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07/06/2000 10:47A

Shelley Vance-Gallatin Co MT MISC

42.00

DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS regulates and controls the use and development of real property, made effective this 26th day of February, 2000, by Lucille Donlan of 533 Blackwood Road, Bozeman, Montana, 59718, referred to herein as "Declarant"

Purpose. Declarant is the owner of certain real property situated in Gallatin County, Montana, being known and designated as follows:

see attached Exhibit "A"

referred to herein as "Tract 1." Declarant intends to sell, transfer or otherwise convey Tract 1 and to impose on it these restrictive covenants for the benefit of the present and future owner(s) of the adjacent real property known and designated as follows:

see attached Exhibit "B"

referred to herein as "Tract 2."

Declaration. Declarant hereby makes of public record and declares that Tract 1, and any part thereof, shall be owned, sold, conveyed, encumbered, leased, used, occupied and developed subject to the following restrictive covenants for benefit of the present and future owner(s) of Tract 2, or any part thereof. These restrictive covenants shall run with the land and shall be binding on all parties having or acquiring any right, title, or interest in the real property described herein. They shall constitute burdens upon all parties or persons acquiring any legal or equitable interest in or title to Tract 1, or any part thereof, and shall inure to the benefit of to all persons or parties acquiring any legal or equitable interest in or title to Tract 2.

NOW, THEREFORE, the Declarant hereby declares that Tract 1 is held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied, and improved subject to the following limitations and restrictions:

1. **Subdividing.** Tract 1 shall not be subdivided or otherwise divided into separate lots.
2. **Residential Use.** Only one single family dwelling shall be allowed on Tract 1. Tract 1 shall be used solely for private single family residential uses. No commercial use may be made of Tract 1 except that home occupations or hobby-businesses may be conducted out of a the residence by the owner or tenant if the following conditions are met:
 - a. the business use shall be clearly incidental and secondary to the residential use of Tract 1;
 - b. the business use shall be entirely inside a dwelling or garage, including any storage of materials, supplies, inventory or equipment;
 - c. the business use shall not occupy more than 400 square feet, total, of the residence and garage combined;
 - d. non-resident employee(s) shall not be allowed, nor shall excessive traffic, noise or

99059/
RETURN TO ALLIED LAND TITLE
108 W. BABCOCK BLVD.
BOZEMAN, MT 59715



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Shelley Vance-Gallatin Co MT MISC

42.00

- pollution generation be permitted;
- e. no signs or structures advertising the business use are permitted; and
- f. the business use does not constitute a nuisance to neighboring property owners.
3. **Mining.** Mining on Tract 1 is prohibited. No prospecting, mining, tunneling, excavating, or drilling for any substance on or with the earth, including, but not limited to, water oil, gas, hydrocarbons, minerals, gravels, sand, rock, or earth shall be permitted.
4. **Animals:**
- a. **Livestock.** The only permitted livestock are cattle and horses. Swine, sheep, goats, llamas and other livestock are specifically prohibited. No more than five (5) head of livestock, consisting of cattle and/or horses are permitted on Tract 1.
- b. **Pets.** No more than two (2) dogs and two (2) cats may be maintained, provided, however, that such animals shall at all times be restrained or leashed.
- c. All animals shall be strictly controlled by their owner(s) to prevent interference with wildlife.
5. **Hunting.** No hunting, trapping or discharge of firearms, air powered guns, bows, or crossbows, or use of traps, shall be allowed on Tract 1.
6. **Setbacks.** All residential structures, including but not limited to, the residence, garage, shed, barn or shop, shall be setback no less than forty (40) feet from the property line(s).
7. **Signs.** No signs, billboards, posters, displays, advertisements or similar structures shall be permitted other than those required by government authorities. Real estate signs shall be allowed only when Tract 1 is for sale. Temporary construction signs shall be allowed on Tract 1 during construction activity provided that they are removed upon substantial completion of the project. One address and family name sign attached to the principal residence being no more than two (2) square feet shall be allowed.
8. **Nuisance.** No noxious or offensive activity shall be permitted, nor shall any use or activity be permitted which may be or may become any annoyance or nuisance to adjacent landowners or which may depreciate the environmental amenities of the area, including but not limited to, unreasonably bright lights and loud sounds.
9. **Maintenance.** Owner(s) of Tract 1 shall maintain the property and improvements in good repair and appearance at all times. All landscaping improvements and property shall be kept and maintained in good, clean, safe, sound, attractive, thriving and slightly condition.



10. **Garbage and Refuse Disposal.** Tract 1 shall not be used or maintained as a dumping ground for rubbish. Rubbish includes but is not limited to non-operative and unregistered vehicles. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.
11. **Vehicles.** "Vehicle" shall mean any four wheel passenger automobiles and pickups, boats, trailers, trucks, campers (whether or not on a truck), recreational vehicles, motorcycles and snowmobiles. All vehicles shall at all times be kept within an enclosed structure unless in actual use, provided, however, up to four (4) operational and registered vehicles may be kept outside of an enclosed structure, provided said vehicles are kept, parked or otherwise stored within two hundred feet (200') of the primary residence located on Tract 1. No vehicle, including but not limited to, snowmobiles, motorcycles, ATVs or other similar devices, shall be operated on Tract 1 for recreation.
12. **Enforcement.** These restrictive covenants may be enforced by the owner(s) of Tract 2, their successors and assigns. In the event of violation or threatened violation of any of these covenants, legal proceedings may be brought in a Court of Law or equity for injunctive relief and damages. In the event of action to enforce these restrictive covenants, the prevailing party shall be entitled to costs and reasonable attorney's fees.

The failure by the owner(s) of Tract 2, their successors or assigns to enforce any restrictions contained herein shall in no event be deemed a waiver or in any way prejudice the right to enforce that restriction at any time against any person violating the restriction or any other breach thereafter or to collect damages for any subsequent breach.
13. **Duration.** These restrictive covenants shall continue in full force and effect and shall run with the land as legal and equitable servitudes in perpetuity unless amended as set forth herein.
14. **Amendment.** These restrictive covenants shall remain in effect until amended or terminated. These covenants, or any portion thereof, may be amended, terminated or supplemented at any time by the execution of a written document containing the terms of the amendment, supplement or termination of any of the covenants, duly acknowledged by a Notary Public, and recorded with the office of the Gallatin County Clerk and Recorder, executed by all the owner(s) of both Tract 1 and 2, or their respective successors or assigns.
15. **Severability.** Any decision by a Court of competent jurisdiction invalidating any part or paragraph of these restrictive covenants shall be limited to the part or paragraph affected by the decision of the Court of remaining paragraphs and covenants herein shall remain in full force and effect.

16. **Acceptance of Covenants.** Every owner or purchaser of Tract 1 or 2 shall be bound be and subject to all of the provisions of this Declaration and every owner or purchaser through his or her purchase or ownership expressly accepts and consents to the operation and enforcement of the provisions of this Declaration.

DATED this 26th day of February, 2000.


Lucille Donlan, Declarant

STATE OF MONTANA)
 :SS
County of Gallatin)

On this 26th day of February, 2000, before me, a Notary Public for the State of Montana, personally appeared Lucille Donlan, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

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



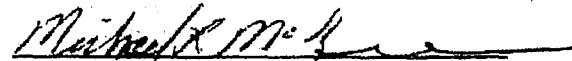

Notary Public for the State of Montana
Residing at: Bozeman
My commission expires: 1-7-2003

EXHIBIT "A"

A tract of land being Tract 1 of Certificate of Survey No. 2179, located in the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 24 and the N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 25, Township 2 South, Range 4 East, P.M.M., Gallatin County, Montana; being more particularly described as follows:

Beginning at the $\frac{1}{4}$ corner common to said Sections 24 and 25; thence S01°06'53"W along the mid-section line of said Section 25, a distance of 185.49 feet; thence N88°47'37"W a distance of 650.44 feet; thence N29°59'26"E a distance of 1109.65 feet; thence N00°56'01"E a distance of 540.28 feet to a point on the north line of the S $\frac{1}{2}$ S $\frac{1}{4}$ of said Section 24; thence S89°15'05"E a distance of 126.09 feet to the C-S $\frac{1}{16}$ corner of said Section 24; thence S01°32'17"W a distance of 1328.37 feet to the Point of Beginning.

Said tract contains 10.122 acres more or less, along with and subject to all existing easements of record or of fact.



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EXHIBIT "B"

Township 2 South, Range 4 East, M.P.M.

Section 24: S $\frac{1}{2}$ SW $\frac{1}{4}$

Section 25: N $\frac{1}{2}$ NW $\frac{1}{4}$

Section 26: N $\frac{1}{2}$ NE $\frac{1}{4}$

Section 23: SE $\frac{1}{4}$ SE $\frac{1}{4}$, and all that part of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 23 lying East of the East line of the right of way of the Gallatin Valley Railway;

Excepting therefrom a tract of land in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 26 and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 23, Township 2 South, Range 4 East, Principal Meridian, conveyed to the State of Montana by Bargain and Sale Deed recorded May 28, 1963 in Book 142 of Deeds, page 506, records of Gallatin County, Montana.

Excepting therefrom a tract of land being Tract 1 of Certificate of Survey No. 2179, located in the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 24 and the N $\frac{1}{2}$ NW $\frac{1}{4}$ of Section 25, Township 2 South, Range 4 East, P.M.M., Gallatin County, Montana; being more particularly described as follows:

Beginning at the $\frac{1}{4}$ corner common to said Sections 24 and 25; thence S01°06'53"W along the mid-section line of said Section 25, a distance of 185.49 feet; thence N88°47'37"W a distance of 650.44 feet; thence N29°59'26"E a distance of 1109.65 feet; thence N00°56'01"E a distance of 540.28 feet to a point on the north line of the S $\frac{1}{2}$ S $\frac{1}{4}$ of said Section 24; thence S89°15'05"E a distance of 126.09 feet to the C-S $\frac{1}{16}$ corner of said Section 24; thence S01°32'17"W a distance of 1328.37 feet to the Point of Beginning.

Said tract contains 10.122 acres more or less, along with and subject to all existing easements of record or of fact.

And together with all water, water right and water ditches thereunto appertaining or belonging, including the right to the use of 110 Miner's inches of the waters of the West Gallatin River, as decreed to O.L. Ward by the District Court of the Ninth (now eighteenth) Judicial District of the State of Montana, County of Gallatin, on the 7th day of October, 1909, in the case of W.D. Bell, Jr., et al vs. F.K. Armstrong, et al, defendants; Also the right to the use of 99 inches (Miner's Measurements) of the water of the West Gallatin River, TOGETHER with a one-eighth ($\frac{1}{8}$) interest in and to the Monforton-Matthews Ditch; ALSO the right to the use of 62.5 inches (Miner's Measurements) of the water of the West Gallatin River, appropriated May 1, 1867, conveyed to and upon the above described premises by and through the Allison-Lewis Ditch, according to the said Decree.

Also, SUBJECT, however, to all valid outstanding easements, rights-of-way, State Highway grants, exceptions and reservations contained in patents, mineral leases, mineral reservations and



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mineral conveyances and restrictive covenants of record, upon, over or across the property;

and further excepting therefrom a tract of land more particularly described as follows:

A tract of land located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 24, Township 2 South, Range 4 East, Principal Montana Meridian, in Gallatin County, Montana, being more particularly described as follows: Beginning at a point being 16.0 feet North and 26.0 feet West of a point identified as the $\frac{1}{4}$ corner between Sections 24 and 25 the true point of beginning, thence N. $03^{\circ}10'$ W.-290.60 feet, thence S. $86^{\circ}33'$ W.-150 feet, thence S. $03^{\circ}10'$ E.-290.60 feet, thence N. $86^{\circ}33'$ E.-150.00 feet to the point of beginning containing 1.0007 acres more or less. According to Certificate of Survey No. 997, filed in the Clerk and Recorder's Office on July 22, 1981, Gallatin County, Montana.



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08/07/2003 02:42P

Shelley Vance-Gallatin Co MT MISC

24.00

**FIRST AMENDMENT TO DECLARATION OF PROTECTIVE
COVENANTS AND RESTRICTIONS FOR ELK GROVE PLANNED UNIT
DEVELOPMENT PHASES 1, 2, & 3**

Whereas the Declaration of Protective Covenants and Restrictions for Elk Grove Planned Unit Development Phases 1, 2, & 3 was recorded as Document No. 2015892 in the records of Gallatin County, Montana;

Whereas the Protective Covenants and Restrictions are ambiguous as to which of their terms and conditions apply to owners of Utility Lots, Commercial Lots, or other Non-Residential Lots as those Lots appear or may appear in the Final Plats for the "Elk Grove Community," as that term is defined in those Protective Covenants and Restrictions;

Whereas Concinnity LLC is a Montana limited liability company at 533 Blackwood Rd., Bozeman, Montana, 59718;

Whereas Elk Grove Development Company, is a Montana corporation at 533 Blackwood Rd., Bozeman, Montana, 59718;

Whereas, Concinnity LLC and Elk Grove Development Company are the holders of more than 2/3rds of the total number of votes within the Elk Grove Homeowners Association entitled to vote on any proposed amendment to the Declaration of Protective Covenants and Restrictions for Elk Grove Planned Unit Development Phases 1, 2, & 3;

Whereas, Concinnity LLC and Elk Grove Development Company wish to exercise their votes to approve the amendment to the Declaration of Protective Covenants and Restrictions for Elk Grove Planned Unit Development Phases 1, 2, & 3 set forth herein;

NOW THEREFORE, Concinnity LLC and Elk Grove Development Company, being the holders of more than 2/3rds of all the votes entitled to vote on any amendment to the Declaration of Protective Covenants and Restrictions for Elk Grove Planned Unit Development Phases 1, 2, & 3, do hereby confirm the exercise of their votes and adopt the following additional provision to Declaration of Protective Covenants and Restrictions for Elk Grove Planned Unit Development Phases 1, 2, & 3, as recorded as Document No. 2015892 in the records of Gallatin County, Montana:

030958
ALLIED LAND TITLE
108 W. BABCOCK BOZEMAN, MT 59715



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Shelley Vance-Gallatin Co MT MISC

24.00

UTILITY LOTS, COMMERCIAL LOTS, AND OTHER NON-RESIDENTIAL LOTS

No covenant and restriction or term and condition set forth herein shall apply or be of any force or affect to any owner of any Utility Lot, Commercial Lot, or other Non-Residential Lot, as any of the Lots may appear in the Final Plats for Elk Grove Community, except that any such owner of a Utility Lot, Commercial Lot, or other Non-Residential Lot, and all their successors and assigns, shall remain subject to and governed by those Gallatin County Required Covenants set forth on page 15 and 16 hereof.

Done this 6th day of August, 2003.

Concinnity, LLC

By Thomas J. Kallenbach, Member

By Justin Buchanan, Member

Elk Grove Development Company

By Thomas J. Kallenbach, Its President

STATE OF MONTANA)

:

ss.

County of Gallatin)

On this 6th day of August, 2003, before me, a Notary Public in and for the State of Montana, personally appeared Thomas J. Kallenbach, known to me to be the



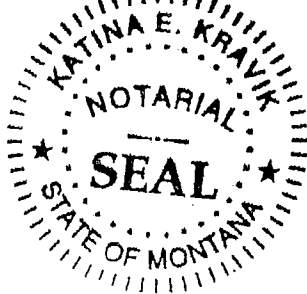
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Shelley Vance-Gallatin Co MT MISC 24.00

person whose name is subscribed to the within and foregoing instrument, and
acknowledged to me that he executed the same on behalf of Concinnity, LLC.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my
official seal as of the day and year first above-written.



Katina E. Kravik

Notary Public for the State of Montana

Residing at Bozeman, MT

My Commission expires 05-22-2005

STATE OF MONTANA)

SS.

County of Gallatin)

On this 16th day of August, 2003, before me, a Notary Public in and for the
State of Montana, personally appeared Justin Buchanan, known to me to be the
person whose name is subscribed to the within and foregoing instrument, and
acknowledged to me that he executed the same on behalf of Concinnity, LLC.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my
official seal as of the day and year first above-written.



Katina E. Kravik

Notary Public for the State of Montana

Residing at Bozeman, MT

My Commission expires 05-22-2005

STATE OF MONTANA)

SS.

County of Gallatin)

On this 16th day of August, 2003, before me, a Notary Public in and for the
State of Montana, personally appeared Thomas J. Kallenbach, known to me to be the
person whose name is subscribed to the within and foregoing instrument, and
acknowledged to me that he executed the same as President of Elk Grove
Development Company.

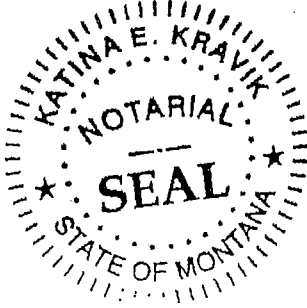


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Shelley Vance-Gallatin Co MT MISC 24.00

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal as of the day and year first above-written.



Katina E. Kravik

Notary Public for the State of Montana

Residing at Bozeman, MT

My Commission expires 05-22-2005



2136106

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12/23/2003 02:11P

Shelley Vance-Gallatin Co MT MISC

24.00

**CORRECTION TO
FIRST AMENDMENT TO DECLARATION OF PROTECTIVE
COVENANTS AND RESTRICTIONS FOR ELK GROVE PLANNED UNIT
DEVELOPMENT PHASES 1, 2, & 3**

Whereas a First Amendment to Declaration of Protective Covenants and Restrictions for Elk Grove Planned Unit Development Phases 1, 2, & 3 was executed on August 6, 2003, and recorded with the Clerk and Recorder of Gallatin County, Montana as Document No. 2118711 (hereinafter referred to as the "First Amendment");

Whereas the First Amendment amended in accordance with its terms the Declaration of Protective Covenants and Restrictions for Elk Grove Planned Unit Development for Elk Grove Planned Unit Development Phases 1, 2, & 3;

Whereas the First Amendment inadvertently referred to the Declaration of Protective Covenants and Restrictions for Elk Grove Planned Unit Development for Elk Grove Planned Unit Development Phases 1, 2, & 3 as being recorded as Document No. 2015892 in the records of Gallatin County, Montana;

Whereas the Declaration of Protective Covenants and Restrictions for Elk Grove Planned Unit Development for Elk Grove Planned Unit Development Phases 1, 2, & 3 is actually recorded as Document No. 2040235 in the records of Gallatin County, Montana;

Whereas Concinnity LLC is a Montana limited liability company at 533 Blackwood Rd., Bozeman, Montana, 59718;

Whereas Elk Grove Development Company, is a Montana corporation at 533 Blackwood Rd., Bozeman, Montana, 59718;

Whereas, Concinnity LLC and Elk Grove Development Company are the holders of more than 2/3rds of the total number of votes within the Elk Grove Homeowners Association entitled to vote on any proposed amendment to the Declaration of Protective Covenants and Restrictions for Elk Grove Planned Unit Development Phases 1, 2, & 3;

Whereas, Concinnity LLC and Elk Grove Development Company wish to correct the inadvertent reference to the recordation of the Declaration of Protective Covenants and Restrictions for Elk Grove Planned Unit Development for Elk Grove Planned

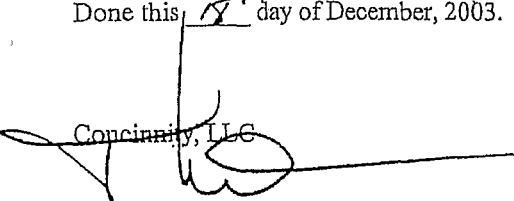
MISC CR

ALLIED LAND TITLE, INC.
106 East Babcock, Ste C, Bozeman, MT 59715

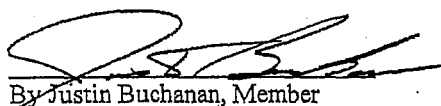
Unit Development Phases 1, 2, & 3 made in the First Amendment, and to otherwise ratify and confirm the terms of the First Amendment;

NOW THEREFORE, Concinnity LLC and Elk Grove Development Company, being the holders of more than 2/3rds of all the votes entitled to vote on any amendment to the Declaration of Protective Covenants and Restrictions for Elk Grove Planned Unit Development Phases 1, 2, & 3, do hereby correct the recordation reference to the Declaration of Protective Covenants and Restrictions for Elk Grove Planned Unit Development for Elk Grove Planned Unit Development Phases 1, 2, & 3, as set forth in the First Amendment, from Document No. 2015892 to Document No. 2040235, as said document appears in the records of Gallatin County, Montana, and Concinnity LLC and Elk Grove Development Company otherwise ratify and confirm each and every term of the First Amendment.

