meetings of the members, the order of business shall be as follows:

- (a) Role call of the membership;
- (b) Reading of minutes of immediate prior meeting for information and approval;
- (c) Reports of officers;
- (d) Reports of committees;
- (e) Unfinished business;
- (f) New business; and
- (g) Election of Directors.

## ARTICLE V

### Board of Directors

Section 1. General Powers. The affairs of the Corporation shall be managed by its Board of Directors. Directors need not be residents of the State of Idaho.

Section 2. Number, Tenure and Qualification. The number of Directors shall be three (3). Directors need not be members. The initial Directors shall serve terms of one (1) year, two (2) years and three (3) years. After the expiration of the initial term, each Director shall serve for three (3) years or until his successor shall be elected and shall qualify or until he is

removed in the manner herein provided. Except for the initial Directors designated in the Articles, Directors shall be elected at the annual meeting of the members.

Section 3. Regular Meetings. A regular annual meeting of the Board of Directors shall be held without other notice than these Bylaws, immediately after, and at the same place as, the annual meeting of members. The Board of Directors may provide by resolution the time and place, either within or without the State of Idaho, for the holding of additional regular meetings of the board without other notice than such resolution.

Section 4. Special Meetings. Special meetings of the Board of Directors may be called by or at the request of the President or any three (3) Directors. The person or persons authorized to call special meetings of the Board may fix any place, either within or without the State of Idaho, as the place for holding any special meeting of the Board called by them.

Section 5. Notice. Notice of any special meeting of the Board of Directors shall be given at least two (2) days previously thereto by written notice delivered personally or sent by mail, facsimile or telegram to each Director at his or its address as shown by the records of the Corporation. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail in a sealed envelope so addressed, with postage thereon prepaid. If notice be given by telegram, such notice shall be deemed to be delivered at the time of delivery to the telegraph company. Any Director may waive notice of any meeting. The attendance of a Director at any meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in the notice or waiver of notice of such meeting, unless specifically required by law or by these Bylaws.

Section 6. Quorum. A majority of the Board of Directors shall constitute a quorum for the transaction of business at any meeting of the Board; but if less than a majority of the Directors are present at said meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice.

Section 7. Manner of Acting. The act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless the act of a greater number is required by law or by these Bylaws.

Section 8. Vacancies. A vacancy in the Board of Directors shall exist upon the death, resignation or removal of any Director. Any such vacancy shall be filled by the affirmative vote of a majority of the remaining Directors, whether or not less than a quorum. A Director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Any Directorship to be filled by reason of an increase in the number of Directors may be filled by the election by the Board of Directors for a term of office continuing only until the next election of Directors by members.

Section 9. Compensation. Directors as such shall not receive any stated salaries for their services, but by resolution of the Board of Directors, expenses of attendance, if any, may be allowed for attendance at each regular or special meeting of the Board.

Section 10. Informal Action by Directors. Any action required by law to be taken at a meeting of Directors, or any action which may be taken at a meeting of Directors, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors.

Section 11. Rules. The Board may adopt such rules as it deems proper for the use and occupancy of the Association property. A copy of the rules, as they may from time to time be adopted, amended, or repealed, shall be mailed or otherwise delivered to each member and may, but need not be recorded. Upon such mailing or delivery, the Association rules shall have the same force and effect as if they were set forth in and were a part of the Declaration.

Section 12. Liability of Directors. No Director shall be personally liable to any member, or to any other party, for any damage, loss, or prejudice suffered or claimed on account of any act or omission of the Association, Board, or any other representatives or employees of the Association, provided that such Director has, upon the basis of such information as may be possessed by him, acted in good faith.

Section 13. Manager and Personnel. The Board may engage the services of a manager or managing agent, and may engage personnel necessary for the maintenance, repair and replacement of the common area.

Section 14. Common Area. The maintenance, repair and replacement of the common area, and payment therefore, shall be governed by the Declaration.

## ARTICLE VI - OFFICERS

Section 1. Number. The Officers of the Corporation shall be a President, Secretary and Treasurer.

Section 2. Election and Term of Office. The Officers of the Corporation shall be elected annually by the Board of Directors at its regular annual meeting. If the election of Officers shall not be held at such meeting, such election shall be held as soon thereafter as convenient. New offices may be created and filled at any meeting of the Board of Directors. Each Officer shall hold office until his successor shall have been duly elected and shall have qualified.

Section 3. Removal. Any Officer elected or appointed by the Board of Directors may be removed by the Board of Directors whenever in its judgment the best interests of the Corporation will be served thereby.

Section 4. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the Board of Directors for the unexpired portion of the term.

Section 5. President. The President shall be the principal executive officer of the Corporation and shall in general supervise and control all of the business and affairs of the Corporation. He shall preside at all meetings of the members and of the Board of Directors. He may sign, with the Secretary or any other proper Officer of the Corporation authorized by the Board of Directors, any deeds, mortgages, bonds, contracts, or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by statute to some other Officer or agent of the Corporation; and in general shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time.

Section 6. Secretary. The Secretary shall keep the minutes of the meetings of the members and of the Board of Directors in one or more books provided for that purpose; see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; be custodian of the corporate records and of the seal of the Corporation and see that the seal of the Corporation is affixed to all necessary documents, the execution of which on behalf of the Corporation under its seal is duly authorized in accordance with the provisions of these Bylaws; keep a register of the post office address of each member which shall be furnished to the Secretary by such member; and in general perform all duties as from time to time may be assigned to him by the President or by the Board of Directors.

Section 7. Treasurer. The Treasurer shall also have charge and custody of and be responsible for all funds and securities of the Corporation; receive and give receipts for moneys due and payable to the Corporation from any source whatsoever, and deposit all such moneys in the name of the Corporation in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of Article VII of these Bylaws; and in general perform all duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him by the President or by the Board of Directors.

## ARTICLE VII

### Contracts, Checks, Deposits and Funds

Section 1. Contracts. The Board of Directors may authorize any Officer or Officers, agent or agents of the Corporation, in addition to the officers so authorized by the Bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

Section 2. Checks, Drafts, etc. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation, shall be signed by such Officer or Officers, agent or agents of the Corporation and in such manner as

shall from time to time be determined by resolution of the Board of Directors. In the absence of such determination by the Board of Directors, such instruments shall be signed by the Treasurer and countersigned by the President of the Corporation.

