

THIS DECLARATION IS SUBJECT TO ARBITRATION IN ACCORDANCE  
WITH THE MONTANA UNIFORM ARBITRATION ACT

**DECLARATION OF UNIT OWNERSHIP**

**FOR**

**THE VILLAGE AT ELK HILLS**

R & H DEVELOPMENT, a Montana Limited Liability Company, the record title holder, of the land and buildings described herein, hereinafter called "Declarant," in order to subdivide said property into separate units, pursuant to Chapter 23 of Title 70 of the Montana Code Annotated ("MCA") hereby establishes and declares on behalf of itself and its successors and assigns, to its grantees and their respective heirs, successors and assigns, that the property described herein from and after the date of the recording of this Declaration in the Office of the County Clerk and Recorder of Missoula County, Montana, shall be and continue to be subject to each and all of the terms in this Condominium Plan until it is terminated, amended or abandoned as hereinafter provided.

1. DEFINITIONS. unless the context expressly provides otherwise, the following definitions shall pertain throughout this Condominium Plan and in the interpretation of it:

- (a) Association shall mean and refer to The Village at Elk Hills Homeowners' Association, a Montana nonprofit mutual benefit corporation, its successors and assigns.
- (b) Board shall mean and refer to the Board of Directors of the Association.
- (c) Bylaws shall mean the bylaws of the Association, as the same may from time to time be amended, and initially in the form of attached Exhibit B.
- (d) Common Elements shall mean the General Common Elements and the Limited Common Elements.
- (e) Common Expenses means and includes the actual and estimated expenses of operating, administering, maintaining, insuring, repairing or replacing the Property and the Common Elements, any reasonable reserve for such purposes as found and determine by the Board and all sums designated common expenses by or pursuant to this Condominium Plan, the Declaration or the Bylaws.
- (f) Condominium means an estate in real property consisting of a separate interest in a Unit, the boundaries of which are shown and described on the Condominium Plan, a fractional undivided interest as a tenant-in-common in the Common

Elements of the Project, a membership in the Association, and the exclusive right to use any Limited Common Elements appurtenant to each Unit as shown on or described in the Condominium Plan or deed of conveyance.

- (g) Condominium Plan shall mean this Declaration of Unit Ownership, as the same may from time to time be amended.
- (h) Declaration shall mean and refer to the Declaration of Restrictions executed by Declarant and recorded with the County Clerk and Recorder of Missoula County, Montana, approximately simultaneously with the recording of this Condominium Plan, as it may from time to time be amended.
- (i) General Common Elements shall mean all those areas which are for the use and benefit of all the Units and of all residents and guests of residents of the residential portion of THE VILLAGE AT ELK HILLS. Specifically included are the real property described in paragraph 2 below including the common area on the site plan in Exhibit A and the grounds under and surrounding the buildings (including the space underneath exterior stairways); footings, foundations, framework, floors, columns, trusses, walls, supports and other structural components of the buildings; the attics and roofs of the buildings; the siding on the buildings; equipment and all other improvements for a water supply; electrical, cable television, gas and telephone lines and wires and connections serving all of the units; the master water meters; fences, roadways, landscaping, plants and other materials and improvements separate from and outside of the buildings containing the units, and other areas necessary for the safety, maintenance and existence of the Condominium in which each Owner shall have his or her designated percentage of interest, as set forth in paragraph 5 below, and as described in section 70-23-403 of the Montana Unit Ownership Act. Excluded from the General Common Elements are the portions of the Common Elements designated as Limited Common Elements in paragraph (j) below. Comm  
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- (j) Limited Common Elements shall mean those Common Elements which are reserved for the use of fewer than all of the residents and guests of residents of the residential portion of THE VILLAGE AT ELK HILLS. Specifically, as to any given Owner or Owners, Limited Common Elements shall mean the following common elements located or situated on or associated with the Property, which are located within, affixed to or adjacent to the building containing the Owner's unit: LIMITED  
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Balconies, patios, landings, stairways providing direct unit access, porches or stoops, walkways, garages and those driveways immediately in front of garages that accommodate parking, flues, ducts, cables, conduits, public utility lines, water, sewer, electrical, cable television lines and hot and cold water pipes (all



such utility pipes and lines are limited common elements where they service fewer than all units; where they service all units they shall be general common elements), electric meter entrances, and fixtures or other portions of the building servicing only a particular unit or fewer than all of the units. Also included in the Limited Common Elements are any doorsteps, exterior doors, door frames and hardware incident thereto, screens and windows and other fixtures, and internal and external telephone wiring designed to serve a Unit but located outside the boundaries of the Unit.