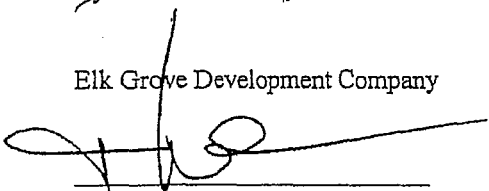
Done this 18th day of December, 2003.


Concinnity, LLC

By Thomas Kallenbach, Member


By Justin Buchanan, Member

Elk Grove Development Company


By Thomas Kallenbach, Its President

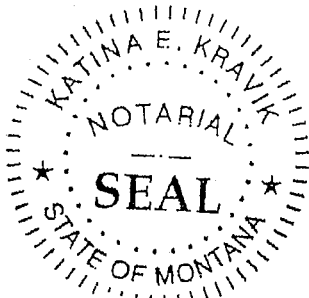
STATE OF MONTANA)

County of Gallatin)

ss.

On this 18 day of December, 2003, before me, a Notary Public in and for the State of Montana, personally appeared Justin Buchanan, known to me to be the person whose name is subscribed to the within and foregoing instrument, and acknowledged to me that he executed the same on behalf of Concinnity, LLC.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal as of the day and year first above-written.



STATE OF MONTANA)

Katina E. Kravik

Notary Public for the State of Montana

Residing at Bozeman, Montana

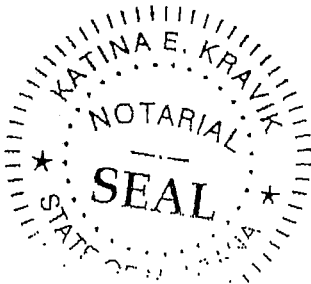
My Commission expires May 22, 2005

County of Gallatin)

SS.

On this 18 day of December, 2003, before me, a Notary Public in and for the State of Montana, personally appeared Thomas Kallenbach, known to me to be the person whose name is subscribed to the within and foregoing instrument, and acknowledged to me that he executed the same on behalf of Concinnity, LLC.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal as of the day and year first above-written.



STATE OF MONTANA)

Katina E. Kravik

Notary Public for the State of Montana

Residing at Bozeman, MT

My Commission expires May 22, 2006

County of Gallatin)

SS.

On this 18 day of December, 2003, before me, a Notary Public in and for the State of Montana, personally appeared Thomas Kallenbach, known to me to be the person whose name is subscribed to the within and foregoing instrument, and



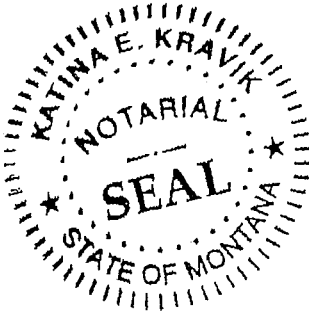
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Shelley Vance-Gallatin Co MT MISC 24.00

acknowledged to me that he executed the same as President of Elk Grove
Development Company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my
official seal as of the day and year first above-written.



Katina E Kravik

Notary Public for the State of Montana

Residing at Bozeman, MT

My Commission expires May 22, 2005

PLATTED



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Shelley Vance-Gallatin Co MT MISC

132.00

**DECLARATION OF PROTECTIVE
COVENANTS AND RESTRICTIONS
FOR
ELK GROVE PLANNED UNIT
DEVELOPMENT PHASES 1, 2, & 3**



Concinnity, LLC, ("Concinnity") is the present owner in fee simple of all the property included within the boundaries of the Elk Grove Community, a planned unit development located in Gallatin County. Elk Grove Development Company is developing the residential component of Elk Grove Community pursuant to an agreement with Concinnity, and an Option to purchase all residential lots in Phases 1, 2, and 3. Concinnity is deferring to Elk Grove Development Company for the purposes of this Declaration of Protective Covenants And Restrictions For Elk Grove Planned Unit Development Phases 1, 2, & 3 (the "Covenants"), but will assume Elk Grove Development Company's responsibilities and/or appoint another developer in the event Elk Grove Development Company is unable to fulfill its obligations hereunder.

The residential portion of the development is proceeding in three phases. Phase 1 of Elk Grove Community is designated on the official plat on file and of record with the Clerk and Recorder of Gallatin County at Book J of Plats, page 316. Although Phase 2 and Phase 3 of Elk Grove Community have not received final plats. These Covenants shall apply equally to lots in all three phases and shall be amended to incorporate the final plats for Phases 2 and 3 when the final plats have been recorded with the Clerk and Recorder of Gallatin County. Elk Grove Development Company, hereinafter referred to as the "Developer", does hereby adopt the following Covenants with the consent of Concinnity, the record owner of all of the property encompassed by Phases 1, 2 and 3 of Elk Grove Community, which will be affected by these Covenants. The Developer, with the

consent of Concinnity, has also adopted and recorded By-Laws of the Elk Grove Community Homeowners' Association, the Elk Grove Community Design Review Guidelines for Elk Grove Planned Unit Development for Phases 1, 2, and 3 (the "Design Guidelines"), and a Design Review Board Declaration for Elk Grove Community which operate and should be construed in conjunction with this Declaration.

This Declaration provides for individual and community decision making. Individual decisions are limited primarily to residential lots, subject to Elk Grove Community Design Review Guidelines regarding architectural design and review of improvements, and subject further to the By-Laws providing for management, administration, and regulation of Elk Grove Planned Unit Development Phases 1, 2, & 3.

ABBREVIATIONS

The following abbreviations are used in this document:

- 1) Elk Grove Planned Unit Development, Phases 1, 2, & 3, a subdivision in Gallatin County, MT, is referred to as: Elk Grove Community
- 2) Elk Grove Community Design Review Board is referred to as: Design Board
- 3) Elk Grove Community Design Review Guidelines is referred to as: Design Guidelines
- 4) Park Area Management Plan is referred to as: P.A.M.P.
- 5) Elk Grove Development Co. is referred to as Declarant.

PURPOSE

This property is a unique setting which has a high natural and scenic value. These Covenants and Restrictions are adopted to preserve and maintain the recreation and scenic values of the property for the benefit of owners of individual residential lots as well as the surrounding communities.

PROTECTIVE COVENANTS



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It is the purpose of these Protective Covenants and Restrictions to preserve and protect the beautiful environment, the natural beauty, view, and surroundings of Elk Grove Community, to define how the park areas are to be used, managed, and maintained through the P.A.M.P., (which is attached hereto and incorporated herein by this reference), and to preserve and protect the interests and investment of the individual owners and Elk Grove Development Company. In addition, these Protective Covenants and Restrictions are designed to conserve the natural habitat and growth of plant life, animal life, surface and underground water.

These Protective Covenants and Restrictions shall attach to and run with the land and shall constitute an equitable servitude upon the real property and every part of it, including all titles, interest and estates as may be held, conveyed, owned, claimed, devised, encumbered, used, occupied and improved. These Protective Covenants and Restrictions are declared for the benefit of the entire property and every part of it and for the benefit of each owner. They shall constitute benefits and burdens to declarants and to all persons or entities hereafter acquiring any interest in the property.

These covenants provide for the general restrictions while the Design Guidelines provide appropriate details in order to ensure compliance with these Covenants. The Design Guidelines must be carefully consulted and followed to ensure the requirements of these Covenants are met.

COMBINATION OF LOTS

Two contiguous lots may be combined to constitute one lot, and that lot will be treated as one lot. Three contiguous lots may be combined to constitute two lots, and those lots will be treated as two lots. The Design Board and appropriate governmental authorities must approve any change in



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lot configuration. The Design Board shall carefully consider the affect such change may have on views of adjoining lots. No lot may be further subdivided.

RESIDENTIAL USE

Only one single-family dwelling unit shall be allowed per residential lot. All residential lots will be used solely for private single-family residential uses. Only single-family homes with attached or non attached garages and an accessory building will be permitted. All garages will be limited to two garage doors.

No commercial use may be made of any residential lot except that the owner or tenant may conduct home occupations or hobby-businesses out of a residence if the following conditions are met:

- a. the business use shall be clearly incidental and secondary to the residential use of the lot;
- b. the business use shall be entirely inside a dwelling or garage including any storage of materials or equipment;
- c. the business use shall not occupy more than 400 square feet, total, of the residence and garage combined;
- d. no non-resident employee shall be allowed, nor shall excessive traffic, noise, or pollution generation be permitted;
- e. the business use does not constitute a nuisance to neighboring property owners.

For guidance, the following uses are examples of home occupations: the making of clothing; child care providers that do not requiring licensing because of their size, the giving of music lessons; a sole practitioner professional practice, service or product providers who maintain a telephone and office within the residence but the services and products are provided and sold off the premises; the pursuit of artistic endeavors such as making of pottery, ceramics, paintings or bronzes, and the like, provided that the products are marketed and sold off the premises, and no kilns or foundries are used on the premises. No signs or structures advertising the occupation are allowed.

TOPOGRAPHY AND NATURAL FEATURES

No prospecting, mining, quarrying, tunneling, excavating, or drilling for any substance on or within the earth, including, but not limited to, water, oil, gas, hydrocarbons, minerals, gravels, sand, rock, or earth shall be permitted.

RESIDENTIAL LOT PREPARATION MAINTENANCE AND LANDSCAPING

Landscaping will be required to enhance the value of the property and the aesthetics of the lot. Each owner shall submit a complete and comprehensive landscape, grading, and irrigation plan as required by the Design Guidelines. Landscaping shall be done only as approved by the Design Board. All residential lots shall install underground sprinkler systems timed to water at the appropriate times in the appropriate amounts as determined by the water utility. All residential lot owners shall plant trees along street frontages in accordance with the Design Guidelines. Additional landscaping requirements are described in the Design Guidelines. A landscape plan shall be submitted to the Design Board within two (2) months of occupancy of a new residential structure or within four (4) months of completion of a new residential structure, whichever comes first. Upon Design Board approval of the landscape plan, revegetation must be completed within two (2) months or within such period as may be reasonably necessary as dictated by weather conditions and all landscaping shall be completed in a timely fashion, and shall generally be completed within 6 (six) months of Design Board approval of the landscape plan. Owners of both unimproved and improved residential lots shall control all noxious weeds and shall destroy them according to county standards. Trees and landscaping in park area shall not be damaged except as mandated by the Design Board.

SIZE AND HEIGHT

Each residence shall contain the minimum interior square footage as described in the Design Guidelines exclusive of open or screened-in porches, decks, and garages. The maximum height and minimum area of building structures on each residential lot is specified and controlled in the Design Guidelines to protect the aesthetics, view sheds, and property values within Elk Grove Community.

The Design Board shall determine the acceptability of the height and size of building structures in accordance with the Design Guidelines.

GRADING

No disturbance or change in existing character shall be undertaken except by approval of the Design Board. Grading for building or other improvements shall be confined to a minimum so that improvements shall be tailored to the lot rather than conforming the lot to the improvements. All grading shall be contoured into existing ground lines to avoid unnatural sharp edges. Residential lot development shall accommodate proper drainage using natural topography of the home lot as approved by the Design Board. Drainage and other topographic transitions shall blend with the natural topography of the residential lot. No unnatural angles or sharp lines shall be permitted. Grading, filling or altering is prohibited within any drainage easement.

SETBACK

Unless otherwise specified in the Design Guidelines or approved through a variance by the Design Board, building structures shall be setback from lot lines as follows. Building structures shall be no less than thirty (30) feet from the front lot line. The main entry feature (which shall not be the garage door) must be prominently placed on the elevation facing the street. Generally, garage doors shall be placed further from the front lot line than the residential structure. Building structures shall be no less than ten (10) feet from the side lot line and no less than forty (40) feet from the rear lot line.

DESIGN AND LIMITATIONS

The design of all improvements and changes to existing natural topography shall be subject to review and approval by the Design Board before work is commenced. All homes, structures, improvements, and changes shall comply with the Design Guidelines and these Covenants.

The purpose of this section and the Design Guidelines is to ensure the building design and landscaping plan for each lot maintains or exceeds the general level of quality, appearance, and marketability as is commensurate with the quality of lots and homes adjacent to it and the overall high quality of the Elk Grove Community. Construction or alteration of any improvement or any work affecting the external appearance of any improvements shall only be initiated after a Permit To Proceed has been issued by the Design Board for said construction or alteration.

Mobile homes, trailers, prefabricated homes and modular homes shall not be permitted, nor can any buildings be moved onto the property. All owners are urged to design buildings that reflect the scenic values in keeping with the spirit of Montana and Elk Grove Community. It is generally the intention of these covenants that duplicate homes shall not be constructed next to or in close proximity as determined by the Design Board.

Material composition and quality, color and shape are important in the construction of improvements. All improvements shall be constructed of highest quality materials. The exterior colors used shall be earth tones and should harmonize and compliment the surrounding site and neighboring buildings. Trim may be more colorful and contrasting in order to add visual interest. Roof design is a major element in the building and therefore will be emphasized by the Design Board. Television and radio antennas, as well as satellite dishes and other receiving or transmitting devices, must be screened from view and subject to approval of the Design Board. Satellite dishes shall be no larger than two (2) feet in diameter, and further, should be as small as technologically available.

FIRE PRECAUTIONS

The purpose of these provisions is to minimize the likelihood and effect of an uncontrolled fire within the property.

Each owner, with respect to such owner's lot, shall cause grass to be trimmed pursuant to the Homeowners' Association directives in order to reduce the danger of fire within the property and shall otherwise maintain the improvements and the general condition of the site to minimize fire hazards. All structures shall be designed so that the primary source of heat is natural gas or electricity. The use of wood, wood by-products or coal burning appliances is prohibited.

Each Owner shall:

- (A) Not allow any burning barrels or pits of any sort. Fireworks are not permitted on any portion of Elk Grove Community unless done with prior approval of the Homeowner's Association and the local fire district.
- (B) Install smoke detectors in each residence.
- (C) Install address numbers that are clearly visible outside the residence.
- (D) Keep all roads and driveways free of obstruction to ensure access by emergency vehicles. In the event of a social function at an owner's residence, the owner shall require parking in the driveway or in the designated parking areas in order to provide adequate widths for access by emergency vehicles.

OUTBUILDINGS AND TEMPORARY STRUCTURES

No outbuildings shall be erected or maintained upon a residential lot before the start of construction of a residence and no trailer, mobile home, basement, tent, shack, garage or other outbuildings shall be erected upon any part of the lot for use as a temporary or permanent residence. Use and location of any construction or temporary structure shall be subject to approval by the Design Board. Temporary structures shall be removed within thirty (30) days after completion of construction.

EXTERIOR IMPROVEMENTS AND EQUIPMENT

Each owner of a residential lot shall install a five (5) foot wide sidewalk along all lot lines that have curb and gutter. Application to the Design Board for approval of pools, spas, or hot tubs shall contain adequate details to establish sufficient abatement of equipment noise. If deep excavations are required for these improvements an engineering assessment may be required.

EXTERIOR LIGHTS

Exterior lighting shall be installed and operated only as approved in advance by the Design Board as part of the overall plan for the residential lot. One dusk-to-dawn freestanding streetlight shall be located at the inside corner of the driveway and sidewalk. Mercury vapor lamps shall not be permitted. All other exterior lights shall be approved by the Design Board in accordance with the Design Guidelines

CONSTRUCTION SCHEDULES

Any owner who wishes to construct improvements shall submit a completed application as defined in the Design Guidelines to the Design Board for approval. Any and all construction, alterations or improvements shall be subject to advance approval by the Design Board and shall be diligently worked on to completion and shall be completed within twelve (12) months following commencement. Once an owner secures a Permit To Proceed, construction must commence within six (6) months of approval of the plans. No aspect of construction shall at any time impede, obstruct or interfere with pedestrian or vehicular traffic. No materials shall be placed or stored upon a residential lot more than thirty days (30) before commencement of construction or more than thirty (30) days following completion of construction as determined by the Design Board

Each construction site shall have a chemical toilet placed in a location as inconspicuous as practical. During any construction, the site shall be cleaned up daily and shall be maintained free of trash. The owner shall be responsible to clean up wind blown debris both on and off the premises. No construction materials may be stored on any portion of a street at any time.

PARKING SPACE

Each home lot shall have a concrete driveway a minimum of eighteen (18) feet wide leading to the garage. Driveways shall provide a minimum of four (4) off street parking spaces exclusive of sidewalk. The garage shall be the primary parking area for the lot owners with overflow parking utilizing the driveway. Parked cars shall not obstruct pedestrian traffic. On-street parking shall be allowed on one side of the roads within Block A for the use of guest or invitees. Guest parking for all other blocks is provided for at the ends of the looped cul-de-sacs and at specified locations within the boulevard. No on-street parking in these blocks is allowed.

Recreational vehicles, boats, trailers, snowmobiles, and other rolling equipment other than automobiles and pick ups shall not be stored in the open view on any residential lot, driveway or road. No residential lot will be permitted to have in excess of two garage doors.

No junk vehicles shall be parked on the street, parking area, or retained or parked on any lot. A junk vehicle is one that cannot be normally and frequently driven under its own power. All implements must be stored in a garage or other such structure and not be left in open view.

Vehicles parked in violation of these covenants will be notified by means of a notice from the Home Owner's Association placed under the windshield wiper stating that the vehicle is in violation of these covenants and requesting immediate remedy. If the violation is not corrected within 24 hours of notification, the Homeowner's Association shall cause the vehicle to be towed and impounded at the expense of the vehicle's owner. The Homeowner's Association may cause a vehicle to be towed immediately without notification if the Homeowner's Association determines the vehicle impedes emergency vehicles or, in any way, presents a threat to health and safety.

FENCES

A primary goal of Elk Grove is to create a community atmosphere. For this reason, tall perimeter fencing will not be allowed. Rear and side yard fencing is allowed along the lot lines and

cannot extend closer to the front yard than the closest corners of the building structures. Rear and side yard fencing shall be four (4) feet in height and shall be constructed according to the design provided in the Design Guidelines. A privacy fence located directly behind the residential building or structure, not to exceed seven (7) feet in height, may be allowed by the Design Board. Acceptable location and design criteria are provided in the Design Guidelines. Entryway gates to residential lots are not permitted.

Owners choosing to construct a perimeter fence shall construct the fence immediately inside said owner's lot lines. All fences shall be maintained in good order and repair. All perimeter fences shall stained or preserved in a color approved by the Design Board at regular intervals to convey a new or nearly new appearance. In the event that no other person or entity maintains such fences, they shall be maintained and repaired by the owner.

PERMIT TO PROCEED AND IMPROVEMENT INSPECTION

No building, structure, road, fence or improvement of any kind shall be erected, placed, altered, added to, reconstructed or permitted to remain on any residential lot, and no construction activities or landscaping shall be commenced until a Permit To Proceed has been issued by the Design Board. Upon completion of construction, the Design Board, to determine compliance with these Protective Covenants and Restrictions, the Design Guidelines, and the Permit To Proceed, will inspect the improvements. Any improvement found to be in noncompliance shall be remedied in accordance with the Design Guidelines.

COMMON AREAS

Common areas of Elk Grove Community consist of those areas described as Park Area in the P.A.M.P. The Homeowner's Association shall own and/or manage all Park Areas in accordance with P.A.M.P. Maintenance, repairs, and replacements of Park Area grounds and improvements shall be the expense of the Homeowner's Association. However, if any portion of the Park Area is damaged

by a negligent or tortuous act of any lot owner, members of his or her family, guest, or employee, then such owner shall be responsible and liable for all such damage.