Section 3. Deposits. All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors may select.

Section 4. Gifts. The Board of Directors may accept on behalf of the Corporation any contribution, gift, bequest or devise for the general purpose or for any special purpose of the Corporation.

## ARTICLE VIII

### Books and Records

The Corporation shall keep correct and complete books and records of account as required by the Declaration, and shall also keep minutes of the proceedings of its members, Board of Directors and committees having any of the authority of the Board of Directors, and shall keep at its principal office a record giving the names and addresses of the members entitled to vote. All books and records of the Corporation may be inspected by any member, or his agent or attorney for any proper purpose at any reasonable time. Upon ten (10) days' notice to any manager or the Board of Directors and payment of a reasonable fee, any unit owner shall be furnished a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from such owner.

## ARTICLE IX

### Fiscal Year

The fiscal year of the corporation shall begin on the 1st day of November and end on the last day of October in each calendar year.

## ARTICLE X

### Assessments

The Board of Directors shall determine from time to time the amount of assessments to be levied against the Members of the Corporation in accordance with the Declaration. The method of estimating the amount of the annual budget and the manner of assessing and collecting from the unit owners their respective shares of such estimated expenses, and of any other expenses lawfully agreed upon, shall be governed by the applicable provisions of the Declaration.

ARTICLE XI

Waiver of Notice

Whenever any notice is required to be given under the provisions of the Idaho Nonprofit Corporation Act or under the provisions of the Articles of Incorporation or the Bylaws of the Corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

ARTICLE XII

Amendments to Bylaws

These Bylaws may be altered, amended or repealed and new Bylaws may be adopted, by the vote of sixty percent (60%) of the Members of the Corporation, provided any amendment complies with Idaho Code §55-1507, as amended..

WE HEREBY CERTIFY that these Bylaws of the ELKHORN SPRINGS RESIDENTIAL CONDOMINIUM ASSOCIATION, INC. were adopted by unanimous written consent of the Directors of the Corporation without a meeting.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
Dave Hennessy, Director

\_\_\_\_\_  
Craig Knight, Director

\_\_\_\_\_  
Suzanne Finch Williams, Director



**PERCENTAGE OWNERSHIP INTEREST**

**EXHIBIT "D"**

<u>UNITS</u>	<u>PERCENTAGE INTEREST/UNIT</u>
1	4.9%
2	5.9%
3	3.5%
4	3.5%
5	6.8%
6	4.9%
7	4.9%
8	5.0%
9	3.5%
10	3.5%
11	6.8%
12	4.9%
13	7.3%
14	10.3%
15	3.5%
16	6.3%
17	8.1%
18	7.3%

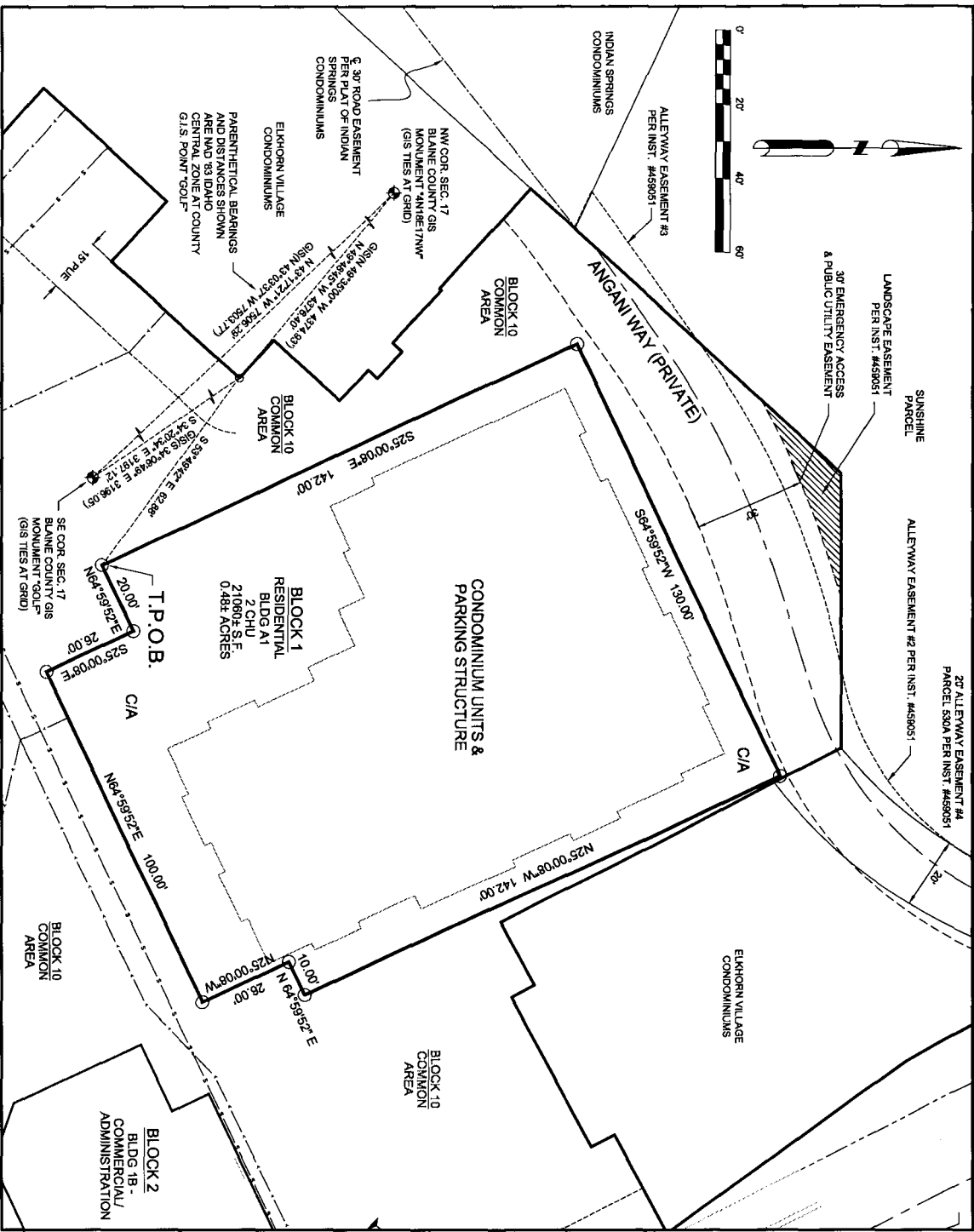
Percentage interest/unit was calculated by dividing the square footage of each unit (but not including the square footage of the staircases within each unit) by the square footage of all the units in the Condominium Plat. As real property is annexed pursuant to Article 15, the percentage interest/unit shall be modified and calculated by dividing the square footage of each unit (but not including the square footage of the staircases within each unit) by the square footage of all the units in the Condominium Plat and the units in the real property annexed.

**CONDOMINIUM PLAT**

**EXHIBIT "E"**

# ELKHORN SPRINGS: HILLSIDE TERRACE NORTH

LOCATED WITHIN T4N, R18E, SEC. 17, B.M., SUN VALLEY, BLAINE COUNTY, IDAHO  
 WHEREIN BLOCK 1, ELKHORN SPRINGS LARGE BLOCK PLAT IS AMENDED CREATING  
 ELKHORN SPRINGS HILLSIDE TERRACE NORTH CONDOMINIUMS, UNITS 1-18.  
 APRIL 2006



## LEGEND

- CENTER LINE OF WIDE SEWER EASEMENT TO BENEFT SUN VALLEY WATER & SEWER DEPARTMENT
- CENTER LINE OF WIDE WATER EASEMENT TO BENEFT SUN VALLEY WATER & SEWER DEPARTMENT
- CENTER LINE OF WIDE DRAINAGE EASEMENT
- PUBLIC UTILITY EASEMENT (P.U.E.) WIDTH AS NOTED
- ROADWAY & UTILITY EASEMENT
- CENTER LINE PRIVATE ROAD
- COMMUNITY HOUSING UNITS
- CHU
- COMMON AREA (WITHIN HILLSIDE TERRACE NORTH)
- FOUND 60" REBAR
- FOUND 12" REBAR

## NOTES:

1. A 30-FOOT WIDE AND A 40-FOOT WIDE EMERGENCY ACCESS & PUBLIC UTILITY EASEMENT EXISTS WITHIN ANGANI WAY AS SHOWN HEREON.
2. AN EXCLUSIVE AND PERPETUAL PARKING EASEMENT EXISTS FOR PARKING SPACES 1-12 AND 15-24 IN THE LOWER LEVEL GARAGE AND PARKING SPACES 42-63 IN THE UPPER LEVEL GARAGE TO BENEFT ELKHORN SPRINGS CONDOMINIUM ASSOCIATION INC. IN ACCORDANCE WITH THE RECORD OF BLAINE COUNTY, IDAHO, INSTRUMENT NO. 4589102, RECORDED AS INST. NO. 4589102.
3. BASIS OF BEARINGS IS PER THAT RECORD OF SURVEY ON FILE WITH THE BLAINE COUNTY RECORDER, RECORDED AS INST. NO. 4589102.
4. THE MASTER DECLARATION OF C.C. & R.'S FOR ELKHORN SPRINGS LARGE BLOCK PLAT WAS RECORDED AS INSTRUMENT # \_\_\_\_\_ RECORDS OF BLAINE COUNTY, IDAHO.
5. THE CONDOMINIUM DECLARATION OF C.C. & R.'S FOR THE WITHIN RECORDS OF BLAINE COUNTY, IDAHO.
6. IN INTERPRETING THE DECLARATION PLAT OR PLATS AND DEEDS OF THE EXISTING BOUNDARIES OF A UNIT AS ORIGINALLY CONSTRUCTED OR RECONSTRUCTED IN LIEU THEREOF SHALL BE CONCLUSIVELY PRESUMED TO BE ITS BOUNDARIES RATHER THAN THE METES AND BOUNDS SHOWN ON THIS PLAT.
7. HORIZONTAL OR SLOPING PLANES SHOWN HEREON ARE TOP OF FINISHED SUBFLOOR AND BOTTOM OF FINISHED CEILING. VERTICAL PLANES ARE FINISHED SURFACES OF INTERIOR WALLS. SOME STRUCTURAL MEMBERS EXTEND INTO UNITS.
8. DIMENSIONS SHOWN HEREON WILL BE SUBJECT TO SLIGHT VARIATIONS OWING TO NORMAL CONSTRUCTION TOLERANCES.
9. CONSULT THE CONDOMINIUM DECLARATIONS FOR THE DEFINITION OF COMMON AREA.
10. ELEVATIONS SHOWN HEREON ARE REFERENCED TO A U.S.C. & G.S. BENCHMARK STATION 5819 WHICH IS LOCATED IN THE TOP OF THE NORTH EDGE OF A PROMINENT ROCK OUTCROPE WHICH IS LOCATED ON THE EAST BANK OF THE BIG WOOD RIVER, 320 FEET NORTH OF THE WARREN SPRINGS ROAD BRIDGE ACROSS THE BIG WOOD RIVER, T4N, R18E, SEC. 17, B.M., IDAHO, 889100.
11. REFER TO ELKHORN SPRINGS LARGE BLOCK PLAT, RECORDED AS INSTRUMENT NO. \_\_\_\_\_ RECORDS OF BLAINE COUNTY, IDAHO, FOR PLAT NOTES APPLICABLE TO THIS PROPERTY.

## HEALTH CERTIFICATE

Sanitary regulations as required by Idaho Code Title 50, Chapter 13, have been satisfied. Sanitary restrictions may be reimposed, in accordance with Idaho Code Title 50, Chapter 13, Section 50-1326, by the issuance of a certificate of disapproval.