INGRESS AND EGRESS

An Easement for general ingress and egress to each residential lot and to all common areas for the general use of all owners and their guests shall exist over all common areas, roads, and trails within Elk Grove Community.

ROAD AND UTILITIES ACCESS TO ELK GROVE RESIDENTIAL

Primary access to Elk Grove Community is from US Highway 191 via Elk Grove Lane and secondary access is provided to Blackwood Road. Use of Blackwood Road is intended to provide access to US Highway 191. It shall be a violation of these covenants to use Blackwood Road as a means of traveling west of Elk Grove Community. This portion of the covenants may only be changed if substantial upgrades are made to Blackwood Road and the Gallatin County Commission allows the change.

The Homeowners' Association shall maintain the Elk Grove Community roadways within their dimensions.

UTILITY EASEMENT

Utility easements for electricity, gas, sewer, water, stormwater, communications, telephone, television, cable communications and other utility equipment are designated on the Elk Grove Planned Unit Development, Phases 1, 2, and 3 Plats. All owners shall have the right to enter upon and excavate in such easements upon the approval of the Design Board. Easements for ingress and egress and for utilities shall not be moved, deleted or restricted without the written approval of all

the lot owners affected. Utility companies and owners must restore disturbed land to a condition as close as possible, to the natural condition of the land before work commenced.

USES

All the area of Elk Grove Community shall be controlled by these covenants that run with all the land for the benefit and use of owners. No horses or motorized vehicles of any kind shall be permitted in the common areas or easements. Lawn maintenance and landscaping equipment may be allowed with the permission of the Homeowner's Association.

NON-DEDICATION TO PUBLIC USE

Nothing contained in these Covenants and Restrictions shall be construed or be deemed to constitute a dedication, express or implied, of any part of the property or the common areas to or for any public use or purpose whatsoever.

MINERAL AND WATER RIGHTS

In order to protect the scenic, recreational, and wildlife values of the area, no mineral or water rights owned by Concinnity, L.L.C. will be assigned or conveyed to individual lot owners. Concinnity L.L.C. reserves the right to convey the water rights and any mineral rights to the Homeowner's Association.

PRESERVATION OF WATER RESOURCES

The owners of all residential lots, their guests or employees shall at all times conduct their use and activities in a manner that will preserve the integrity of the wetlands, springs, ponds, streams, irrigation water and creeks within the premises. The degradation or pollution of water quality will not be permitted. All applicable state, and local guidelines and standards must be followed.

WILDLIFE HABITAT, HUNTING AND FISHING



In keeping with the purpose of these protective covenants, declarants reserve the right to utilize and manage all common areas for the creation of and enhancement of habitat for wildlife and native plants. The taking of any and all wildlife species by any means within any common area or easements is prohibited except for the catching and keeping of fish by lawful means, and the control of specific animals known to be causing unacceptable damage to property or persons. No hunting or shooting of firearms shall be allowed within boundaries of Elk Grove Community. No feeding of wildlife other than birds shall be allowed. No non-native species of animal shall be introduced to the lands or waters of the common areas or easements.

UTILITIES

Elk Grove Development Company shall cause the installation and maintenance of electric power, gas, telephone, water, and sewer utility service to the property line or utility easement along road frontage. Owners shall bear all responsibility and costs from such location to building structures.

All utilities of every nature shall be installed and maintained underground. Piping and wiring shall be concealed.

Each owner shall be responsible for utility installation and maintenance in accordance to state and local regulations. Connection to sewer and water shall not be completed without approval of the Valley Water Works, the operator of the water distribution and treatment facilities for Elk Grove Community.

ANIMALS

LIMITATIONS

Only companion family pets shall be permitted. No more than two dogs and two cats may be maintained, provided, however, that such animals shall at all times be restrained or leashed and, provided further, subject to the provisions of the P.A.M.P. No swine, sheep, cattle, horses, goats,

llamas or other similar livestock shall be allowed. No animals shall be permitted which shall constitute a nuisance as determined by the Homeowner's Association. All animals shall be strictly controlled by their owners to prevent any interference with wildlife.

The Homeowner's Association may also limit the number of domestic animals on a lot or elsewhere and may withdraw permission for any domestic animal to remain on the premises from any owner who, after due notice, violates the restrictions of this paragraph or who's animal is, or has become, a nuisance to wildlife, property, other owners, or invitees.

MAINTENANCE

Owners shall maintain residential lots and improvements in good repair and appearance at all times. All landscaping improvements and property shall be maintained in good, clean, safe, sound, attractive, thriving and sightly condition and in good repair at all times.

NOXIOUS OFFENSIVE OR HAZARDOUS ACTIVITIES

No noxious, offensive, or hazardous activities shall be permitted upon any portion of the property nor shall anything be done on or placed upon any portion of the property that is or may become a nuisance to others as determined by the Homeowner's Association. No light shall be produced upon any residential lot or other portion of the property that shall be unreasonably bright or cause unreasonable glare. Exterior loud speakers shall be prohibited. No sound shall be produced on any residential lot or other portion of a property which is unreasonably loud or annoying, including but not limited to speakers, horns, whistles or bells.

SIGNS

No signs, billboards, posters, displays, advertisements or similar structures shall be permitted other than those required by government authorities. Real estate signs shall be allowed only on the

property for sale. Temporary construction signs shall be allowed on the same lot as the construction activity provided that they are removed upon substantial completion of the home. One address and family name sign attached to the principal residence being no more than two (2) square feet shall be allowed. The Design Board, at its discretion, may allow signage not explicitly provided for in these covenants if so requested in writing.

GALLATIN COUNTY REQUIRED COVENANTS

The following covenants are required by Gallatin County and shall not be amended or revoked without the mutual consent of the owners, in accordance with the amendment procedures in the covenants, and the County Commission:

- (a) The control of noxious weeds by the Homeowner's Association on those areas for which the Homeowner's Association is responsible and the control of noxious weeds by individual owners on their respective lots shall be as set forth and specified under the Montana Noxious Weed Control Act (MCA 7-22-2101 through 7-22-2153) and the rules and regulations of the Gallatin County Weed Control District.
- (b) The landowner shall be responsible for the control of state and county declared noxious weeds on his or her lot. Both unimproved and improved lots shall be managed for noxious weeds. In the event a landowner does not control the noxious weeds after ten (10) days notice from the Homeowner's Association, the Homeowner's Association may cause the noxious weeds to be controlled. The cost and expense associated with such weed management shall be assessed to the lot and such assessment may become a lien if not paid within thirty (30) days of the mailing of such assessment.
- (c) Individual lot accesses from the County public roads shall be built to the standards of Section 7.G.2 of the Subdivision Regulations.

- (d) The fire district shall receive a stamped set of engineered sprinkler system plans for review and approval prior to construction of any commercial facilities. Inspections shall be scheduled, with 48-hour notice, during construction and after completion.
- (e) Lot owners and residents of the subdivision are informed that nearby uses may be agricultural. Lot owners accept and are aware that standard agricultural and farming practices can result in smoke, dust, animal odors, flies and machinery noise. Standard agricultural practices feature the use of heavy equipment, burning, chemical sprays and the use of machinery early in the morning and sometimes late into the evening.
- (f) All fences bordering agricultural lands shall be maintained by the Homeowner's Association in accordance with State Law.
- (g) Use of wood burning stoves is prohibited within Elk Grove Planned Unit Development.
- (h) Lot owners may not remove water or cause to be removed water from irrigation ditches or creeks without deeded water rights. Before any maintenance and/or improvements are performed on any ditches the owner of the water right must give written permission for work to be done.
- (i) Lot owners must develop and maintain all park lands and trails within the subdivision in accordance with the approved plan at the time of subdivision approval.
- (j) All roads within Elk Grove Community shall be maintained by the Homeowner's Association.
- (k) No lot may be further subdivided.
- (l) The Homeowner's Association shall be responsible for all parking enforcement with provisions contained in the covenants.

- (m) Violet Road shall be maintained by the Homeowner's Association from the point of access of Elk Grove Lane west to U.S. Highway 191.

ENFORCEMENT

The provisions of these protective covenants may be enforced by individual owners, Elk Grove Community Homeowners' Association, Design Board or Elk Grove Development Company.

RIGHT OF ACCESS

A right of access shall be reserved and be immediate for making of emergency repairs in improvements or lots on the property. These repairs may be needed to prevent property damage, personal injury, or continued property damage.

ACTION

In the event of violation or threatened violation of any of these covenants, or the design regulations or additional covenants and regulations adopted pursuant to the terms of these covenants, legal proceedings may be brought in a Court of Law or equity for injunctive relief and damages. In addition, an owner, the Design Board or Elk Grove Development Company may enforce these covenants by serving notice in writing on the person or entity violating these covenants which notice shall specify the offense, identify the location and demand compliance with the terms and conditions of these covenants. Such notice shall be personally served. In the event personal service can not be obtained after reasonable efforts, notice shall be posted at a conspicuous place on the property in question and a copy of the notice shall be mailed by certified mail, return receipt requested, to the last known address of the party or entity.

No owner, nor the Design Board, nor Elk Grove Development Company shall be liable to any person or entity for any entry, self help or abatement of a violation or threatened violation of these covenants. All owners, invitees and guests shall be deemed to have waived any and all rights or

claims for damages for any loss or injury resulting from such action except for intentionally wrongful acts.

Enforcement of these covenants shall be by proceedings either at law or in equity against any person or persons violation or attempting to violate these Covenants; and the legal proceedings may be either to enjoin or restrain violation of the Covenants or to recover damages or both. In the event of action to enforce these Covenants, the prevailing party shall be entitled to costs and attorney's fees.

The failure by the Grantor or its assigns or the association of any subsequent lot owner to enforce any covenants or restrictions contained herein shall in no event be deemed a waiver or in any way prejudice the right to enforce that Covenant at any time against any person breaking the Covenant or any other Covenant breached thereafter or to collect damages for any subsequent breach of Covenants.

Invalidation of any one of these Covenants by judgment or Court order shall in no way affect any of the other Covenants or provisions, all of which shall remain in full force and effect.

All of the above described real property and lots shall be subject to the restrictions and Covenants set forth herein whether or not there is a reference to the same in a deed or conveyance.

A breach of any of the foregoing restrictions or Covenants shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon any lot or portion of the real property or any improvements thereon. However, these restrictions and Covenants shall be binding upon and inure to the benefit of any subsequent owner who acquired by foreclosure, trustee sale or otherwise, title to Property with Elk Grove Community.

PERPETUITY

These covenants shall continue in full force and effect and shall run with land as legal and equitable servitude in perpetuity unless amended as set forth herein.

AMENDMENT

These Covenants shall remain in effect until amended or terminated. The Covenants, or any portion thereof, may be amended, terminated or supplemented at any time by the affirmative vote of 2/3 of the total votes of Class A and Class B members of the Elk Grove Community Homeowners' Association.

Any covenant which is included herein as a condition of preliminary plat approval and required by the County Commission shall not be amended or revoked without the mutual consent of the owners, in accordance with the amendment procedures in the covenants, and the County Commission.

SEVERABILITY

Captions and paragraph headings are designated herein as a matter of convenience. A determination of invalidity of any portion of these covenants shall not in any manner affect the other portions or provisions.

DESIGN BOARD

The Design Board shall be constituted, shall conduct its business, and shall have the authority and responsibility as provided herein above and in the attached document, titled DESIGN REVIEW BOARD DECLARATION FOR ELK GROVE COMMUNITY.

ELK GROVE COMMUNITY HOMEOWNERS' ASSOCIATION

The Elk Grove Community Homeowners' Association shall be constituted, shall conduct its business, and shall have the authority and responsibility as provided herein and in the attached document, titled BY-LAWS OF THE ELK GROVE COMMUNITY HOMEOWNER'S ASSOCIATION.

IN WITNESS WHEREOF, this instrument has been executed this 19 day of June, 2001.

ELK GROVE DEVELOPMENT COMPANY,
a Montana Limited Partnership

By: [Signature]
Its: President

STATE OF MONTANA)

COUNTY OF Gallatin) ss.

On this 19th day of June, 2001, before me, the undersigned officer, personally appeared Jay Josephs, known to me to be the person whose name is subscribed to within instrument as Jay Josephs, of Concinnity Corporation and acknowledged to me that he executed the same as such officer, in the name of and for and on behalf of Concinnity Corp. for the purposes therein contained.

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



Lafina E. Kravitz
Notary Public for the State of Montana
Residing at: Bozeman
My Commission Expires: 5/22/05
CONCINNITY, LLC,
a Montana Limited Liability Company,

By: [Signature]
Justin M. Buchanan, member/manager

By: [Signature]
Jay Josephs, member/manager



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By: Thomas J. Kallenbach
Thomas J. Kallenbach, member/manager

By: Cordell D. Pool
Cordell D. Pool, member/manager

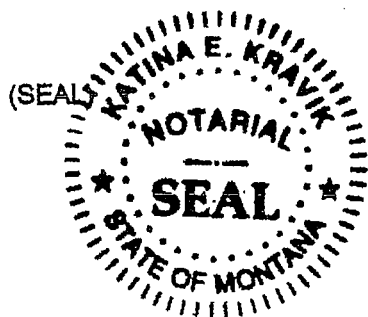
STATE OF MONTANA)

COUNTY OF GALLATIN)

:ss.

On this 19th day of June, 2001, before me, the undersigned officers, personally appeared Justin M. Buchanan, Jay Josephs, Thomas J. Kallenbach and Cordell D. Pool, known to me to be the people described in and who executed the foregoing instrument as members/managers of Concinnity, LLC, a Montana limited liability company, and acknowledged to me that they executed the same as such officers, in the name of and for and on behalf of Concinnity, LLC, for the purposes herein contained.

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



Katrina E. Kravik
Notary Public for the State of Montana
Residing at: Bozeman
My Commission Expires: 5/22/5

BY-LAWS OF THE
ELK GROVE HOMEOWNERS ASSOCIATION, INC.

Concinnity, LLC, ("Concinnity") is the present owner in fee simple of all the property included within the boundaries of the Elk Grove Community, a planned unit development located in Gallatin County. Elk Grove Development Company is developing the residential component of Elk Grove Community pursuant to an agreement with Concinnity, and an Option to purchase all residential lots in Phases 1, 2, and 3. Concinnity is deferring to Elk Grove Development Company for the purposes of these By-Laws, but will assume Elk Grove Development Company's responsibilities and/or appoint another developer in the event Elk Grove Development Company is unable to fulfill its obligations hereunder.

The residential portion of the development is proceeding in three phases. Phase 1 of Elk Grove Community is designated on the official plat on file and of record with the Clerk and Recorder of Gallatin County at Book #2040233 ^{Record #} of Plats, page _____. Although Phase 2 and Phase 3 of Elk Grove Community have not received final plats, these By-Laws shall apply equally to lots in all three phases and shall be amended to incorporate the final plats for Phases 2 and 3 when these final plats have been recorded with the Clerk and Recorder of Gallatin County. Elk Grove Development Company, hereinafter referred to as the "Developer", does hereby adopt the following By-Laws of the Elk Grove Homeowners Association, with the consent of Concinnity, the record owner of all of the property encompassed by Phases 1, 2 and 3 of Elk Grove Community, which will be affected by these By-Laws. The Developer, with the consent of Concinnity, has also adopted and recorded a Declaration of Protective Covenants and Restrictions for Elk Grove Community Planned Unit Development Phases 1, 2 and 3 (the "Covenants"), a Design Review Board Declaration for



Elk Grove Homeowners Association, Inc. ("Design Board Declaration") and the Elk Grove Community Design Review Guidelines (the "Design Guidelines") which operate and should be construed in conjunction with these By-Laws.

MEMBERSHIP

Every owner of property in the Elk Grove Community shall be a member of the Homeowners' Association (the "Association"). Membership shall be appurtenant to and may not be separate from the ownership of any lot subject to assessment. Each lot owner shall be responsible for advising the Association of his acquisition of ownership and his current address. Each owner shall be bound by these By-Laws and the duly passed Resolutions of the Association. The Association has been incorporated as a non-profit homeowners' association. There shall be two classes of members in the Association. Class A and Class B members, which are defined as follows:

The Association shall have two (2) classes of voting membership:

CLASS "A": Class A membership shall be all lot owners with the exception of Class B members named below. Class A members shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such a lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any lot.

CLASS "B": The Class B member shall be the Developer, who shall be entitled to five hundred and forty (540) votes. Class B membership shall cease and be converted to Class A membership when ninety percent (90%) of the original lots in Phases I, II and

III are sold to third parties. Thereafter, Developer shall become a Class A member and shall be entitled to one vote for each unsold platted lot.

OPERATIONS

MEETINGS

Written notice of any meeting called for the purpose of taking any action authorized hereunder shall be mailed to all members not less than 10 days nor more than 45 days in advance of the meeting. A general description of the items to be considered at such a meeting shall be contained in the notice. At such meeting called, the presence of members or of proxies entitled to cast fifty-percent (50%) of all the votes of Class A and Class B members combined shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half ($\frac{1}{2}$) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

DIRECTORS AND OFFICERS

Members of the Association shall annually elect three (3) Directors from its membership who shall be responsible for the overall operations of the Association as described herein. The Directors shall also have the power and responsibility of setting an annual budget. Such Directors shall be elected by a majority of the total votes of Class A and Class B members represented at any meeting in person or by proxy, at which a quorum is present. The Directors may be removed from time to time at any regularly called meeting of the Association by a vote of two thirds ($\frac{2}{3}$) of the total votes of Class A and Class B members represented at any meeting in person or by proxy at the meeting, provided that a

quorum is present, or immediately, upon termination of the Director's membership. The Directors are authorized to manage the business of the Association and are authorized to take such actions as shall be necessary and reasonable to carry out the functions of the Association. The Directors shall elect a president and secretary from among the Directors or the members to serve as the officers of the Association. The Directors may also elect such other officers as they deem necessary. The duties of these officers shall be established by the Board of Directors.

RULES AND REGULATIONS

The Homeowners' Association may adopt such additional rules and regulations as shall be reasonable and necessary to carry out its authority and duties under the terms of these Covenants provided that such additional rules and regulations are first adopted by a majority of the Board of Directors and then submitted to a meeting of the Homeowners' Association for a vote by delivering notice of the meeting together with a copy of the additional rules and regulations to the last known address of each lot owner at least thirty days before the meeting. Additional rules and regulations shall be adopted provided they receive a 60% vote of the total votes of all Class A and Class B members represented in person or by proxy at any meeting at which a quorum is present and all members have been notified that such rules or regulations will be up for discussion. Additional rules and regulations shall be effective 30 days after the same are executed and recorded by the Board of Directors of the Homeowners' Association with the Clerk and Recorder or Gallatin County, Montana, and mailed to each lot owner at their last known address.

ASSESSMENTS

The Directors shall have the authority to levy assessments on each lot and the owner thereof for the purposes of improvement, repair and maintenance of roads, common areas, snow removal, administration, accounting and legal fees. There shall be three types of assessments: "Annual Assessments", which shall be a pro-rata portion of anticipated expenses for the coming year based upon the budget prepared by the Directors; "Capital Improvement and Compliance Assessments" approved by a two-thirds (2/3) majority of the total votes of Class A and Class B members; and "Emergency Assessments" levied at the discretion of the Directors without submitting the assessment to a vote of the members, in order to rectify emergencies. Each type of assessment is described below. The total assessment shall be divided and paid equally by the owners of each lot, excluding lots owned by Developer, regardless of the size of the lot. Developer shall pay a flat assessment of \$5.00 per month for each unsold platted lot up to a maximum of \$5000 over the course of developing all residential lots in Phases 1, 2 and 3. This contribution by Developer shall commence six (6) months after the final plat is recorded for each phase.

The Owner of each lot, hereby covenants and agrees, by the acceptance of a deed therefore (regardless of whether it shall be so expressed in such deed) to all matters set forth in these By-Laws, the Covenants, the Design Guidelines and the Design Board Declaration, and to pay to the Association such assessments as the Association shall levy against each lot. No owner shall be entitled to a reduced assessment because such owner does not reside upon the property or does not use the roads or other amenities. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use

or abandonment of his lot or because he or she believes that these Covenants are not being properly enforced.