Date: \_\_\_\_\_

South Central District Health Dept., ETIS

## ELKHORN SPRINGS: HILLSIDE TERRACE NORTH

LOCATED WITHIN:  
T4N, R18E, SEC. 17, B.M.,  
SUN VALLEY, BLAINE COUNTY, IDAHO

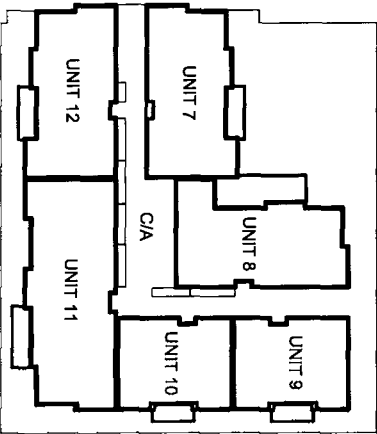
PREPARED FOR: CG-ELKHORN HOTEL, LLC

A CONDOMINIUM PLAT  
 PLOT BY: TLJ/CPL DWG FILE 04100A10G1.DWG  
 PROJECT NO. 04108 DATE: 4/28/06 SHEET 1 OF 8

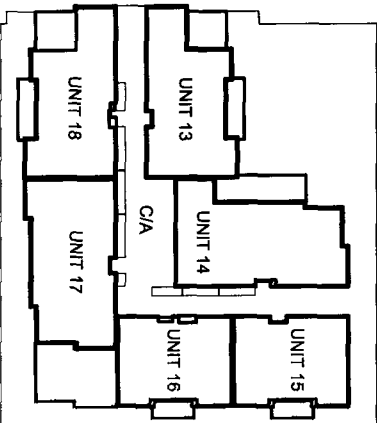
# ELKHORN SPRINGS: HILLSIDE TERRACE NORTH

LOCATED WITHIN T4N, R18E, SEC. 17, B.M., SUN VALLEY, BLAINE COUNTY, IDAHO  
 WHEREIN BLOCK 1, ELKHORN SPRINGS LARGE BLOCK PLAT, IS AMENDED CREATING  
 ELKHORN SPRINGS HILLSIDE TERRACE NORTH CONDOMINIUMS, UNITS 1-18.