Assessments shall be due and payable within thirty (30) days of the date of the notice of such assessment. An assessment shall be a charge upon the land and shall be a continuing lien upon the property and lot upon which the assessments are made. Each assessment shall also be a personal obligation of the person who is the owner of the property at the time the assessment falls due.

Upon delivery of the notice of assessment to the owner, the assessment shall be a lien upon the owner's lot until paid. The Association may record a notice of the lien with the Clerk and Recorder of Gallatin County, Montana. In the event of non-payment within thirty (30) days after recording the notice of the lien, the Association may foreclose the lien in a manner set forth under Montana law for the foreclosure of liens against real property. The recording of the notice of lien shall be notice to all third parties of the assessment outstanding against the lot.

The Association may bring an action at law against the owners personally obligated to pay the same or may foreclose the lien against the property. In the event of an action to collect a past due assessment, the Association shall be entitled to recover any or all of the following costs, in addition to the amount of the past due assessment: (1) the costs of filing the lien including interest at the rate of the then prevailing prime rate of interest plus two percent (2%) from the date due; (2) all costs of the action; (3) reasonable attorneys fees incurred in preparation for filing the lien; (4) reasonable attorneys fees incurred in preparing and prosecuting the action.

The sale, transfer or encumbrance of any lot shall not affect the assessment lien or the personal liability of the owner except to the extent such lien is extinguished by Montana law. No sale, transfer or encumbrance shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof, provided that if the assessment lien has not been recorded with the Clerk and Recorder of Gallatin County, a good faith purchaser or encumbrancer without actual notice of the outstanding assessment shall take the property free of the lien.

ANNUAL ASSESSMENTS

The owner of each lot, excluding Developer, shall be assessed annually for a pro-rata portion of anticipated expenses for the coming year based upon the budget prepared by the Directors. After the initial Annual Assessment is set, the assessment against any lot shall not be increased more than 20 percent (20%) per year without the approval of two-thirds (2/3) of the total votes of Class A and Class B members represented at any meeting in person or by proxy, unless the increase is required to comply with a mandatory rule, regulation, or order of municipal, county, state or federal government.

The Annual Assessments provided for herein shall commence as to all lots on the date determined by the Board of Directors. The Board of Directors shall fix the amount of the annual assessment against each lot based upon a budget of the estimated expenses of the Association for each year. At least thirty (30) days in advance of the due date of each annual assessment, written notice of the annual assessment and the due date shall be mailed to every lot owner at their last known address. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a

certificate signed by the Directors of the Association, setting forth whether the assessment of a specified lot has been paid.

CAPITAL IMPROVEMENTS AND COMPLIANCE ASSESSMENTS

Capital Improvements. The Association may levy assessments for construction or reconstruction or unexpected repair or replacement of a capital improvement or equipment for use consistent with the purposes of the Association.

Compliance. The Association may levy assessments for purposes of defraying costs, including legal fees to enforce any protective covenant or authority or responsibility granted to the Association, including but not limited to all rules and regulations adopted by the Association or to pay for the necessary repair or maintenance of a property or residence which an owner has otherwise refused to repair or maintain.

EMERGENCY ASSESSMENTS

Emergency assessments shall be levied only to meet the costs and expenses precipitated by a condition which must be remedied promptly to ensure the safe and adequate discharge of the responsibilities of the Association. This may include items which would otherwise be considered as Capital Improvement and Compliance Assessments, if the Board determines (1) that the capital improvement or compliance action is absolutely necessary; and (2) that circumstances make it impractical to put the matter to a vote of the members due to timing or other constraints. Any improvements or other work required by state or federal agencies which must be completed in a timely fashion and cannot be included in the Annual Assessment for the following year shall also be considered Emergency Assessments.

FORECLOSURE AND EXECUTION

As further security for payment of assessments levied by the Association, the Association may, in addition to foreclosing upon the lien as described above, execute upon a judgement through all remedies provided at law and equity, including sale of the liened parcel in accordance with the laws of the State of Montana. At such a sale, the Association may bid upon and acquire such lot.

ACCUMULATION OF REMEDIES

All remedies provided under the Covenants, these By-Laws, and the Design Guidelines, as well as all of the rules and regulations of the Association and remedies and authority granted to individual owners to enforce covenants shall be cumulative and shall be in addition to, and not in substitution of, all other rights and remedies which the Association may have under law.

In addition, any owner or the Association, may bring an action for damages for injunctive relief to abate a nuisance, to restrain any threatened or prospective violation or continuing violation of any portion of the covenants affecting the Elk Grove Community. In any such action for the enforcement of covenants, the prevailing party shall be entitled to recover all costs, court costs, costs of discovery and reasonable attorney fees.

NOTICES

Each owner shall register with the Association, a current mailing address and shall promptly notify the Elk Grove Homeowners' Association of any change. All notices, demands, and other communication to any owner shall be sufficient for all purposes if personally served or if delivered by postage pre-paid United States Mail, Certified, return receipt requested, addressed to the owner at the last mailing address registered with the Association.



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SEVERABILITY

Invalidity or un-enforceability of any provision of this instrument determined by a Court shall not affect the validity or enforceability of any other provision.

NO WAIVER

Failure to enforce any provision, restriction, covenant or condition of these By-Laws, the Covenants or the Design Guidelines shall not create a waiver of any such provision, restriction, covenant or condition or of any other provision, restriction, covenant or condition.

IN WITNESS WHEREOF, this Declaration has been executed this 26 day of June, 2001.

ELK GROVE DEVELOPMENT COMPANY,
a Montana corporation,

BY: 

Its: President

STATE OF MONTANA)
:ss.
COUNTY OF GALLATIN)

On this 26th day of June, 2001, before me, the undersigned officer, personally appeared Jay Josephs, known to me to be the person described in and who executed the foregoing instrument as President of Elk Grove Development Company, a Montana corporation company, and acknowledged to me that he executed the same as such officer, in the name of and for and on behalf of Elk Grove Development Company, for the purposes herein contained.



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



Katina E. Kravik
Notary Public for the State of Montana
Residing at: Bozeman
My Commission Expires: 5/22/5

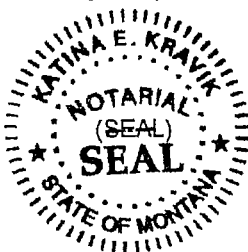
CONCINNITY, LLC,
A Montana Limited Liability Company,

By: [Signature] Justin M. Buchanan, member/manager
By: [Signature] Jay Josephs, member/manager
By: [Signature] Thomas J. Kallenbach, member/manager
By: [Signature] Cordell D. Pool, member/manager

STATE OF MONTANA)
) ss.
COUNTY OF GALLATIN)

On this 26th day of June, 2001, before me, the undersigned
officers, personally appeared Justin M. Buchanan, Jay Josephs, Thomas J.
Kallenbach and Cordell D. Pool, known to me to be the people described in and
who executed the foregoing instrument as members/managers of Concinnity,
LLC, a Montana limited liability company, and acknowledged to me that they
executed the same as such officers, in the name of and for and on behalf of
Concinnity, LLC, for the purposes herein contained.

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



Katina E. Kravik
Notary Public for the State of Montana
Residing at: Bozeman
My Commission Expires: 5/22/5



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Shelley Vance-Gallatin Co MT MISC

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**RESOLUTION OF BOARD OF DIRECTORS
ELK GROVE HOMEOWNERS ASSOCIATION**

Whereas an issue has arisen as to the applicability of the Bylaws of the Elk Grove Homeowners Association to the owners of Utility Lots, Commercial Lots, or other Non-Residential Lots, as those lots appear or may appear in the Final Plats of Elk Grove Community;

Whereas the Board of Directors wishes to resolve any issues as to the reach and effect of the Bylaws of the Elk Grove Homeowners Subdivision on owners of Utility Lots, Commercial Lots, or other Non-Residential Lots, as those lots appear or may appear in the Final Plats of Elk Grove Community;

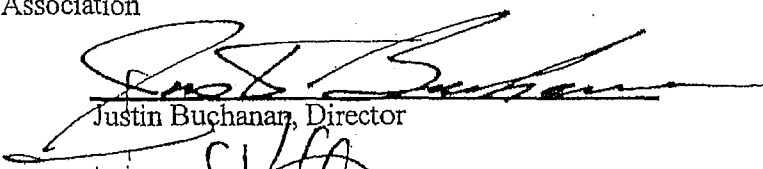
NOW THEREFORE, BE IT RESOLVED, that by a unanimous vote of the Board of Directors at a Special Meeting on August 6, 2003, the following amendment was authorized to the Bylaws of the Elk Grove Homeowners Association:

Commercial Lots, Utility Lots, and Other Non-Residential Lots

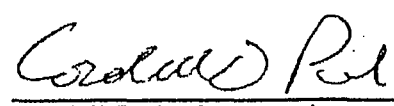
These bylaws shall bind each owner of any lot that is designated by the Final Plat for Phase 1, Phase 2, and Phase 3 as a commercial lot, a utility lot, or any other non-residential lot, except that no Rules and Regulations adopted hereunder shall apply to any such lots, nor shall the owners of any such lots be entitled to vote on the adoption, amendment, or repeal of any such Rule and Regulation.

Done this 6th day of August, 2003.

Board of Directors, Elk Grove Homeowner's
Association


Justin Buchanan, Director


Thomas J. Kallenbach, Director


Cordell D. Pool, Director

ALLIED LAND TITLE
108 W. BAIBCOCK BOZEMAN, MT 59715

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**FIRST AMENDMENT TO BYLAWS OF THE
ELK GROVE HOMEOWNERS ASSOCIATION, INC.**

The Bylaws of the Elk Grove Homeowners Association, Inc., as adopted on June 26th, 2001, and recorded as Document No. 2047228 in the records of Gallatin County Montana, are hereby amended to include the following additional paragraph:

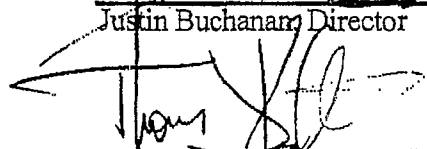
Commercial Lots, Utility Lots, and Other Non-Residential Lots

These bylaws shall bind each owner of any lot that is designated by the Final Plat for Phase 1, Phase 2, and Phase 3 as a commercial lot, a utility lot, or any other non-residential lot, except that no Rules and Regulations adopted hereunder shall apply to any such lots, nor shall the owners of any such lots be entitled to vote on the adoption, amendment, or repeal of any such Rule and Regulation.

This First Amendment to Bylaws of the Elk Grove Homeowners Association, Inc. is adopted this 6th day of August, 2003 by the unanimous voted of the Board of Directors.

Board of Directors, Elk Grove Homeowner's
Association


Justin Buchanan, Director


Thomas J. Kallenbach, Director


Cordell D. Pool, Director

STATE OF MONTANA)
:
County of Gallatin)

SS.

On this 6th day of August, 2003, before me, a Notary Public in and for the State of Montana, personally appeared Justin Buchanan, known to me to be the person whose name is subscribed to the within and foregoing instrument, and

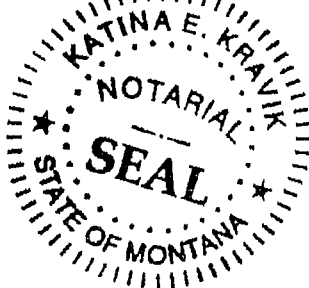
030958

ALLIED LAND TITLE
108 W. BABCOCK BOZEMAN, MT 59715



acknowledged to me that he executed the same as Director of the Elk Grove Homeowners Association, Inc.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal as of the day and year first above-written.

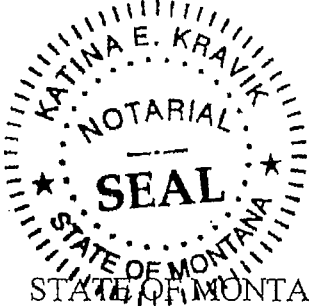


Katina E. Kravik
Notary Public for the State of Montana
Residing at Bozeman, MT
My Commission expires 05-22-2005

STATE OF MONTANA)
: SS.
County of Gallatin)

On this 10th day of August, 2003, before me, a Notary Public in and for the State of Montana, personally appeared Thomas J. Kallenbach, known to me to be the person whose name is subscribed to the within and foregoing instrument, and acknowledged to me that he executed the same as Director of the Elk Grove Homeowners Association, Inc.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal as of the day and year first above-written.



Katina E. Kravik
Notary Public for the State of Montana
Residing at Bozeman, MT
My Commission expires 05-22-2005

STATE OF MONTANA)
: SS.
County of Gallatin)

On this 10th day of August, 2003, before me, a Notary Public in and for the State of Montana, personally appeared Cordell D. Pool, known to me to be the person whose name is subscribed to the within and foregoing instrument, and acknowledged to me that he executed the same as Director of the Elk Grove Homeowners Association, Inc.

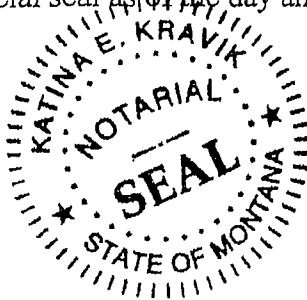


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Shelley Vance-Gallatin Co MT MISC 24.00

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal as of the day and year first above-written.



Katsia E. Kravik

Notary Public for the State of Montana

Residing at Bozeman, MT

My Commission expires 05-22-2005



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Shelley Vance-Gallatin Co MT MISC

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Misc 0425

ALLIED LAND TITLE, INC.
106 East Babcock, Ste C, Bozeman, MT 59715



e l k g r o v e

**SECOND AMENDED DECLARATION OF PROTECTIVE COVENANTS AND
RESTRICTIONS FOR ELK GROVE
PLANNED UNIT DEVELOPMENT PHASES 1, 2, AND 3**

Elk Grove Development Company, hereinafter referred to as the "Developer" and the Elk Grove Community Homeowners Association, hereby adopt the following Amended Covenants for Phases 1, 2 and 3 of Elk Grove Community, which will be affected by these Covenants. These Covenants are intended to supersede all prior recorded Covenants for the property to the extent conflicts between previously recorded Covenants and these Covenants exist.

This Declaration provides for individual and community decision making. Individual decisions are limited primarily to residential lots, subject to Elk Grove Community Design Review Guidelines regarding architectural design and review of improvements, and subject further to the By-Laws providing for management, administration, and regulation of Elk Grove Planned Unit Development Phases 1, 2, and 3.

ABBREVIATIONS

The following abbreviations are used in this document:

- 1) Elk Grove Planned Unit Development, Phases 1, 2, and 3; a subdivision in Gallatin County, MT, is referred to as: Elk Grove Community.
- 2) Elk Grove Community Design Review Board is referred to as: Design Board. The Design Review Board may delegate a portion of its authority to Design Review Subcommittees, such as landscaping or other committees. Each committee so formed shall have the same authority as the Design Board, but shall be subject to review and oversight by the Design Board. Reference to the Design Board in these Covenants and Restrictions shall also automatically refer to any committees formed by the Design Board unless stated otherwise.
- 3) Elk Grove Community Design Review Guidelines is referred to as: Design Guidelines.
- 4) Park Area Management Plan is referred to as: P.A.M.P.
- 5) Elk Grove Development Co. is referred to as Declarant.

PURPOSE

This property is a unique setting which has a high natural and scenic value. These Covenants and Restrictions are adopted to preserve and maintain the recreation and scenic values of the property for the benefit of owners of individual residential lots as well as the surrounding communities.



PROTECTIVE COVENANTS

It is the purpose of these Protective Covenants and Restrictions to preserve and protect the beautiful environment, the natural beauty, view, and surroundings of Elk Grove Community, to define how the park areas are to be used, managed, and maintained through the P.A.M.P., (which is attached hereto and incorporated herein by this reference), and to preserve and protect the interests and investment of the individual owners and Elk Grove Development Company. In addition, these Protective Covenants and Restrictions are designed to conserve the natural habitat and growth of plant life, animal life, surface and underground water.

These Protective Covenants and Restrictions shall attach to and run with the land and shall constitute an equitable servitude upon the real property and every part of it, including all titles, interest and estates as may be held, conveyed, owned, claimed, devised, encumbered, used, occupied and improved. These Protective Covenants and Restrictions are declared for the benefit of the entire property and every part of it and for the benefit of each owner. They shall constitute benefits and burdens to declarants and to all persons or entities hereafter acquiring any interest in the property.

These covenants provide for the general restrictions while the Design Guidelines provide appropriate details in order to ensure compliance with these Covenants. The Design Guidelines must be carefully consulted and followed to ensure the requirements of these Covenants are met.

COMBINATION OF LOTS

Two contiguous lots may be combined to constitute one lot, and that lot will be treated as one lot. Three contiguous lots may be combined to constitute two lots, and those lots will be



treated as two lots. The Design Board and appropriate governmental authorities must approve any change in lot configuration. The Design Board shall carefully consider the affect such change may have on views of adjoining lots. No lot may be further subdivided.

RESIDENTIAL USE

Only one single-family dwelling unit shall be allowed per residential lot. All residential lots will be used solely for private single-family residential uses. Only single-family homes with attached or non attached garages and an accessory building will be permitted. ~~All garages will be limited to two garage doors~~

No commercial use may be made of any residential lot except that the owner or tenant may conduct home occupations or hobby-businesses out of a residence if the following conditions are met:

- a. the business use shall be clearly incidental and secondary to the residential use of the lot;
- b. the business use shall be entirely inside a dwelling or garage including any storage of materials or equipment;
- c. the business use shall not occupy more than 400 square feet, total, of the residence and garage combined;
- d. no non-resident employee shall be allowed, nor shall excessive traffic, noise, or pollution generation be permitted;
- e. the business use does not constitute a nuisance to neighboring property owners.

For guidance, the following uses are examples of home occupations: the making of clothing; child care providers that do not requiring licensing because of their size, the giving of music lessons; a sole practitioner professional practice, service or product providers who maintain a telephone and office within the residence but the services and products are provided and sold off the premises; the pursuit of artistic endeavors such as making of pottery, ceramics,

paintings or bronzes, and the like, provided that the products are marketed and sold off the premises, and no kilns or foundries are used on the premises. No signs or structures advertising the occupation are allowed.

TOPOGRAPHY AND NATURAL FEATURES

No prospecting, mining, quarrying, tunneling, excavating, or drilling for any substance on or within the earth, including, but not limited to, water, oil, gas, hydrocarbons, minerals, gravels, sand, rock, or earth shall be permitted.

RESIDENTIAL LOT PREPARATION MAINTENANCE AND LANDSCAPING

Landscaping will be required to enhance the value of the property and the aesthetics of the lot. Each owner shall submit a complete and comprehensive landscape, grading, and irrigation plan as required by the Design Guidelines. Landscaping shall be done only as approved by the Design Board. All residential lots shall install underground sprinkler systems timed to water at the appropriate times in the appropriate amounts as determined by the water utility. All residential lot owners shall plant trees along street frontages in accordance with the Design Guidelines. Additional landscaping requirements are described in the Design Guidelines. A landscape plan shall be submitted to the Design Board within two (2) months of occupancy of a new residential structure or within four (4) months of completion of a new residential structure, whichever comes first. Upon Design Board approval of the landscape plan, revegetation must be completed within two (2) months or within such period as may be reasonably necessary as dictated by weather conditions and all landscaping shall be completed in a timely fashion, and shall generally be completed within 6 (six) months of Design Board approval of the landscape plan. Owners of both unimproved and improved residential lots shall

control all noxious weeds and shall destroy them according to county standards. Trees and landscaping in park area shall not be damaged except as mandated by the Design Board

SIZE AND HEIGHT

Each residence shall contain the minimum interior square footage as described in the Design Guidelines exclusive of open or screened-in porches, decks, and garages. The maximum height and minimum area of building structures on each residential lot is specified and controlled in the Design Guidelines to protect the aesthetics, view sheds, and property values within Elk Grove Community. The Design Board shall determine the acceptability of the height and size of building structures in accordance with the Design Guidelines.

GRADING

No disturbance or change in existing character shall be undertaken except by approval of the Design Board. Grading for building or other improvements shall be confined to a minimum so that improvements shall be tailored to the lot rather than conforming the lot to the improvements. All grading shall be contoured into existing ground lines to avoid unnatural sharp edges. Residential lot development shall accommodate proper drainage using natural topography of the home lot as approved by the Design Board. Drainage and other topographic transitions shall blend with the natural topography of the residential lot. No unnatural angles or sharp lines shall be permitted. Grading, filling or altering is prohibited within any drainage easement.

SETBACK

Unless otherwise specified in the Design Guidelines or approved through a variance by the Design Board, building structures shall be setback from lot lines as follows. Building

structures shall be no less than thirty (30) feet from the front lot line. The main entry feature (which shall not be the garage door) must be prominently placed on the elevation facing the street. Generally, garage doors shall be placed further from the front lot line than the residential structure. Building structures shall be no less than ten (10) feet from the side lot line and no less than forty (40) feet from the rear lot line.

DESIGN AND LIMITATIONS

The design of all improvements and changes to existing natural topography shall be subject to review and approval by the Design Board before work is commenced. All homes, structures, improvements, and changes shall comply with the Design Guidelines and these Covenants.

The purpose of this section and the Design Guidelines is to ensure the building design and landscaping plan for each lot maintains or exceeds the general level of quality, appearance, and marketability as is commensurate with the quality of lots and homes adjacent to it and the overall high quality of the Elk Grove Community. Construction or alteration of any improvement or any work affecting the external appearance of any improvements shall only be initiated after a Permit To Proceed has been issued by the Design Board for said construction or alteration.

Mobile homes, trailers, prefabricated homes and modular homes shall not be permitted, nor can any buildings be moved onto the property. All owners are urged to design buildings that reflect the scenic values in keeping with the spirit of Montana and Elk Grove Community. It is generally the intention of these covenants that duplicate homes shall not be constructed next to or in close proximity as determined by the Design Board

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Material composition and quality, color and shape are important in the construction of improvements. All improvements shall be constructed of highest quality materials. The exterior colors used shall be earth tones and should harmonize and compliment the surrounding site and neighboring buildings. Trim may be more colorful and contrasting in order to add visual interest. Roof design is a major element in the building and therefore will be emphasized by the Design Board. Television and radio antennas, as well as satellite dishes and other receiving or transmitting devices, must be screened from view and subject to approval of the Design Board. Satellite dishes shall be no larger than two (2) feet in diameter, and further, should be as small as technologically available.

FIRE PRECAUTIONS

The purpose of these provisions is to minimize the likelihood and effect of an uncontrolled fire within the property.

Each owner, with respect to such owner's lot, shall cause grass to be trimmed pursuant to the Homeowners' Association directives in order to reduce the danger of fire within the property and shall otherwise maintain the improvements and the general condition of the site to minimize fire hazards. All structures shall be designed so that the primary source of heat is natural gas or electricity. The use of wood, wood by-products or coal burning appliances is prohibited.

Each Owner shall:

(A) Not allow any burning barrels or pits of any sort. Fireworks are not permitted on any portion of Elk Grove Community unless done with prior approval of the Homeowners' Association and the local fire district.

- (B) Install smoke detectors in each residence.
- (C) Install address numbers that are clearly visible outside the residence.
- (D) Keep all roads and driveways free of obstruction to ensure access by emergency vehicles. In the event of a social function at an owner's residence, the owner shall require parking in the driveway or in the designated parking areas in order to provide adequate widths for access by emergency vehicles.

OUTBUILDINGS AND TEMPORARY STRUCTURES

No outbuildings shall be erected or maintained upon a residential lot before the start of construction of a residence and no trailer, mobile home, basement, tent, shack, garage or other outbuildings shall be erected upon any part of the lot for use as a temporary or permanent residence. Use and location of any construction or temporary structure shall be subject to approval by the Design Board. Temporary structures shall be removed within thirty (30) days after completion of construction.

EXTERIOR IMPROVEMENTS AND EQUIPMENT

Each owner of a residential lot shall install a five (5) foot wide sidewalk along all lot lines that have curb and gutter within one (1) year from the date of purchase from Elk Grove Development Company. Application to the Design Board for approval of pools, spas, or hot tubs shall contain adequate details to establish sufficient abatement of equipment noise. If deep excavations are required for these improvements an engineering assessment may be required.

EXTERIOR LIGHTS

Exterior lighting shall be installed and operated only as approved in advance by the Design Board as part of the overall plan for the residential lot. One dusk-to-dawn freestanding



streetlight shall be located at the inside corner of the driveway and sidewalk. Mercury vapor lamps shall not be permitted. All other exterior lights shall be approved by the Design Board in accordance with the Design Guidelines

CONSTRUCTION SCHEDULES

Any owner who wishes to construct improvements shall submit a completed application as defined in the Design Guidelines to the Design Board for approval. Any and all construction, alterations or improvements shall be subject to advance approval by the Design Board and shall be diligently worked on to completion and shall be completed within twelve (12) months following commencement. The Design Board may limit construction activity to certain hours and days. Once an owner secures a Permit To Proceed, construction must commence within six (6) months of approval of the plans. No aspect of construction shall at any time impede, obstruct or interfere with pedestrian or vehicular traffic. No construction materials, or construction equipment, trailers, or vehicles shall be placed or stored upon a residential lot more than thirty days (30) before commencement of construction or more than thirty (30) days following completion of construction as determined by the Design Board.

Each construction site shall have a chemical toilet placed in a location as inconspicuous as practical. During any construction, the site shall be cleaned up daily and shall be maintained free of trash. The owner shall be responsible to clean up wind blown debris both on and off the premises. No construction materials may be stored on any portion of a street at any time. The owner shall be responsible for compliance with construction schedules and guidelines, and for compliance with all terms and conditions established by the Design Board.

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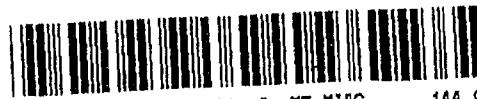
PARKING SPACE

Each home lot shall have a concrete driveway a minimum of eighteen (18) feet wide leading to the garage. Driveways shall provide a minimum of four (4) off street parking spaces exclusive of sidewalk. The garage shall be the primary parking area for the lot owners with overflow parking utilizing the driveway. Parked cars shall not obstruct pedestrian traffic. Additional parking is provided for guests of residences and may be used by non-residents on a temporary basis not to exceed three (3) days. Guest parking shall be allowed only on one side of Annie Glade and Morgan Creek and only upon the side of the street where houses have even numbered addresses. Guest parking for all other blocks is provided for at the ends of the looped cul-de-sacs and at specified locations within the boulevard. No on-street parking, except as described for Block A above, is allowed.

Recreational vehicles, boats, trailers, snowmobiles, and other rolling equipment other than automobiles and pick ups shall not be stored in the open view on any residential lot, driveway or road. ~~No residential lot will be permitted to have in excess of two garage doors.~~

No junk vehicles shall be parked on the street, parking area, or retained or parked on any lot. A junk vehicle is one that cannot be normally and frequently driven under its own power. All implements must be stored in a garage or other such structure and not be left in open view.

Vehicles parked in violation of these covenants may be notified by means of a verbal notice to the vehicle owner, or by notice from the Home Owner's Association placed under the windshield wiper stating that the vehicle is in violation of these covenants and requesting immediate removal of the vehicle. If the violation is not corrected within 24 hours of notification,

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the Homeowners' Association may cause the vehicle to be towed and impounded at the expense of the vehicle's owner. The Homeowners' Association may cause a vehicle to be towed immediately without notification if the Homeowners' Association determines the vehicle impedes emergency vehicles or, in any way, presents a threat to health and safety.

FENCES

A primary goal of Elk Grove is to create a community atmosphere. For this reason, tall perimeter fencing will not be allowed. Rear and side yard fencing is allowed along the lot lines and cannot extend closer to the front yard than the closest corners of the building structures. Rear and side yard fencing shall be four (4) feet in height and shall be constructed to the exact specifications in Diagram 2, Appendix 1 of the Design Guidelines. A privacy fence located directly behind the residential building or structure, not to exceed seven (7) feet in height, may be allowed by the Design Board. Acceptable location and design criteria are provided in the Design Guidelines. Entryway gates to residential lots are not permitted.

Owners choosing to construct a perimeter fence shall construct the fence immediately inside said owner's lot lines. All fences shall be maintained in good order and repair. All perimeter fences shall be stained or preserved in a color approved by the Design Board at regular intervals to convey a new or nearly new appearance. In the event that no other person or entity maintains such fences, they shall be maintained and repaired by the owner.

PERMIT TO PROCEED AND IMPROVEMENT INSPECTION

No building, structure, road, fence or improvement of any kind shall be erected, placed, altered, added to, reconstructed or permitted to remain on any residential lot, and no construction activities or landscaping shall be commenced until a Permit To Proceed has been

issued by the Design Board, and an appropriate bond has been posted, if required. Upon completion of construction, the Design Board, to determine compliance with these Protective Covenants and Restrictions, the Design Guidelines, and the Permit To Proceed, will inspect the improvements. Any improvement found to be in noncompliance shall be remedied in accordance with the Design Guidelines.

COMMON AREAS

Common areas of Elk Grove Community consist of those areas described as Park Area in the P.A.M.P. The Homeowners' Association shall own and/or manage all Park Areas in accordance with P.A.M.P. Maintenance, repairs, and replacements of Park Area grounds and improvements shall be the expense of the Homeowners' Association. However, if any portion of the Park Area is damaged by a negligent or tortuous act of any lot owner, members of his or her family, guest, or employee, then such owner shall be responsible and liable for all such damage.

INGRESS AND EGRESS

An Easement for general ingress and egress to each residential lot and to all common areas for the general use of all owners and their guests shall exist over all common areas, roads, and trails within Elk Grove Community.

ROAD AND UTILITIES ACCESS TO ELK GROVE RESIDENTIAL

Primary access to Elk Grove Community is from US Highway 191 via Elk Grove Lane and secondary access is provided to Blackwood Road. Use of Blackwood Road is intended to provide access to US Highway 191. It shall be a violation of these covenants to use Blackwood Road as a means of traveling west of Elk Grove Community. This portion of the covenants may



only be changed if substantial upgrades are made to Blackwood Road and the Gallatin County Commission allows the change.

The Homeowners' Association shall maintain the Elk Grove Community roadways within their dimensions.

UTILITY EASEMENT

Utility easements for electricity, gas, sewer, water, stormwater, communications, telephone, television, cable communications and other utility equipment are designated on the Elk Grove Planned Unit Development, Phases 1, 2, and 3 Plats. All owners shall have the right to enter upon and excavate in such easements upon the approval of the Design Board. Easements for ingress and egress and for utilities shall not be moved, deleted or restricted without the written approval of all the lot owners affected. Utility companies and owners must restore disturbed land to a condition, as close as possible, to the natural condition of the land before work commenced.

USES

All the area of Elk Grove Community shall be controlled by these covenants that run with all the land for the benefit and use of owners. No horses or motorized vehicles of any kind shall be permitted in the common areas or easements. Lawn maintenance and landscaping equipment may be allowed with the permission of the Homeowners' Association.

NON-DEDICATION TO PUBLIC USE

Nothing contained in these Covenants and Restrictions shall be construed or be deemed to constitute a dedication, express or implied, of any part of the property or the common areas to or for any public use or purpose whatsoever.

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MINERAL AND WATER RIGHTS

In order to protect the scenic, recreational, and wildlife values of the area, no mineral or water rights owned by Concinnity, L.L.C. will be assigned or conveyed to individual lot owners. Concinnity L.L.C. reserves the right to convey the water rights and any mineral rights to the Homeowners' Association.

PRESERVATION OF WATER RESOURCES

The owners of all residential lots, their guests or employees shall at all times conduct their use and activities in a manner that will preserve the integrity of the wetlands, springs, ponds, streams, irrigation water and creeks within the premises. The degradation or pollution of water quality will not be permitted. All applicable state, and local guidelines and standards must be followed.

WILDLIFE HABITAT, HUNTING AND FISHING

In keeping with the purpose of these protective covenants, declarants reserve the right to utilize and manage all common areas for the creation of and enhancement of habitat for wildlife and native plants. The taking of any and all wildlife species by any means within any common area or easements is prohibited except for the catching and keeping of fish by lawful means, and the control of specific animals known to be causing unacceptable damage to property or persons. No hunting or shooting of firearms shall be allowed within boundaries of Elk Grove Community. No feeding of wildlife other than birds shall be allowed. No non-native species of animal shall be introduced to the lands or waters of the common areas or easements.

UTILITIES

Elk Grove Development Company shall cause the installation and maintenance of electric power, gas, telephone, water, and sewer utility service to the property line or utility easement along road frontage. Owners shall bear all responsibility and costs from such location to building structures.

All utilities of every nature shall be installed and maintained underground. Piping and wiring shall be concealed.

Each owner shall be responsible for utility installation and maintenance in accordance to state and local regulations. Connection to sewer and water shall not be completed without approval of the operator of the water distribution and treatment facilities for Elk Grove Community.

ANIMALS

LIMITATIONS

Only family pets shall be permitted. No more than two dogs and two cats may be maintained on any lot. Animals shall at all times be restrained or leashed and subject to the provisions of the P.A.M.P. No swine, sheep, cattle, horses, goats, llamas or other similar livestock shall be allowed. No animals shall be permitted which shall constitute a nuisance as determined by the Homeowners' Association in its sole discretion. All animals shall be strictly controlled by their owners to prevent any interference with wildlife, pets, residents, guests, the public or property.

The Homeowners' Association may also limit the number of domestic animals on a lot or elsewhere and may withdraw permission for any domestic animal to remain on the premises



from any owner who, after due notice, violates the restrictions of this paragraph or who's animal is, or has become, a nuisance to wildlife, property, other owners, or invitees.

MAINTENANCE

Owners shall maintain residential lots and improvements in good repair and appearance at all times. All landscaping improvements and property shall be maintained in good, clean, safe, sound, attractive, thriving and sightly condition and in good repair at all times.

NOXIOUS OFFENSIVE OR HAZARDOUS ACTIVITIES

No noxious, offensive, or hazardous activities shall be permitted upon any portion of the property nor shall anything be done on or placed upon any portion of the property that is or may become a nuisance to others as determined by the Homeowners' Association. No light shall be produced upon any residential lot or other portion of the property that shall be unreasonably bright or cause unreasonable glare. No sound, including construction noise outside of times allowed by the Design Board, shall be produced on any residential lot or other portion of a property which is unreasonably loud or annoying, including but not limited to speakers, horns, whistles or bells.

SIGNS

No signs, billboards, posters, displays, advertisements or similar structures shall be permitted other than those required by government authorities. Real estate signs shall be allowed only on the property for sale. Temporary construction signs shall be allowed on the same lot as the construction activity provided that they are removed upon substantial completion of the home. One address and family name sign attached to the principal residence

being no more than two (2) square feet shall be allowed. The Design Board, at its discretion, may allow signage not explicitly provided for in these covenants if so requested in writing.

GALLATIN COUNTY REQUIRED COVENANTS

The following covenants are required by Gallatin County and shall not be amended or revoked without the mutual consent of the owners, in accordance with the amendment procedures in the covenants, and the County Commission:

- (a) The control of noxious weeds by the Homeowners' Association on those areas for which the Homeowners' Association is responsible and the control of noxious weeds by individual owners on their respective lots shall be as set forth and specified under the Montana Noxious Weed Control Act (MCA 7-22-2101 through 7-22-2153) and the rules and regulations of the Gallatin County Weed Control District.
- (b) The landowner shall be responsible for the control of state and county declared noxious weeds on his or her lot. Both unimproved and improved lots shall be managed for noxious weeds. In the event a landowner does not control the noxious weeds after ten (10) days notice from the Homeowners' Association, the Homeowners' Association may cause the noxious weeds to be controlled. The cost and expense associated with such weed management shall be assessed to the lot and such assessment may become a lien if not paid within thirty (30) days of the mailing of such assessment.
- (c) Individual lot accesses from the County public roads shall be built to the standards of Section 7.G.2 of the Subdivision Regulations.

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- (d) The fire district shall receive a stamped set of engineered sprinkler system plans for review and approval prior to construction of any commercial facilities. Inspections shall be scheduled, with 48-hour notice, during construction and after completion.
 - (e) Lot owners and residents of the subdivision are informed that nearby uses may be agricultural. Lot owners accept and are aware that standard agricultural and farming practices can result in smoke, dust, animal odors, flies and machinery noise. Standard agricultural practices feature the use of heavy equipment, burning, chemical sprays and the use of machinery early in the morning and sometimes late into the evening.
 - (f) All fences bordering agricultural lands shall be maintained by the Homeowners' Association in accordance with State Law.
 - (g) Use of wood burning stoves is prohibited within Elk Grove Planned Unit Development.
 - (h) Lot owners may not remove water or cause to be removed water from irrigation ditches or creeks without deeded water rights. Before any maintenance and/or improvements are performed on any ditches the owner of the water right must give written permission for work to be done.
 - (i) Lot owners must develop and maintain all park lands and trails within the subdivision in accordance with the approved plan at the time of subdivision approval.
-



- (j) All roads within Elk Grove Community shall be maintained by the Homeowners' Association.
- (k) No lot may be further subdivided.
- (l) The Homeowners' Association shall be responsible for all parking enforcement with provisions contained in the covenants.
- (m) Violet Road shall be maintained by the Homeowners' Association from the point of access of Elk Grove Lane west to U.S. Highway 191.

ENFORCEMENT

The provisions of these protective covenants may be enforced by individual owners, Elk Grove Community Homeowners' Association, Design Board or Elk Grove Development Company.

RIGHT OF ACCESS

A right of access shall be reserved and be immediate for making of emergency repairs in improvements or lots on the property. These repairs may be needed to prevent property damage, personal injury, or continued property damage.

ACTION

In the event of violation or threatened violation of any of these covenants, or the design regulations or additional covenants and regulations adopted pursuant to the terms of these covenants, or in the event of violation of the By-Laws of the Association, or of any approvals, directives, or other orders of the Homeowners' Association or Design Board, legal proceedings may be brought by the Homeowners' Association or the Design Board in a Court of Law or equity for injunctive relief and damages. In addition, an owner, the Design Board or Elk Grove



Development Company may enforce these covenants by serving notice in writing on the person or entity violating these covenants which notice shall specify the offense, identify the location and demand compliance with the terms and conditions of these covenants. Such notice may be personally served, or may be sent by mail to the last known address of the party or entity.

The Homeowners' Association or Design Board may, in addition to the other enforcement powers enumerated in these covenants, enter the property of an owner for the purposes of correcting any condition, action, or inaction which constitutes a violation of these covenants, the Design Review Guidelines or the By-Laws. Any expenses incurred in the course of correcting a violation may be billed to the owner. Bills remaining unpaid after thirty (30) days may be considered an unpaid assessment and converted to a lien as provided in the By-Laws.

No owner, nor the Design Board, nor Elk Grove Development Company shall be liable to any person or entity for any entry, self help or abatement of a violation or threatened violation of these covenants. All owners, invitees and guests shall be deemed to have waived any and all rights or claims for damages for any loss or injury resulting from such action except for intentionally wrongful acts.

Enforcement of these covenants shall be by proceedings either at law or in equity against any person or persons violation or attempting to violate these Covenants; and the legal proceedings may be either to enjoin or restrain violation of the Covenants or to recover damages or both. In the event of action to enforce these Covenants, the prevailing party shall be entitled to costs and attorney's fees.

The failure by the Grantor or its assigns or the association of any subsequent lot owner to enforce any covenants or restrictions contained herein shall in no event be deemed a waiver

or in any way prejudice the right to enforce that Covenant at any time against any person breaking the Covenant or any other Covenant breached thereafter or to collect damages for any subsequent breach of Covenants.