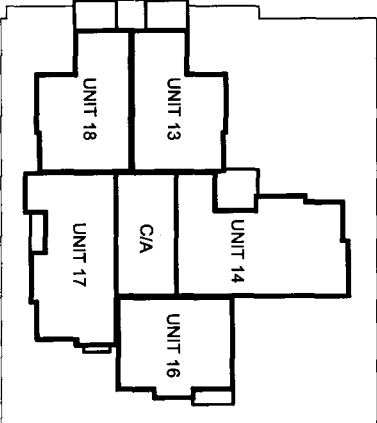
APRIL 2006



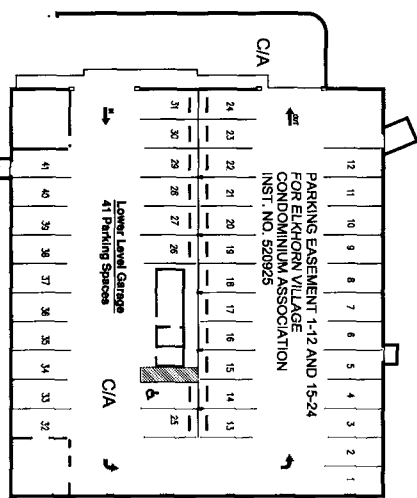
SECOND FLOOR



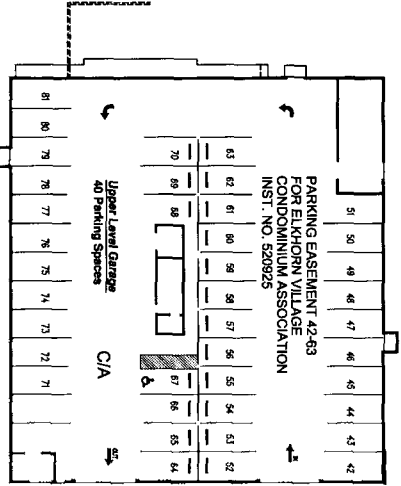
THIRD FLOOR



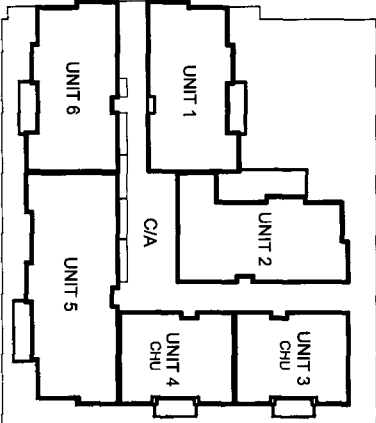
FOURTH FLOOR



LOWER LEVEL GARAGE



UPPER LEVEL GARAGE



FIRST FLOOR

**LEGEND**  
 L/C LIMITED COMMON AREA  
 C/A COMMON AREA  
 CHU COMMUNITY HOUSING UNITS  
 THE FROM 1908



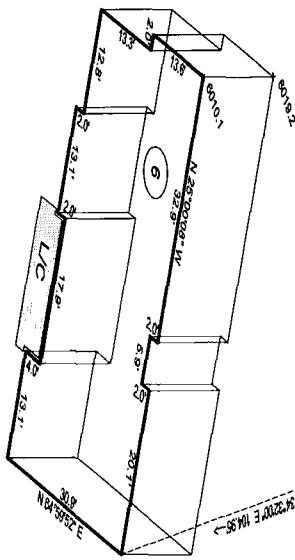
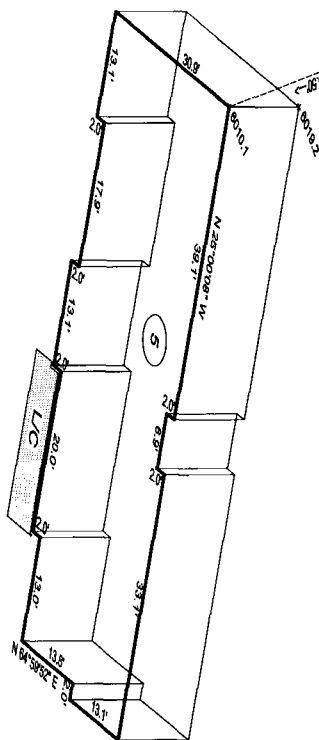
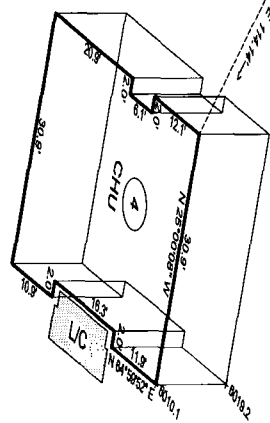
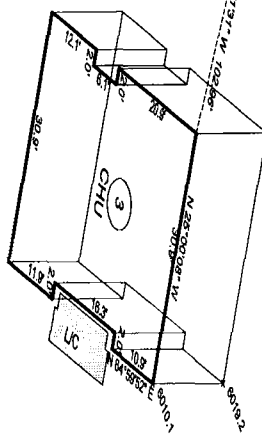
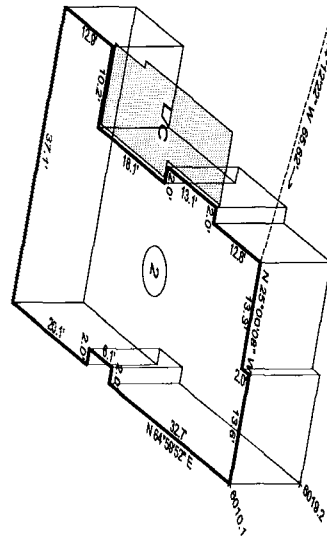
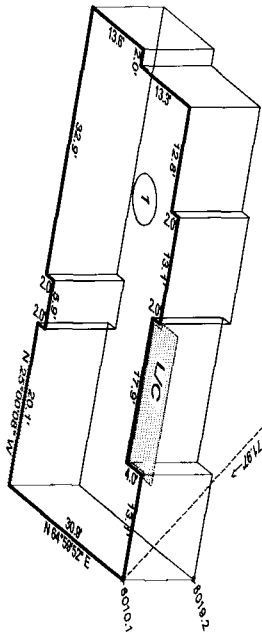
PREPARED BY: BENCHMARK ASSOCIATES, P.A.  
 P.O. BOX 733  
 KETCHIKAN, IDAHO 83340  
 (208) 726-8512  
 (208) 726-8514 FAX



**ELKHORN SPRINGS:  
 HILLSIDE TERRACE NORTH**  
 LOCATED WITHIN:  
 T4N, R18E, SEC. 17, B.M., SUN VALLEY,  
 BLAINE COUNTY, IDAHO  
 PREPARED FOR: OG-ELKHORN HOTEL, LLC  
 PREPARED BY: LLJ  
 DATE: 4/18/06  
 DWG FILE: 04108A101.DWG  
 SHEET 2 OF 8  
 PROJECT NO. 04108  
 A CONDOMINIUM PLAT

# ELKHORN SPRINGS: HILLSIDE TERRACE NORTH FIRST FLOOR UNITS 1-6

**LEGEND**  
 L/C LIMITED COMMON AREA  
 C/A COMMON AREA  
 CHU COMMUNITY HOUSING UNITS  
 --- THE FRONT PORCH



PREPARED BY: BENCHMARK ASSOCIATES, P.A.  
 P.O. BOX 733  
 KETCHUM, IDAHO 83340  
 (208) 726-9912  
 (208) 726-9914 FAX



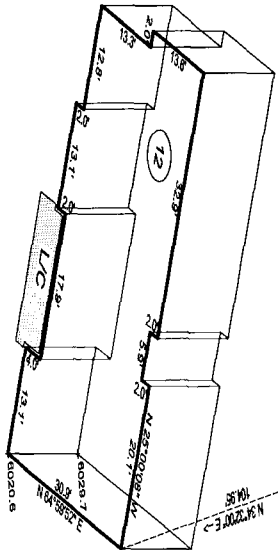
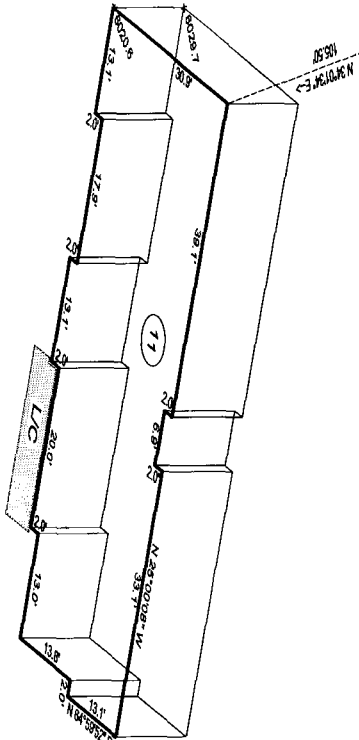
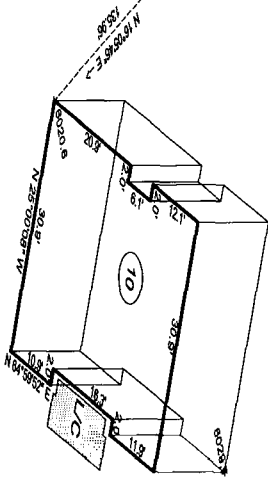
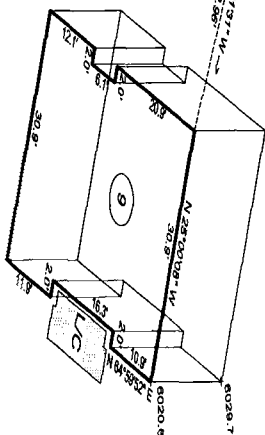
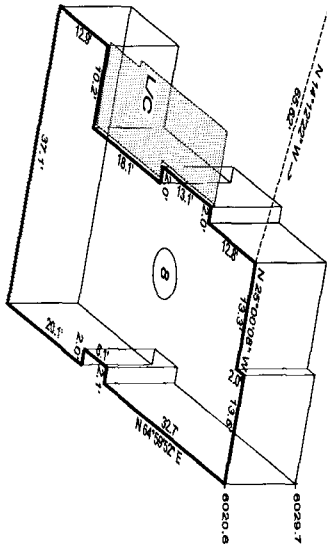
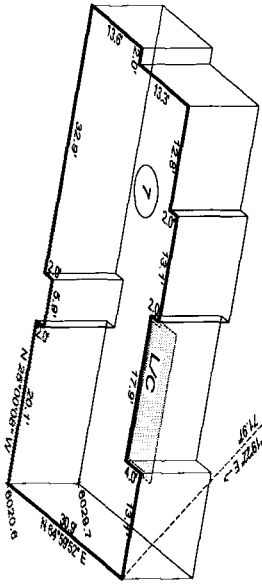
**ELKHORN SPRINGS:  
 HILLSIDE TERRACE NORTH  
 FIRST FLOOR UNITS 1-6**