Invalidation of any one of these Covenants by judgment or Court order shall in no way affect any of the other Covenants or provisions, all of which shall remain in full force and effect.

All of the above described real property and lots shall be subject to the restrictions and Covenants set forth herein whether or not there is a reference to the same in a deed or conveyance.

A breach of any of the foregoing restrictions or Covenants shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon any lot or portion of the real property or any improvements thereon. However, these restrictions and Covenants shall be binding upon and inure to the benefit of any subsequent owner who acquired by foreclosure, trustee sale or otherwise, title to Property with Elk Grove Community.

PERPETUITY

These covenants shall continue in full force and effect and shall run with land as legal and equitable servitude in perpetuity unless amended as set forth herein.

AMENDMENT

These Covenants shall remain in effect until amended or terminated. The Covenants, or any portion thereof, may be amended, terminated or supplemented at any time by the affirmative vote of 2/3 of the total votes of Class A and Class B members of the Elk Grove Community Homeowners' Association.



Any covenant which is included herein as a condition of preliminary plat approval and required by the County Commission shall not be amended or revoked without the mutual consent of the owners, in accordance with the amendment procedures in the covenants, and the County Commission.

SEVERABILITY

Captions and paragraph headings are designated herein as a matter of convenience. A determination of invalidity of any portion of these covenants shall not in any manner affect the other portions or provisions.

DESIGN BOARD

The Design Board shall be constituted, shall conduct its business, and shall have the authority and responsibility as provided herein above and in the attached document, titled DESIGN REVIEW BOARD DECLARATION FOR ELK GROVE COMMUNITY. The Design Board may, as a condition of issuance of permits to proceed, approvals or variances for any application filed by a lot owner, require a cash bond of up to \$2,000.00 to secure the lot owner's performance of the terms and conditions of the approval. The bond may also be used by the Design Board to pay any attorney's fees or other costs incurred by the Board or Homeowners' Association in the course of enforcing the terms of the permit to proceed. Any bond retained by the Board shall be released to the lot owner within thirty (30) days of satisfactory completion of the work for which the bond was required, and a permit issued.

ELK GROVE COMMUNITY HOMEOWNERS' ASSOCIATION

The Elk Grove Community Homeowners' Association shall be constituted, shall conduct its business, and shall have the authority and responsibility as provided herein and in the



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attached document, titled BY-LAWS OF THE ELK GROVE COMMUNITY HOMEOWNERS' ASSOCIATION.

IN WITNESS WHEREOF, this instrument has been executed this 23rd day of July, 2004.

ELK GROVE COMMUNITY HOMEOWNERS
ASSOCIATION, INC., a Montana
Non-Profit Corporation,

BY: [Signature]

Director

Its:

STATE OF MONTANA)
COUNTY OF GALLATIN)
:ss.

On this 23rd day of July, 2004, before me, the undersigned officer, personally appeared Justin Buchanan, known to me to be the person described in and who executed the foregoing instrument as director of Elk Grove Community Homeowners Association, Inc., a Montana Non-Profit Corporation, and acknowledged to me that he executed the same as such officer, in the name of and for and on behalf of Elk Grove Community Homeowners Association, Inc., for the purposes herein contained.

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



[Signature]
Notary Public for the State of Montana
Print Name: Maggie Jo Luke
Residing at: Belgrade
My Commission Expires: 4.21.2008



**FIRST AMENDED BY-LAWS OF THE
ELK GROVE HOMEOWNERS ASSOCIATION, INC.**

Elk Grove Development Company, hereinafter referred to as the "Developer" and the Elk Grove Community Homeowners Association, hereby adopt the following By-Laws of the Elk Grove Homeowners Association for Phases 1, 2 and 3 of Elk Grove Community, which will be affected by these By-Laws. The Declaration of Protective Covenants and Restrictions for Elk Grove Community Planned Unit Development Phases 1, 2 and 3 (the "Covenants") and subsequent amendments thereto, a Design Review Board Declaration for Elk Grove Homeowners Association, Inc. ("Design Board Declaration") and subsequent amendments thereto, and the Elk Grove Community Design Review Guidelines (the "Design Guidelines") and subsequent amendments thereto, should be construed in conjunction with these By-Laws.

MEMBERSHIP

Every owner of property in the Elk Grove Community shall be a member of the Homeowners' Association (the "Association"). Membership shall be appurtenant to and may not be separate from the ownership of any lot subject to assessment. Each lot owner shall be responsible for advising the Association of his acquisition of ownership and his current address. Each owner shall be bound by these By-Laws and the duly passed Resolutions of the Association. The Association has been incorporated as a non-profit homeowners' association. There shall be two classes of members in the Association. Class A and Class B members, which are defined as follows:

The Association shall have two (2) classes of voting membership:

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CLASS "A": Class A membership shall be all lot owners with the exception of Class B members named below. Class A members shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such a lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any lot.

CLASS "B": The Class B member shall be the Developer, who shall be entitled to five hundred and forty (540) votes. Class B membership shall cease and be converted to Class A membership when ninety percent (90%) of the original lots in Phases I, II and III are sold to third parties. Thereafter, Developer shall become a Class A member and shall be entitled to one vote for each unsold platted lot.

OPERATIONS

MEETINGS

Written notice of any meeting called for the purpose of taking any action authorized hereunder shall be mailed to all members not less than 10 days nor more than 45 days in advance of the meeting. A general description of the items to be considered at such a meeting shall be contained in the notice. At such meeting called, the presence of members or of proxies entitled to cast fifty-percent (50%) of all the votes of Class A and Class B members combined shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.



DIRECTORS AND OFFICERS

Members of the Association shall annually elect three (3) Directors from its membership who shall be responsible for the overall operations of the Association as described herein. The Directors shall also have the power and responsibility of setting an annual budget. Such Directors shall be elected by a majority of the total votes of Class A and Class B members represented at any meeting in person or by proxy, at which a quorum is present. The Directors may be removed from time to time at any regularly called meeting of the Association by a vote of two thirds (2/3) of the total votes of Class A and Class B members represented at any meeting in person or by proxy at the meeting, provided that a quorum is present, or immediately, upon termination of the Director's membership. The Directors are authorized to manage the business of the Association and are authorized to take such actions as shall be necessary and reasonable to carry out the functions of the Association. The Directors shall elect a president and secretary from among the Directors or the members to serve as the officers of the Association. The Directors may also elect such other officers as they deem necessary. The duties of these officers shall be established by the Board of Directors.

PROXIES

A member in good standing may, by written proxy, assign his or her right to vote to another member in good standing. To be valid, each proxy must be in writing and must contain the name of the person assigning the proxy, the lot number and address of the assignor, the name, lot number, and address of the assignee, the signature of the assignor, and the date of the creation of the proxy. A proxy may be general, or specific, but no proxy shall be valid more than 30 days beyond its date of creation. Questions regarding the

validity or scope of a proxy shall be determined by a decision of the Board, which shall be final.

RULES AND REGULATIONS

The Homeowners' Association may adopt such additional rules and regulations as shall be reasonable and necessary to carry out its authority and duties under the terms of these Covenants provided that such additional rules and regulations are first adopted by a majority of the Board of Directors and then submitted to a meeting of the Homeowners' Association for a vote by delivering notice of the meeting together with a copy of the additional rules and regulations to the last known address of each lot owner at least thirty days before the meeting. Additional rules and regulations shall be adopted provided they receive a 60% vote of the total votes of all Class A and Class B members represented in person or by proxy at any meeting at which a quorum is present and all members have been notified that such rules or regulations will be up for discussion. Additional rules and regulations shall be effective 30 days after the same are executed and recorded by the Board of Directors of the Homeowners' Association with the Clerk and Recorder of Gallatin County, Montana, and mailed to each lot owner at their last known address.

VOTING BY BALLOT

Voting at membership meetings may also be made by written mail in ballot received at the address of the Association on or before the date specified in the ballot. Each ballot, which shall be provided by the Association to its members, shall state the name, lot number, and address of the voting member and shall contain a brief description of the item to be voted upon.



ASSESSMENTS

The Directors shall have the authority to levy assessments on each lot and the owner thereof for the purposes of improvement, repair and maintenance of roads, common areas, snow removal, administration, accounting and legal fees. There shall be three types of assessments: "Annual Assessments", which shall be a pro-rata portion of anticipated expenses for the coming year based upon the budget prepared by the Directors; "Capital Improvement and Compliance Assessments" approved by a two-thirds (2/3) majority of the total votes of Class A and Class B members; and "Emergency Assessments" levied at the discretion of the Directors without submitting the assessment to a vote of the members, in order to rectify emergencies. Each type of assessment is described below. The total assessment shall be divided and paid equally by the owners of each lot, excluding lots owned by Developer, regardless of the size of the lot. Developer shall pay a flat assessment of \$5.00 per month for each unsold platted lot up to a maximum of \$5000 over the course of developing all residential lots in Phases 1, 2 and 3. This contribution by Developer shall commence six (6) months after the final plat is recorded for each phase.

The Owner of each lot, hereby covenants and agrees, by the acceptance of a deed therefore (regardless of whether it shall be so expressed in such deed) to all matters set forth in these By-Laws, the Covenants, the Design Guidelines and the Design Board Declaration, and to pay to the Association such assessments as the Association shall levy against each lot. No owner shall be entitled to a reduced assessment because such owner does not reside upon the property or does not use the roads or other amenities. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use

or abandonment of his lot or because he or she believes that these Covenants are not being properly enforced.

Assessments shall be due and payable within thirty (30) days of the date of the notice of such assessment. An assessment shall be a charge upon the land and shall be a continuing lien upon the property and lot upon which the assessments are made. Each assessment shall also be a personal obligation of the person who is the owner of the property at the time the assessment falls due.

Within three (3) days of mailing of the notice of assessment to the owner, the assessment shall be a lien upon the owner's lot until paid. The Association may record a notice of the lien with the Clerk and Recorder of Gallatin County, Montana. In the event of non-payment within thirty (30) days after recording the notice of the lien, the Association may foreclose the lien in a manner set forth under Montana law for the foreclosure of liens against real property. The recording of the notice of lien shall be notice to all third parties of the assessment outstanding against the lot.

The Association may bring an action at law against the owners personally obligated to pay the same or may foreclose the lien against the property. In the event of an action to collect a past due assessment, the Association shall be entitled to recover any or all of the following costs, in addition to the amount of the past due assessment: (1) the costs of filing the lien including interest at the rate of the then prevailing prime rate of interest plus two percent (2%) from the date due; (2) all costs of the action; (3) reasonable attorneys fees incurred in preparation for filing the lien; (4) reasonable attorneys fees incurred in preparing and prosecuting the action.

The sale, transfer or encumbrance of any lot shall not affect the assessment lien or the personal liability of the owner except to the extent such lien is extinguished by Montana law. No sale, transfer or encumbrance shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof, provided that if the assessment lien has not been recorded with the Clerk and Recorder of Gallatin County, a good faith purchaser or encumbrancer without actual notice of the outstanding assessment shall take the property free of the lien.

ANNUAL ASSESSMENTS: TIMING AND PENALTIES

The owner of each lot, excluding Developer, shall be assessed annually for a pro-rata portion of anticipated expenses for the coming year based upon the budget prepared by the Directors. After the initial Annual Assessment is set, the assessment against any lot shall not be increased more than 20 percent (20%) per year without the approval of two-thirds (2/3) of the total votes of Class A and Class B members represented at any meeting in person or by proxy, unless the increase is required to comply with a mandatory rule, regulation, or order of municipal, county, state or federal government.

The Annual Assessments provided for herein shall commence as to all lots on the date determined by the Board of Directors. The Board of Directors shall fix the amount of the annual assessment against each lot based upon a budget of the estimated expenses of the Association for each year. At least thirty (30) days in advance of the due date of each annual assessment, written notice of the annual assessment and the due date shall be mailed to every lot owner at their last known address. Payments and notices for payments of assessments may be made semi-annually. The due dates, whether annually, semi-annually, or otherwise, shall be established by the Board of Directors. Unless modified by

the Board, payments for assessments shall be due on March 1 and September 1 of each year. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by the Directors of the Association, setting forth whether the assessment of a specified lot has been paid.

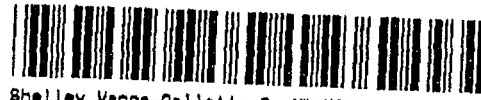
CAPITAL IMPROVEMENTS AND COMPLIANCE ASSESSMENTS

Capital Improvements. The Association may levy assessments for construction or reconstruction or unexpected repair or replacement of a capital improvement or equipment for use consistent with the purposes of the Association.

Compliance. The Association may levy assessments for purposes of defraying costs, including legal fees to enforce any protective covenant or authority or responsibility granted to the Association, including but not limited to all rules and regulations adopted by the Association or to pay for the necessary repair or maintenance of a property or residence which an owner has otherwise refused to repair or maintain.

EMERGENCY ASSESSMENTS

Emergency assessments shall be levied only to meet the costs and expenses precipitated by a condition which must be remedied promptly to ensure the safe and adequate discharge of the responsibilities of the Association. This may include items which would otherwise be considered as Capital Improvement and Compliance Assessments, if the Board determines (1) that the capital improvement or compliance action is absolutely necessary; and (2) that circumstances make it impractical to put the matter to a vote of the members due to timing or other constraints. Any improvements or other work required by state or federal agencies which must be completed in a timely fashion and cannot be



included in the Annual Assessment for the following year shall also be considered Emergency Assessments.

FORECLOSURE AND EXECUTION

As further security for payment of assessments levied by the Association, the Association may, in addition to foreclosing upon the lien as described above, execute upon a judgement through all remedies provided at law and equity, including sale of the liened parcel in accordance with the laws of the State of Montana. At such a sale, the Association may bid upon and acquire such lot.

ACCUMULATION OF REMEDIES

All remedies provided under the Covenants, these By-Laws, and the Design Guidelines, as well as all of the rules and regulations of the Association and remedies and authority granted to individual owners to enforce covenants shall be cumulative and shall be in addition to, and not in substitution of, all other rights and remedies which the Association may have under law.

In addition, any owner or the Association, may bring an action for damages for injunctive relief to abate a nuisance, to restrain any threatened or prospective violation or continuing violation of any portion of the covenants affecting the Elk Grove Community. In any such action for the enforcement of covenants, the prevailing party shall be entitled to recover all costs, court costs, costs of discovery and reasonable attorney fees.

NOTICES

Each owner shall register with the Association, a current mailing address and shall promptly notify the Elk Grove Homeowners' Association of any change. All notices, demands, and other communication to any owner shall be sufficient for all purposes if

personally served of if delivered by postage pre-paid United States Mail, addressed to the owner at the last mailing address registered with the Association.

SEVERABILITY

Invalidity or un-enforceability of any provision of this instrument determined by a Court shall not affect the validity or enforceability of any other provision.

NO WAIVER

Failure to enforce any provision, restriction, covenant or condition of these By-Laws, the Covenants or the Design Guidelines shall not create a waiver of any such provision, restriction, covenant or condition or of any other provision, restriction, covenant or condition.

IN WITNESS WHEREOF, this Declaration has been executed this 23rd day of

July, 2004.



ELK GROVE COMMUNITY HOMEOWNERS
ASSOCIATION, INC., a Montana
Non-Profit Corporation,

BY: _____

Its: Director

STATE OF MONTANA)

:ss.

COUNTY OF GALLATIN)

On this 23rd day of July, 2004, before me, the undersigned officer, personally appeared Justin Buchanan, known to me to be the person described in and who executed the foregoing instrument as Director of Elk Grove Community Homeowners Association, Inc., a Montana Non-Profit Corporation, and acknowledged to me that he executed the same as such officer, in the name of and for and on behalf of Elk Grove Community Homeowners Association, Inc., for the purposes herein contained.

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



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Shelley Vance-Gallatin Co MT MISC 88.00

Maggie Joluke

Notary Public for the State of Montana

Print Name: Maggie Joluke

Residing at: Belgrade

My Commission Expires: 4.21.2008

(SEAL)



**BY-LAWS OF THE
ELK GROVE HOMEOWNERS ASSOCIATION, INC.**

Elk Grove Homeowners Association, Inc., hereinafter referred to as the "Association" and hereby adopt the following By-Laws of the Elk Grove Homeowners Association, Inc. for Phases 1, 2, and 3 of Elk Grove Community, which will be affected by these By-Laws. The Declaration of Protective Covenants and Restriction for Elk Grove Community Planned Unit Development Phases 1, 2 and 3 (the "Covenants") and subsequent amendments thereto, a Design Review Board Declaration for Elk Grove Homeowners Association, Inc. ("Design Board Declaration") and subsequent amendments thereto, and the Elk Grove Community Design review and guidelines (the "Design Guidelines") and subsequent amendments thereto, should be construed in conjunction with the By-Laws.

MEMBERSHIP

Every owner of property in the Elk Grove Community Planned Unit Development, Phases 1, 2, and 3 shall be a member of the Elk Grove Homeowners Association, Inc. (the "Association"). Membership shall be appurtenant to and may not be separate from the ownership of any lot subject to assessment. Each lot owner shall be responsible for advising the Association of his acquisition of ownership and his current address. Each owner shall be bound by these By-Laws and the duly passed Resolutions of the Association. The Association has been incorporated as a non-profit homeowner's association. There shall be one class of members in the Association. The membership shall be comprised of all lot owners. Each member shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such a lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any lot.

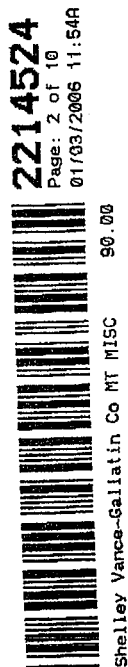
OPERATIONS

MEETINGS

Written notice of any meeting called for the purpose of taking any action authorized hereunder shall be mailed to all members not less than ten (10) days nor more than forty-five (45) days in advance of the meeting. A general description of the items to be considered at such a meeting shall be contained in the notice. At such meeting called, the presence of members or of proxies entitled to cast fifty-percent (50%) of all the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

DIRECTORS AND OFFICERS

Members of the Association shall annually elect three (3) Directors from its membership who shall be responsible for the overall operations of the Association as described herein. The Directors shall also have the power and responsibility of setting an annual budget. Such Directors shall be elected by a majority of the total votes of members represented at any meeting in person or by proxy, at which a quorum is present. The Directors may be removed from time to time at any regularly called meeting of the Association by a vote of two-thirds (2/3) of the total votes of members represented at any meeting in person or by proxy at the meeting, provided that a quorum is present, or immediately, upon termination of the Director's membership. The Directors are authorized to manage the business of the Association and are authorized to take such actions as shall be necessary and reasonable to carry out the functions of the Association.



The Directors shall elect a president and secretary from among the Directors or the members to serve as the officers of the Association. The Directors may also elect such other officers as they deem necessary. The duties of these officers shall be established by the Board of Directors.

PROXIES

A member in good standing may, by written proxy, assign his or her right to vote to another member in good standing. To be valid, each proxy must be in writing and must contain the name of the person assigning the proxy, the lot number and address of the assignor, the name, lot number, and address of the assignee, the signature of the assignor, and the date of the creation of the proxy. A proxy may be general, or specific, but no proxy shall be valid more than thirty (30) days beyond its date of creation. Questions regarding the validity or scope of a proxy shall be determined by a decision of the Board, which shall be final.

VOTING BY BALLOT

Voting at membership meetings may also be made by written mail in ballot received at the address of the Association on or before the date specified in the ballot. Each ballot, which shall be provided by the Association to its members, shall state the name, lot number, and address of the voting member and shall contain a brief description of the time to be voted upon.

ASSESSMENTS

The Directors shall have the authority to levy assessments on each lot and the owner thereof for the purposes of improvement, repair and maintenance of road, common areas, snow removal, administration, accounting and legal fees. There shall be three types of assessments: "Annual Assessments", which shall be a pro-rata portion of anticipated expenses for the coming year based upon the budget prepared by the Directors; "Capital Improvement and Compliance

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Shelley Vance-Gallatin Co MT MISC 90.00

Assessments" approved by a two-thirds (2/3) majority of the total votes of members; and "Emergency Assessments" levied at the discretion of the Directors without submitting the assessment to a vote of the members, in an order to rectify emergencies. Each type of assessment is described below. The total assessment shall be divided and paid equally by the owners of each lot, regardless of the size of the lot.