LOCATED WITHIN:  
 T4N, R18E, SEC. 8E, S14N, SUN VALLEY,  
 BLAINE COUNTY, IDAHO

A CONDOMINIUM PLAT  
 PROJECT NO. 04108  
 PLOT BY: LLL  
 DATE: 4/18/06  
 DWG FILE: 04108101.DWG  
 SHEET 3 OF 8

# ELKHORN SPRINGS: HILLSIDE TERRACE NORTH SECOND FLOOR UNITS 7-12

**LEGEND**  
 L/C LIMITED COMMON AREA  
 C/A COMMON AREA  
 CHU COMMUNITY HOUSING UNITS  
 --- THE FROM TPOB



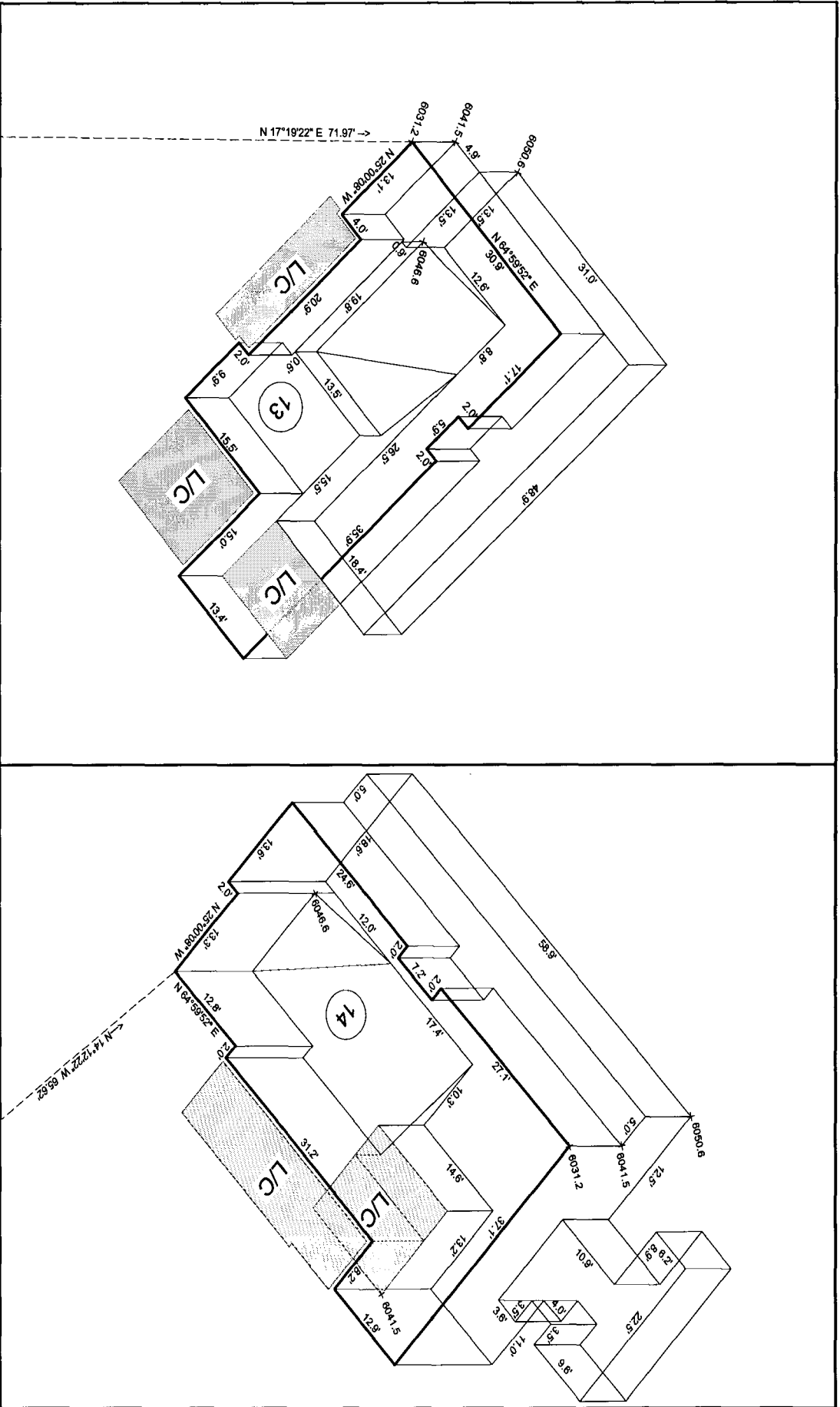
PREPARED BY: BENCHMARK ASSOCIATES, P.A.  
 P.O. BOX 733  
 KETCHUM, IDAHO 83340  
 (208) 226-5612  
 (208) 226-5611 FAX



**ELKHORN SPRINGS:  
 HILLSIDE TERRACE NORTH  
 SECOND FLOOR UNITS 7-12**  
 LOCATED WITHIN:  
 74N, R1B2, SEC 12 B.M., SUN VALLEY,  
 BLAINE COUNTY, IDAHO  
 A CONDOMINIUM PLAN  
 PROJECT NO. 04108  
 PLOT BY: LLL  
 DATE: 4/18/08  
 DWG FILE: 04108A1P02.DWG  
 SHEET 4 OF 8

# ELKHORN SPRINGS: HILLSIDE TERRACE NORTH THIRD AND FOURTH FLOOR UNITS 13-14

**LEGEND**  
 L/C LIMITED COMMON AREA  
 C/A COMMON AREA  
 CHU COMMUNITY HOUSING UNITS  
 --- THE FROM TPOB



PREPARED BY: BENCHMARK ASSOCIATES, P.A.  
 P.O. BOX 733  
 KETCHIKAN, IDAHO 83340  
 (208) 728-9312  
 (208) 728-9314 FAX

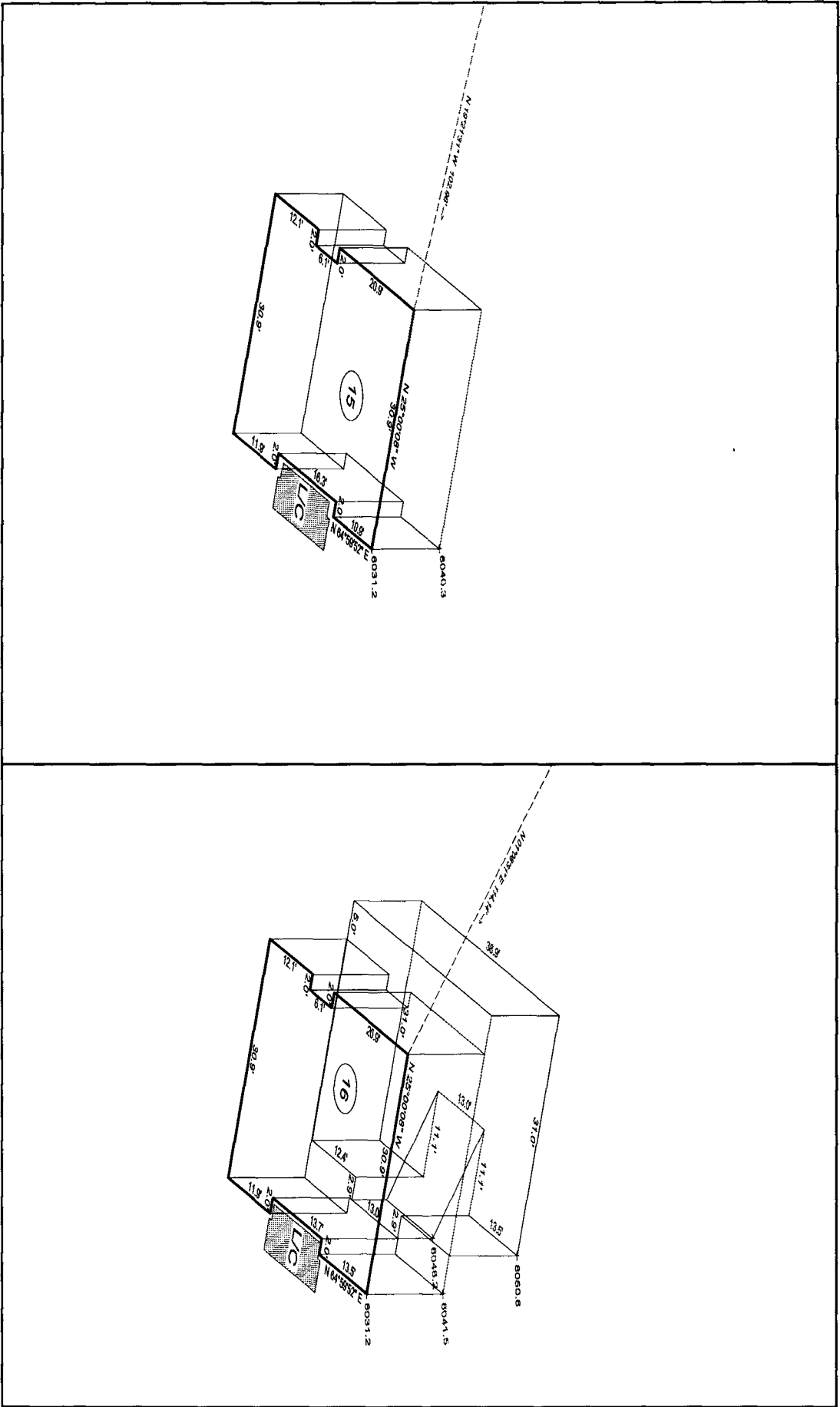


**ELKHORN SPRINGS:  
 HILLSIDE TERRACE NORTH  
 SECOND FLOOR UNITS 13-14**


LOCATED WITHIN:  
 T4N, R19E, SEC. 17, B.M.  
 SUN VALLEY, BLAINE COUNTY, IDAHO  
 PLOT BY: ILL  
 DWG FILE: P410B41P031.DWG  
 SHEET 5 OF 8  
 DATE: 4/18/08  
 PROJECT NO. 04108