The Owner of each lot, hereby covenants and agrees, by the acceptance of a deed therefore (regardless of whether it shall be so expressed in such deed) to all matters set forth in these By-Laws, the Covenants, the Design Guidelines and the Design Board Declaration, and to pay to the Association such assessments as the Association shall levy against each lot. No owner shall be entitled to a reduced assessment because such owner does not reside upon the property or does not use the roads or other amenities. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use or abandonment of his lot or because he or she believes that these Covenants are not being properly enforced.

Assessments shall be due and payable within thirty (30) days of the date of the notice of such assessment. An assessment shall be a charge upon the land and shall be a continuing lien upon the property and lot upon which the assessments are made. Each assessment shall also be a personal obligation of the person who is the owner of the property at the time the assessment falls due.

Within three (3) days of mailing of the notice of assessment to the owner, the assessment shall be a lien upon the owner's lot until paid. The Association may record a notice of the lien with the Clerk and Recorder of Gallatin County, Montana. In the event of non-payment within thirty (30) days after recording the notice of the lien, the Association may foreclose the lien in a

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Shelley Vance-Gallatin Co MT MISC

manner set forth under Montana law for the foreclosure of liens against real property. The recording of the notice of lien shall be notice to all third parties of the assessment outstanding against the lot.

The Association may bring an action at law against the owners personally obligated to pay the same or may foreclose the lien against the property. In the event of an action to collect a past due assessment, the Association shall be entitled to recover any or all of the following costs, in addition to the amount of the past due assessment: (1) the costs of filing the lien including interest at the rate of the then prevailing prime rate of interest plus two percent (2%) from the date due; (2) all costs of the action; (3) reasonable attorneys fees incurred in preparation for filing the lien; (4) reasonable attorneys fees incurred in preparing and prosecuting the action.

The sale, transfer or encumbrance of any lot shall not affect the assessment lien or the personal liability of the owner except to the extent such lien is extinguished by Montana law. No sale, transfer or encumbrance shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof, provided that if the assessment lien has not been recorded with the Clerk and Recorder of Gallatin County, a good faith purchaser or encumbrancer without actual notice of the outstanding assessment shall take the property free of the lien.

ANNUAL ASSESSMENTS TIMING AND PENALTIES

The owner of each lot shall be assessed annually for a pro-rata portion of anticipated expenses for the coming year based upon the budget prepared by the Directors. After the initial Annual Assessment is set, the assessment against any lot shall not be increased more than 20 percent (20%) per year without the approval of two-thirds (2/3) of the total votes of members represented at any meeting in person or by proxy, unless the increase is required to comply with a

mandatory rule, regulation, or order of municipal, county, state or federal government.

The Annual Assessments provided for herein shall commence as to all lots on the date

determined by the Board of Directors. The Board of Directors shall fix the amount of the annual assessment against each lot based upon a budget of the estimated expenses of the Association for each year. At least thirty (30) days in advance of the due date of each annual assessment, written notice of the annual assessment and the due date shall be mailed to every lot owner at their last know address. Payments and notices for payments of assessments may be made semi-annually. The due dates, whether annually, semi-annually, or otherwise, shall be established by the Board of Directors. Unless modified by the Board, payments of assessments shall be due on March 1 and September 1 of each year. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by the Directors of Association, setting forth whether the assessment of a specified lot has been paid.

CAPITAL IMPROVEMENTS AND COMPLIANCE ASSESSMENTS

Capital Improvements. The Association may levy assessments for construction or reconstruction or unexpected repair or replacement of a capital improvement or equipment for use consistent with the purposes of the Association.

Compliance. The Association may levy assessments for purposes of defraying costs, including legal fees to enforce any protective covenant or authority or responsibility granted to the Association, including but not limited to all rules and regulations adopted by the Association or to pay for the necessary repair or maintenance of a property or residence which an owner has otherwise refused to repair or maintain.

EMERGENCY ASSESSMENTS

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Shelley Vance-Gallatin Co MT MISC 90.00

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Shelley Vance-Gallatin Co MT MISC

Emergency assessments shall be levied only to meet the costs and expenses precipitated by a condition which must be remedied promptly to ensure the safe and adequate discharge of the responsibilities of the Association. This may include items which would otherwise be considered as Capital Improvement and compliance Assessments, if the Board determines (1) that the capital improvement or compliance action is absolutely necessary; and (2) that circumstances make it impractical to put the matter to a vote of the members due to timing or other constraints. Any improvements or other work required by state or federal agencies which must be completed in a timely fashion and cannot be included in the Annual Assessment for the following year shall also be considered Emergency Assessments.

FORECLOSURE AND EXECUTION

As further security for payment of assessments levied by the Association, the Association may, in addition to foreclosing upon the lien as described above, execute upon a judgement through all remedies provided at law and equity, including sale of the liened parcel in accordance with the laws of the State of Montana. At such a sale, the Association may bid upon and acquire such lot.

In addition, any owner of the Association, may bring an action for damages for injunctive relief to abate a nuisance, to restrain any threatened or prospective violation or continuing violation of any portion of the covenants affecting the Elk Grove community. In any such action for the enforcement of covenants, the prevailing party shall be entitled to recover all costs, court costs, costs of discovery and reasonable attorney fees.

NOTICES

Each owner shall register with the Association, a current mailing address and shall

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Page: 8 of 10
01/03/2006 11:54A

Shelley Vance-Gallatin Co MT MISC
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promptly notify the Elk Grove Homeowner's Association of any change. All notices, demands, and other communication to any owner shall be sufficient for all purposes if personally served or if delivered by postage pre-paid United States Mail, addressed to the owner at the last mailing address registered with the Association.

SEVERABILITY

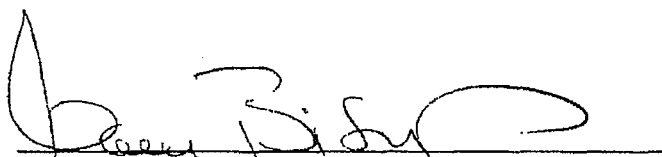
Invalidity or un-enforceability of any provision of this instrument determined by a Court shall not affect the validity or enforceability of any other provision.

NO WAIVER

Failure to enforce any provision, restriction, covenant or condition of these By-Laws, the Covenants or the Design Guidelines shall not create a waiver of any such provision, restriction, covenant or condition or of any other provision, restriction, covenant or condition.

IN WITNESS WHEREOF, this Declaration has been executed this 11th day of

December, 2005.


GARY BISHOP


JERRY MEEK


ROBERT FARRINGTON

STATE OF MONTANA

)
:SS.

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Shelley Vance-Gallatin Co MT MISC 90.00

County of Gallatin)

On the 11th day of December, 2005, before me a notary in and for said State, personally appeared GARY BISHOP known to me to be the person whose name is subscribed on the above and foregoing document and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the date above written.

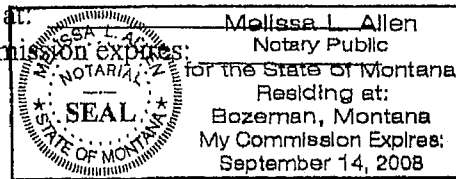
Melissa L. Allen

Notary Public for the State of Montana

Print Name: _____

Residing at: _____

My Commission Expires: _____



(SEAL)

STATE OF MONTANA)

:SS.

County of Gallatin)

On the 11th day of December, 2005, before me a notary in and for said State, personally appeared JERRY MEEK known to me to be the person whose name is subscribed on the above and foregoing document and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the date above written.

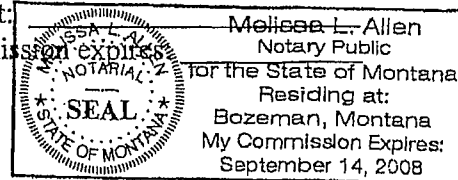
Melissa L. Allen

Notary Public for the State of Montana

Print Name: _____

Residing at: _____

My Commission Expires: _____



(SEAL)

STATE OF MONTANA)

:SS.

County of Gallatin)

On the 11th day of December, 2004, before me a notary in and for said State, personally appeared ROBERT FARRINGTON known to me to be the person whose name is subscribed on the above and foregoing document and acknowledged to me that he executed the

same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the date above written.

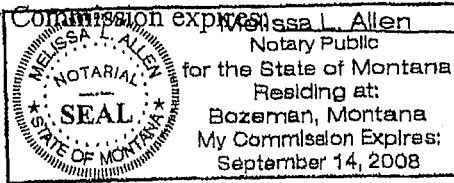
(S E A L)

Melissa L Allen
Notary Public for the State of Montana

Print Name: _____

Residing at: _____

My Commission expires: Melissa L. Allen



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08/19/2004 12:36P

Shelley Vance-Gallatin Co MT MISC 30.00

Real Covenants

Whereas, Concinnity, LLC, a Montana limited liability company, at 533 Blackwood Road, Bozeman, Montana, owns various property in Gallatin County, Montana, including but not limited to Utility Lot 4 (UL 4), as that lot appears on the official plat of Elk Grove Subdivision Phase 1, a Planned Unit Development, in the records of Gallatin County, Montana;

Whereas, Concinnity, LLC desires to limit and restrict the use and possession of Utility Lot 4 (UL 4), as that lot appears on the official plat of Elk Grove Subdivision Phase 1, a Planned Unit Development, in the records of Gallatin County, Montana, to protect and maintain the uses and possession of other property owned by Concinnity LLC and third parties;

NOW THEREFORE, Concinnity LLC adopts the following Covenants, Conditions and Restrictions to regulate the use and occupancy of the Burdened Property as hereinafter defined for the benefit of all owners of the Benefited Premises or any part thereof described herein, and declares that all and each part of the Burdened Property shall be owned, held, sold, conveyed, encumbered, leased, used, occupied, transferred and developed subject to the following restrictions, covenants, and conditions.

1. Burdened Property. The Property burdened by these Covenants, Conditions, and Restrictions shall be all that property described as Utility Lot 4 (UL 4), as that lot appears on the official plat of Elk Grove Subdivision Phase 1, a Planned Unit Development, in the records of Gallatin County, Montana.

2. Benefited Premises. The property to be benefited by these Covenants, Conditions, and Restrictions shall be comprised of those lots, including Utility Lots 2-4 inclusive, that are depicted on the official plats of Elk Grove Subdivision Phase 1, a Planned Unit Development, Elk Grove Subdivision Phase 2, a Planned Unit Development, Elk Grove Subdivision Phase 3, a Planned Unit Development, and Elk Grove Subdivision Phase 4, a Planned Unit Development, as those plats appear in the records of Gallatin County, Montana, excluding any of the remainder tracts depicted thereon. Without in any way limiting this paragraph, each lot owner of any lot permitted, approved, or otherwise authorized by Gallatin County, Montana as evidenced by the recordation of a Final Plat for Elk Grove Subdivision Phase 1, a Planned Unit Development, Elk Grove Subdivision Phase II, a Planned Unit Development; Elk Grove Subdivision Phase III, a Planned Unit Development; and/or Elk Grove Subdivision Phase IV, a Planned Unit Development, shall be deemed an owner of premises benefited by these covenants, and the Elk Grove Homeowners'

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Shelley Vance-Gallatin Co MT MISC

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Association, as a representative of such lot owners or as an owner of land, shall also be deemed an owner of premises benefited by these covenants.

3. Conditions, Covenants, and Restrictions. The ownership, possession, and use of all or any part of the Burdened Property shall be regulated and otherwise controlled by the following Condition, Covenants, and Restrictions.

A. The Burdened Property, and all of the buildings, structures, and other improvements that may be erected thereon, shall be maintained in good condition and repair, and shall be kept free of trash and other debris. Without limiting this provision, the fencing on the Burdened Property shall be oiled, stained, or otherwise maintained to preserve the natural wood character of the fencing materials, and such fencing materials shall be replaced as necessary to preserve the integrity of the fence with materials of the same size and type as the existing fence.

B. The Burdened Property shall be landscaped as shown on Exhibit A and such landscaping shall be mowed, trimmed, pruned and otherwise maintained in an attractive and suitable manner.

C. The Burdened Property shall not be possessed or used in any way that creates noises in excess of 20 decibels as measured at any residence or commercial building located on any part of the Benefited Premises, except during times of construction or repair of improvements on or under the Burdened Property. No construction shall occur on any of the Burdened Property before the hour of 6:30 am nor after 6:30 pm on other than weekends and holidays, and not before the hour of 8:30 am nor after 6:30 pm on weekends and holidays.

D. The Burdened Property shall not display any lights visible from any residence or commercial building located on any part of the Benefited Premises.

E. Only buildings or other structures and improvements that are used or useful for the operation of a storage facility may be constructed on the Burdened Premises. No part of any storage unit or facility may be used as a retail business that sells goods or services to the public where the transactions occur on the premises of the burdened property.

F. The height of any building, structure or other improvement constructed on the Burdened Property shall be as low as practicable consistent with the design of the buildings, structures, or improvements to store property of various sizes, but not in any event exceeding a height of 22 feet. All buildings, structures, or other improvements shall be constructed of materials that are durable and resistant to weathering. The colors of the roof, siding, and trim of all such buildings, structures,



or other improvements shall be of different but compatible hues, and only of earth tones.

G. No well for the provision of a water supply shall be drilled on the Burdened Property, nor shall any septic system or other private wastewater treatment system be constructed or located thereon.

H. The Burdened Property shall be fenced, no later than September 15, 2004, with cedar board in a manner and design substantially similar to the fence on adjoining tracts. The fence shall be ten (10) feet high on the north and east property lines, eight (8) feet high on the west property line, and six (6) feet high on the south property line, all as measured from the elevation of the concrete pad underlying the storage facility to the top of the fence exclusive of the posts.

I. The Burdened Property have a non-exclusive easement for ingress and egress from Elk Grove Lane to Utility Lot 4, as that Lane, roadway, and Utility Lot are depicted on the official plat of Elk Grove Subdivision, Phase 1, a Planned Unit Development as said plat appears in the records of Gallatin County, Montana.

J. No part of any building, structure, or other improvement on the Burdened Premises shall be located on or within five feet of the centerline of that water line depicted on Exhibit A hereto.

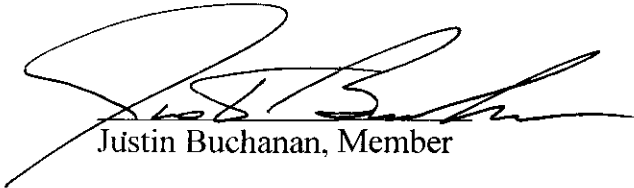
K. No use shall be made of the Burdened Property that creates a nuisance or that suffers a nuisance to be maintained, or that otherwise interferes unreasonably with the use and enjoyment of any of the Benefited Premises.

4. Binding Effect. The Covenants, Conditions, and Restrictions set forth herein shall run with the land and bind each and all of the owners of all or any part of the Burdened Property, and these Covenants, Conditions, and Restrictions shall likewise run with the land and benefit each and all of the owners of all or any part of the Benefited Premises. If for any reason any of the provisions herein cannot be given effect as a real covenant, then and in that event they shall be construed in such a way that they operate as an equitable servitude upon the affected lands. If for any reason any of the provisions herein cannot be so construed as an equitable servitude, then and in that event each owner of all or any part of the Benefited Property shall be deemed a creditor third party beneficiary of the covenants set forth herein that create any duty for each owner of all or any part of the Burdened Property.

Done this 18th day of August, 2004.

Concinnity, LLC, by



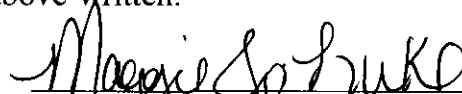

Justin Buchanan, Member

STATE OF MONTANA)
 : SS.
County of Gallatin)

On this 18 day of August, 2004, before me, a Notary Public in and for the State of Montana, personally appeared Justin Buchanan, known to me to be the person whose name is subscribed to the within and foregoing instrument, and acknowledged to me that he executed the same on behalf of Concinnity, LLC.

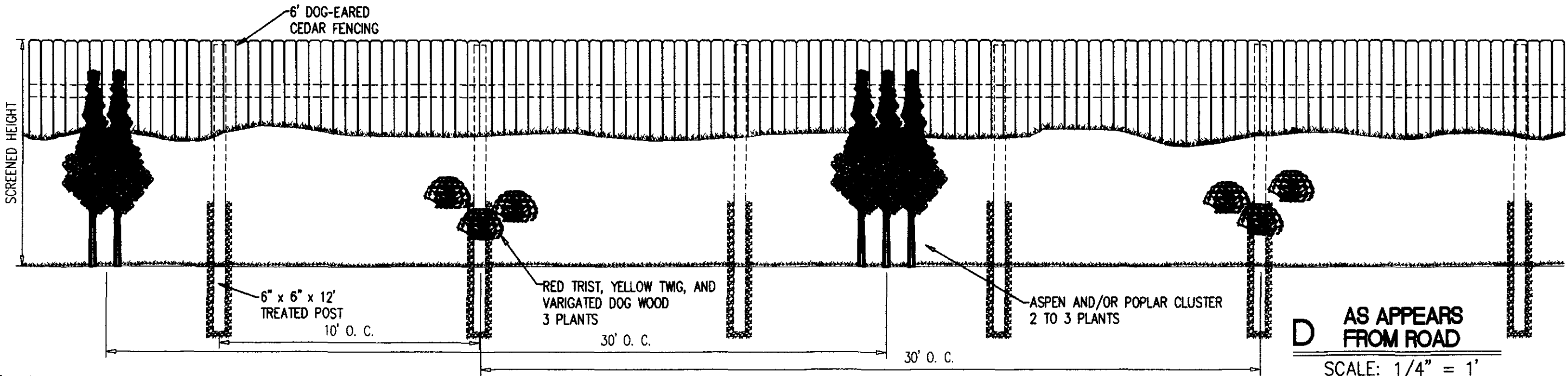
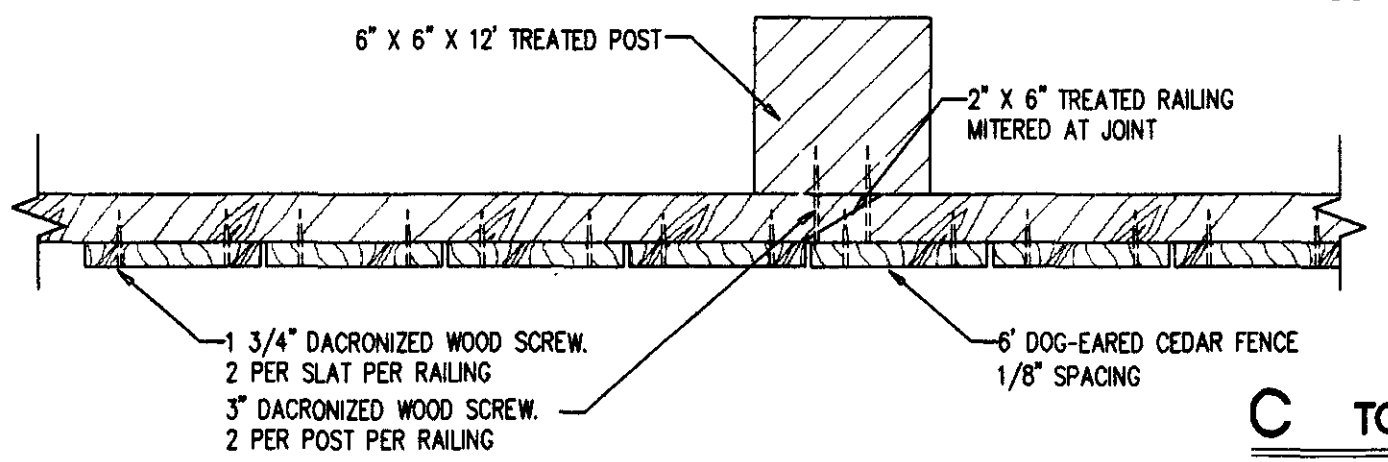
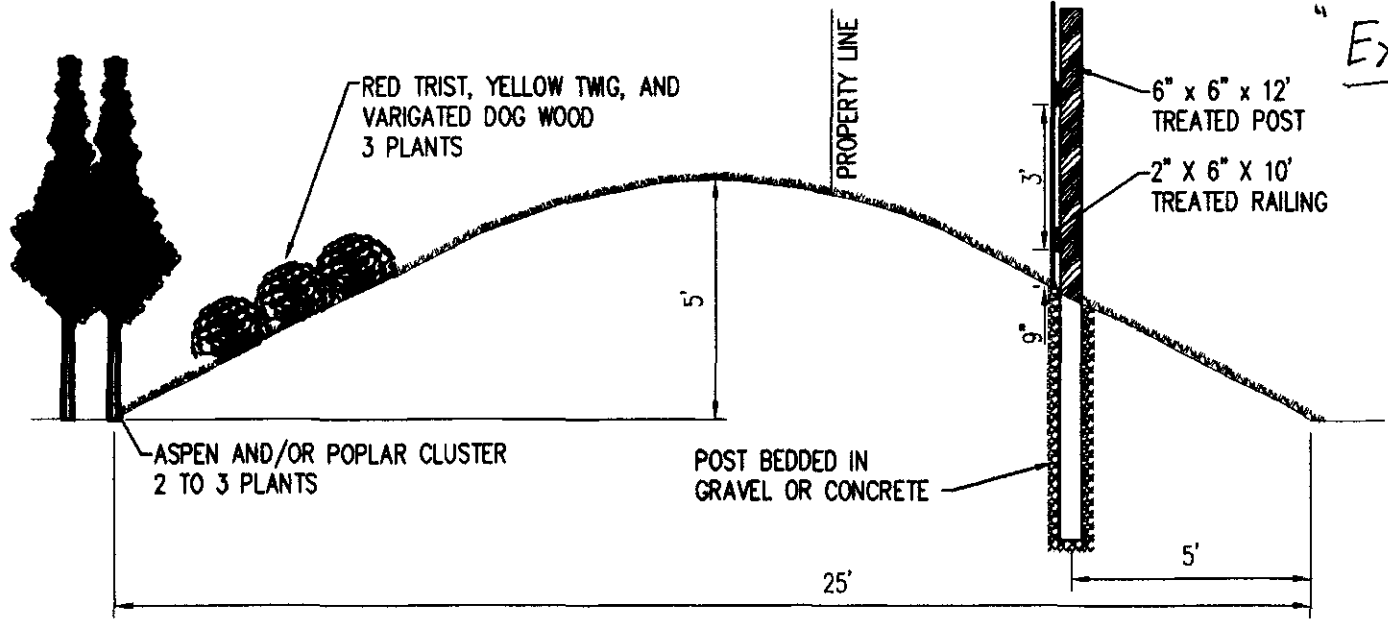
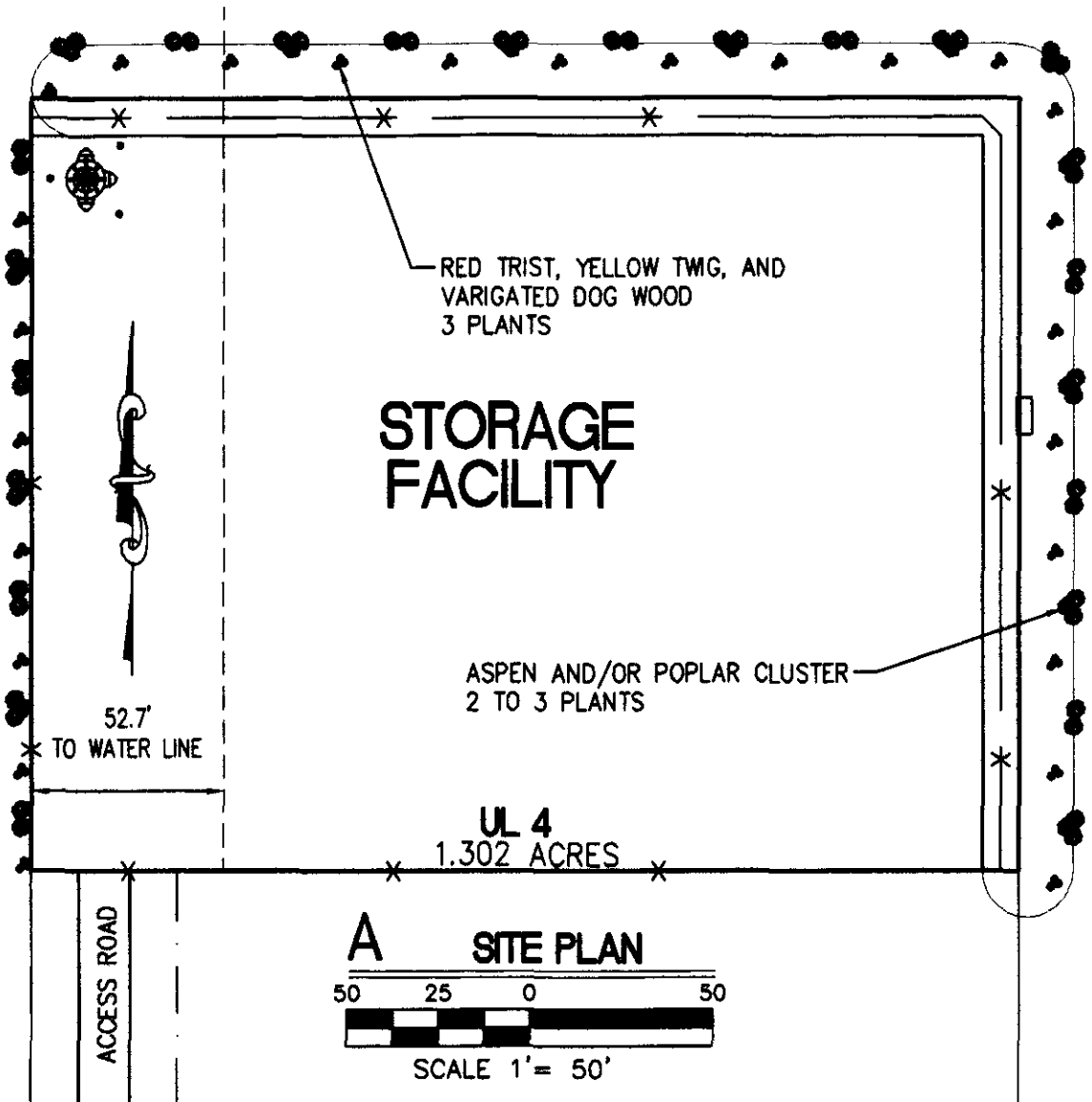
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal as of the day and year first above-written.




Notary Public for the State of Montana
Residing at Big Lake
My Commission expires 4.21.2008

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08/19/2004 12:38P

Shelley Vance-Gallatin Co MT MISC 30.00



"Exhibit A"



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PROJECT: ELK GROVE
SHEET TITLE: STORAGE AREA LANDSCAPE LAYOUT
DATE: 05-13-04 SCALE: AS NOTED DRAWN BY: CMC

PREPARED BY:
FLUIDYNE
Scientific Engineers - Inventors
533 BLACKWOOD, BOZEMAN, MONTANA 59718
406-586-2289 FAX 586-2335

P3.0



**BY-LAWS OF THE
ELK GROVE HOMEOWNERS ASSOCIATION, INC.**

Elk Grove Homeowners Association, Inc., hereinafter referred to as the "Association" and hereby adopt the following By-Laws of the Elk Grove Homeowners Association, Inc. for Phases 1, 2, and 3 of Elk Grove Community, which will be affected by these By-Laws. The Declaration of Protective Covenants and Restriction for Elk Grove Community Planned Unit Development Phases 1, 2 and 3 (the "Covenants") and subsequent amendments thereto, a Design Review Board Declaration for Elk Grove Homeowners Association, Inc. ("Design Board Declaration") and subsequent amendments thereto, and the Elk Grove Community Design review and guidelines (the "Design Guidelines") and subsequent amendments thereto, should be construed in conjunction with the By-Laws.

MEMBERSHIP

Every owner of property in the Elk Grove Community Planned Unit Development, Phases 1, 2, and 3 shall be a member of the Elk Grove Homeowners Association, Inc. (the "Association"). Membership shall be appurtenant to and may not be separate from the ownership of any lot subject to assessment. Each lot owner shall be responsible for advising the Association of his acquisition of ownership and his current address. Each owner shall be bound by these By-Laws and the duly passed Resolutions of the Association. The Association has been incorporated as a non-profit homeowner's association. There shall be one class of members in the Association. The membership shall be comprised of all lot owners. Each member shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such a lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any lot.

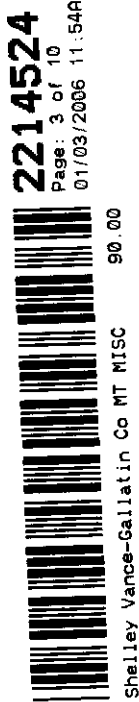
OPERATIONS

MEETINGS

Written notice of any meeting called for the purpose of taking any action authorized hereunder shall be mailed to all members not less than ten (10) days nor more than forty-five (45) days in advance of the meeting. A general description of the items to be considered at such a meeting shall be contained in the notice. At such meeting called, the presence of members or of proxies entitled to cast fifty-percent (50%) of all the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

DIRECTORS AND OFFICERS

Members of the Association shall annually elect three (3) Directors from its membership who shall be responsible for the overall operations of the Association as described herein. The Directors shall also have the power and responsibility of setting an annual budget. Such Directors shall be elected by a majority of the total votes of members represented at any meeting in person or by proxy, at which a quorum is present. The Directors may be removed from time to time at any regularly called meeting of the Association by a vote of two-thirds (2/3) of the total votes of members represented at any meeting in person or by proxy at the meeting, provided that a quorum is present, or immediately, upon termination of the Director's membership. The Directors are authorized to manage the business of the Association and are authorized to take such actions as shall be necessary and reasonable to carry out the functions of the Association.



The Directors shall elect a president and secretary from among the Directors or the members to serve as the officers of the Association. The Directors may also elect such other officers as they deem necessary. The duties of these officers shall be established by the Board of Directors.

PROXIES

A member in good standing may, by written proxy, assign his or her right to vote to another member in good standing. To be valid, each proxy must be in writing and must contain the name of the person assigning the proxy, the lot number and address of the assignor, the name, lot number, and address of the assignee, the signature of the assignor, and the date of the creation of the proxy. A proxy may be general, or specific, but no proxy shall be valid more than thirty (30) days beyond its date of creation. Questions regarding the validity or scope of a proxy shall be determined by a decision of the Board, which shall be final.

VOTING BY BALLOT

Voting at membership meetings may also be made by written mail in ballot received at the address of the Association on or before the date specified in the ballot. Each ballot, which shall be provided by the Association to its members, shall state the name, lot number, and address of the voting member and shall contain a brief description of the time to be voted upon.

ASSESSMENTS

The Directors shall have the authority to levy assessments on each lot and the owner thereof for the purposes of improvement, repair and maintenance of road, common areas, snow removal, administration, accounting and legal fees. There shall be three types of assessments: "Annual Assessments", which shall be a pro-rata portion of anticipated expenses for the coming year based upon the budget prepared by the Directors; "Capital Improvement and Compliance

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Assessments” approved by a two-thirds (2/3) majority of the total votes of members; and “Emergency Assessments” levied at the discretion of the Directors without submitting the assessment to a vote of the members, in an order to rectify emergencies. Each type of assessment is described below. The total assessment shall be divided and paid equally by the owners of each lot, regardless of the size of the lot.

The Owner of each lot, hereby covenants and agrees, by the acceptance of a deed therefore (regardless of whether it shall be so expressed in such deed) to all matters set forth in these By-Laws, the Covenants, the Design Guidelines and the Design Board Declaration, and to pay to the Association such assessments as the Association shall levy against each lot. No owner shall be entitled to a reduced assessment because such owner does not reside upon the property or does not use the roads or other amenities. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use or abandonment of his lot or because he or she believes that these Covenants are not being properly enforced.

Assessments shall be due and payable within thirty (30) days of the date of the notice of such assessment. An assessment shall be a charge upon the land and shall be a continuing lien upon the property and lot upon which the assessments are made. Each assessment shall also be a personal obligation of the person who is the owner of the property at the time the assessment falls due.

Within three (3) days of mailing of the notice of assessment to the owner, the assessment shall be a lien upon the owner’s lot until paid. The Association may record a notice of the lien with the Clerk and Recorder of Gallatin County, Montana. In the event of non-payment within thirty (30) days after recording the notice of the lien, the Association may foreclose the lien in a

manner set forth under Montana law for the foreclosure of liens against real property. The recording of the notice of lien shall be notice to all third parties of the assessment outstanding against the lot.

The Association may bring an action at law against the owners personally obligated to pay the same or may foreclose the lien against the property. In the event of an action to collect a past due assessment, the Association shall be entitled to recover any or all of the following costs, in addition to the amount of the past due assessment: (1) the costs of filing the lien including interest at the rate of the then prevailing prime rate of interest plus two percent (2%) from the date due; (2) all costs of the action; (3) reasonable attorneys fees incurred in preparation for filing the lien; (4) reasonable attorneys fees incurred in preparing and prosecuting the action.

The sale, transfer or encumbrance of any lot shall not affect the assessment lien or the personal liability of the owner except to the extent such lien is extinguished by Montana law. No sale, transfer or encumbrance shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof, provided that if the assessment lien has not been recorded with the Clerk and Recorder of Gallatin County, a good faith purchaser or encumbrancer without actual notice of the outstanding assessment shall take the property free of the lien.

ANNUAL ASSESSMENTS TIMING AND PENALTIES

The owner of each lot shall be assessed annually for a pro-rata portion of anticipated expenses for the coming year based upon the budget prepared by the Directors. After the initial Annual Assessment is set, the assessment against any lot shall not be increased more than 20 percent (20%) per year without the approval of two-thirds (2/3) of the total votes of members represented at any meeting in person or by proxy, unless the increase is required to comply with a

mandatory rule, regulation, or order of municipal, county, state or federal government.

The Annual Assessments provided for herein shall commence as to all lots on the date determined by the Board of Directors. The Board of Directors shall fix the amount of the annual assessment against each lot based upon a budget of the estimated expenses of the Association for each year. At least thirty (30) days in advance of the due date of each annual assessment, written notice of the annual assessment and the due date shall be mailed to every lot owner at their last know address. Payments and notices for payments of assessments may be made semi-annually. The due dates, whether annually, semi-annually, or otherwise, shall be established by the Board of Directors. Unless modified by the Board, payments of assessments shall be due on March 1 and September 1 of each year. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by the Directors of Association, setting forth whether the assessment of a specified lot has been paid.

CAPITAL IMPROVEMENTS AND COMPLIANCE ASSESSMENTS

Capital Improvements. The Association may levy assessments for construction or reconstruction or unexpected repair or replacement of a capital improvement or equipment for use consistent with the purposes of the Association.

Compliance. The Association may levy assessments for purposes of defraying costs, including legal fees to enforce any protective covenant or authority or responsibility granted to the Association, including but not limited to all rules and regulations adopted by the Association or to pay for the necessary repair or maintenance of a property or residence which an owner has otherwise refused to repair or maintain.

EMERGENCY ASSESSMENTS

Emergency assessments shall be levied only to meet the costs and expenses precipitated by a condition which must be remedied promptly to ensure the safe and adequate discharge of the responsibilities of the Association. This may include items which would otherwise be considered as Capital Improvement and compliance Assessments, if the Board determines (1) that the capital improvement or compliance action is absolutely necessary; and (2) that circumstances make it impractical to put the matter to a vote of the members due to timing or other constraints. Any improvements or other work required by state or federal agencies which must be completed in a timely fashion and cannot be included in the Annual Assessment for the following year shall also be considered Emergency Assessments.

FORECLOSURE AND EXECUTION

As further security for payment of assessments levied by the Association, the Association may, in addition to foreclosing upon the lien as described above, execute upon a judgement through all remedies provided at law and equity, including sale of the liened parcel in accordance with the laws of the State of Montana. At such a sale, the Association may bid upon and acquire such lot.

In addition, any owner of the Association, may bring an action for damages for injunctive relief to abate a nuisance, to restrain any threatened or prospective violation or continuing violation of any portion of the covenants affecting the Elk Grove community. In any such action for the enforcement of covenants, the prevailing party shall be entitled to recover all costs, court costs, costs of discovery and reasonable attorney fees.

NOTICES

Each owner shall register with the Association, a current mailing address and shall

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promptly notify the Elk Grove Homeowner's Association of any change. All notices, demands, and other communication to any owner shall be sufficient for all purposes if personally served or if delivered by postage pre-paid United States Mail, addressed to the owner at the last mailing address registered with the Association.

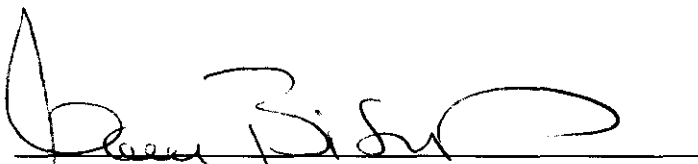
SEVERABILITY


Invalidity or un-enforceability of any provision of this instrument determined by a Court shall not affect the validity or enforceability of any other provision.

NO WAIVER

Failure to enforce any provision, restriction, covenant or condition of these By-Laws, the Covenants or the Design Guidelines shall not create a waiver of any such provision, restriction, covenant or condition or of any other provision, restriction, covenant or condition.

IN WITNESS WHEREOF, this Declaration has been executed this 11th day of December, 2005.


GARY BISHOP


JERRY MEEK


ROBERT FARRINGTON

STATE OF MONTANA)
:SS.

County of Gallatin)

On the 16th day of December, 2005, before me a notary in and for said State, personally appeared GARY BISHOP known to me to be the person whose name is subscribed on the above and foregoing document and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the date above written.

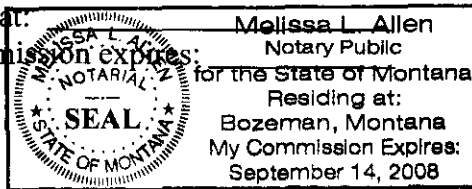
Melissa L. Allen

Notary Public for the State of Montana

Print Name: _____

Residing at: _____

My Commission Expires: _____



(S E A L)

STATE OF MONTANA)

:SS.

County of Gallatin)

On the 16th day of December, 2005, before me a notary in and for said State, personally appeared JERRY MEEK known to me to be the person whose name is subscribed on the above and foregoing document and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the date above written.

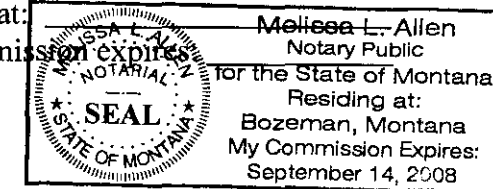
Melissa L. Allen

Notary Public for the State of Montana

Print Name: _____

Residing at: _____

My Commission Expires: _____



(S E A L)

STATE OF MONTANA)

:SS.

County of Gallatin)

On the 16th day of December, 2004, before me a notary in and for said State, personally appeared ROBERT FARRINGTON known to me to be the person whose name is subscribed on the above and foregoing document and acknowledged to me that he executed the

same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the date above written.

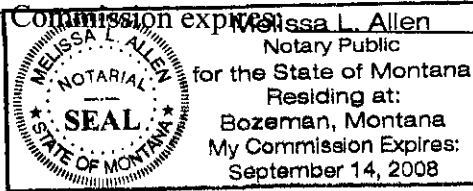
(S E A L)

Melissa L. Allen
Notary Public for the State of Montana

Print Name: _____

Residing at: _____

My Commission expires: _____



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