# ELKHORN SPRINGS: HILLSIDE TERRACE NORTH THIRD AND FOURTH FLOOR UNITS 15-16

**LEGEND**  
 L/C LIMITED COMMON AREA  
 C/A COMMON AREA  
 CHU COMMUNITY HOUSING UNITS  
 THE FROM TRSB



PREPARED BY: BENCHMARK ASSOCIATES, P.A.  
 P.O. BOX 73  
 KETCHUM, IDAHO 83340  
 (208) 725-9614  
 (208) 725-9614 FAX



**ELKHORN SPRINGS:  
HILLSIDE TERRACE NORTH  
SECOND FLOOR UNITS 15-16**

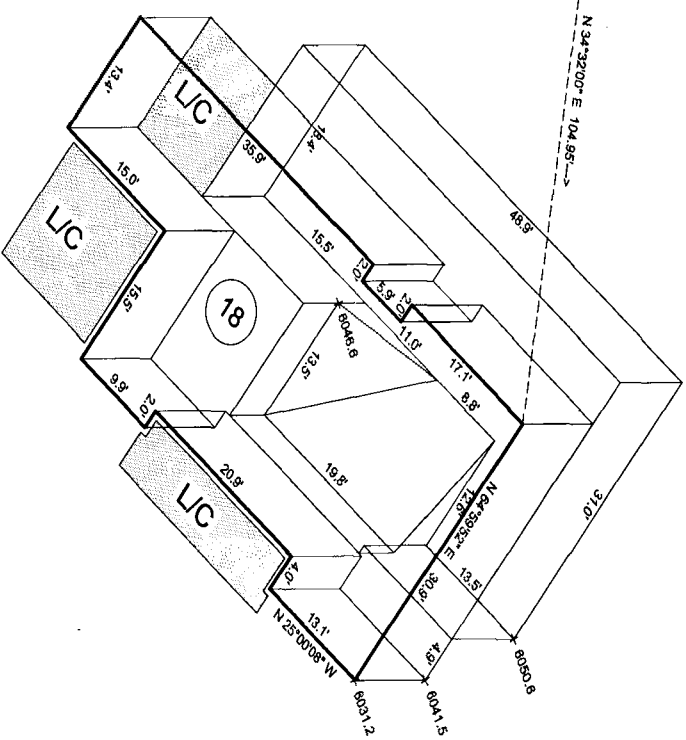
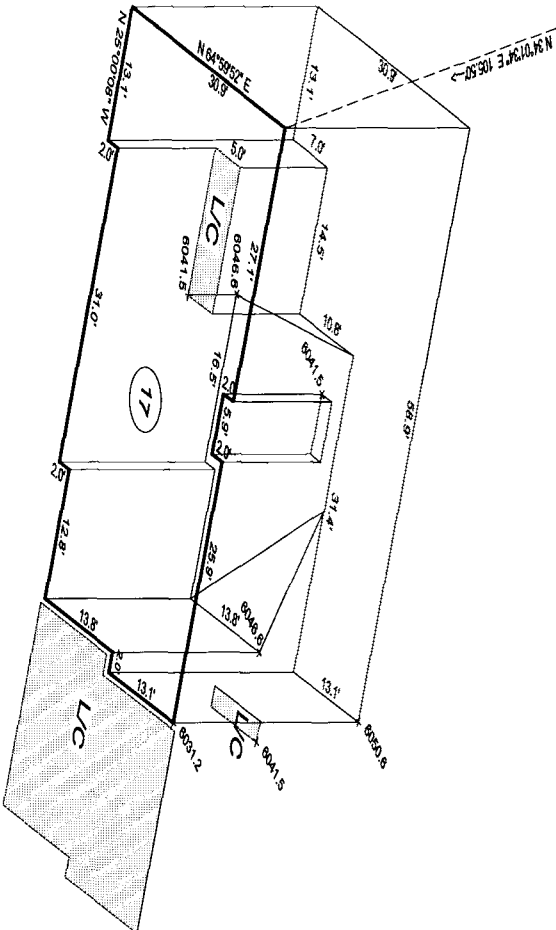
LOCATED WITHIN:  
T4N, R18E, SEC. 17, 84W, SUN VALLEY,  
BLAINE COUNTY, IDAHO

A CONDOMINIUM PLAN  
 PROJECT NO. 04108  
 DATE: 4/18/06  
 DWG FILE: 04108A1D51.DWG  
 SHEET 6 OF 8



# ELKHORN SPRINGS: HILLSIDE TERRACE NORTH THIRD AND FOURTH FLOOR UNITS 17-18

**LEGEND**  
 LIC LIMITED COMMON AREA  
 C/A COMMON AREA  
 CHU COMMUNITY HOUSING UNITS  
 --- THE FROM T108



PREPARED BY: BENCHMARK ASSOCIATES, P.A.  
 P.O. BOX 733  
 KETCHIKAN, IDAHO 83340  
 (208) 726-9512  
 (208) 726-9514 FAX



**ELKHORN SPRINGS:  
 HILLSIDE TERRACE NORTH  
 SECOND FLOOR UNITS 17-18**

LOCATED WITHIN:  
 TAN, FORD SEC.  
 SUN VALLEY, BLAINE COUNTY, IDAHO

PLOT BY: TLU  
 DATE: 4/18/08  
 DWG FILE: 04108A1P04.DWG  
 SHEET 7 OF 8

A CONDOMINIUM PLAN  
 PROJECT NO. 04108

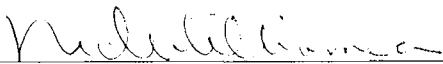
**DESIGNATION OF PERSON TO RECEIVE SERVICE**

**EXHIBIT "F"**

# ACCEPTANCE OF DESIGNATION

The undersigned, a resident of the State of Idaho, does hereby accept the designation to receive service of process in any action relating to the common areas and facilities shown on the Condominium Plat for HILLSIDE TERRACE NORTH CONDOMINIUMS recorded in the records of Blaine County, Idaho as Instrument No. 536010. The designation to receive service of process shall continue until the designation is terminated in accordance with law. The physical address of the undersigned is 115 Second Avenue South, Hailey, Idaho 83333.

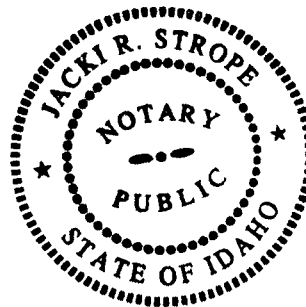
DATED this 30<sup>th</sup> day of May, 2006.

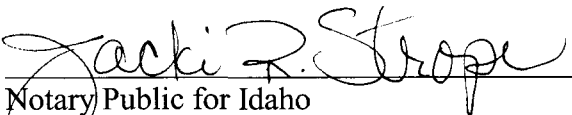
  
\_\_\_\_\_  
Ned C. Williamson

STATE OF IDAHO    )  
                          ) ss.  
County of Blaine    )

On this 30<sup>th</sup> day of May, 2006, before me a Notary Public in and for said State, personally appeared Ned C. Williamson, known to me to be the person who executed the within and foregoing document and acknowledged to me that he 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.



  
\_\_\_\_\_  
Notary Public for Idaho  
Residing at: Hailey, Idaho  
My commission expires: 09/03/06

**CERTIFICATE OF CONSENT**

**EXHIBIT "G"**

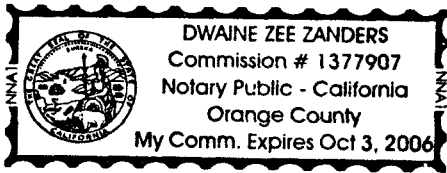


**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California }  
County of Orange } ss.

On June 1, 2006 before me, Dwaine Zee Zanders,  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")  
personally appeared Grant Hill  
Name(s) of Signer(s)

Personally known to me  
 proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

[Signature]  
Signature of Notary Public

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer**

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