- (k) Owner means any natural person, firm, corporation, partnership, trust or other entity which owns a fee simple interest in any Condominium, including Declarant, and any contract purchasers who have filed a Notice of Purchaser's Interest in accordance with Montana law or whose purchase contract has been recorded. "Owner" shall not include any persons or entities who hold an interest in a Condominium merely as security for performance of an obligation. For purposes of exercising membership rights and incurring membership obligations, when an Owner is a corporation, any director, officer, employee or agent designated by corporate resolution may exercise the membership rights attributable to the corporation. When an Owner is a trust, the trustee may exercise the membership rights attributable to the trust unless otherwise designated in writing by the trustee.
- (l) Project shall mean and refer to the Property and the Common Elements, including all structures and improvements erected or to be erected thereon.
- (m) Property shall mean the property described in Paragraph 2 below.
- (n) Unit shall mean and refer to a separate interest in space and as shown and described in this Condominium Plan. Each Unit shall include the part of the building containing the Unit that lies within the boundaries of the Unit, which boundaries are as follows:

Upper and Lower Boundaries: The upper and lower boundaries of said Units shall be the following boundaries extended to an intersection with the perimetrical boundaries.

- (i) Upper Boundary: The plane of the underside of the ceiling (i.e. the inside surface of the interior drywall) but not including any beams, paneling, or wood covering said ceiling (which shall be part of the Unit).
- (ii) Lower Boundary: The upper surface of the floor not including carpeting, tile or other floor covering (which shall be part of the Unit).

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Perimetrical Boundaries: The perimetrical boundaries of the Units shall be the following boundaries extended to an intersection with the upper and lower boundaries:

- (i) **Exterior Building Walls:** The intersecting vertical planes adjacent to and including the interior surface of the exterior walls bounding the units (i.e. the inside surface of the interior drywall of the outside walls).
- (ii) **Interior Building Walls:** The inside surface of the interior walls separating the units (i.e. the inside surface of the interior drywall of the inside walls).

Capitalized terms used in this Condominium Plan which are not otherwise defined shall have the meaning ascribed to those terms in the Declaration.

2. Property. The land herein subjected to this Condominium Plan consists of the following described property situated in the City of Missoula, County of Missoula, Montana:

A portion of The Village at Elk Hills being a portion of the Southeast quarter of Section 6, Township 12 North, Range 19 West, P.M.M., City of Missoula, Montana and being described as follows:

Commencing at the Southeast corner of Elk Hills - Phase 1, a recorded subdivision in Missoula County, thence S88°15'00"W along the southern boundary of said Elk Hills - Phase 1, 232.18 feet to the point of beginning; thence, continuing S88°15'00"W, 90.82 feet; thence S84°20'45"W, 169.73 feet; thence S05°31'30"E, 152.30 feet; thence S84°00'00"W, 100.00 feet; thence S40°00'00"W, 50.00 feet; thence S15°00'00"E, 125.00 feet; thence S67°04'30"E, 123.64 feet; thence S61°51'24"E, 204.56 feet; thence S48°05'43"E, 189.96 feet; thence N22°47'57"E, 187.34 feet; thence northerly 175.24 feet along the arc of a tangent curve with a radius of 924.93 feet; thence N76°35'13"W, 50.07 feet; thence N62°59'29"W, 170.81 feet; thence N04°46'56"W, 183.86 feet to the point of beginning.

SUBJECT TO those rights, reservations, exceptions and easements of record including the easement for ingress, egress and utility purposes for Lot 7 as shown on the approved plat for The Village at Elk Hills.

Said tract containing 4.4 acres, more or less.

3. Name and Description. The property subject to this Declaration shall be known as the residential portion of THE VILLAGE AT ELK HILLS. The residential buildings on this Property consist of two stories, containing two basic floor plans, with mirror images, for the Units. Buildings 1, 2, 3, 4, and 6 each contain eight one-story units; building 5 contains six one-story units. In addition there are two building used for garages as shown on Exhibit A. The



principal construction materials for the buildings are concrete for the foundation and slabs, wood for the framing, structural and finish work, sheetrock for the interior walls, vinyl siding for the exterior siding, and asphalt shingles for the roof. Each Owner obtains particular and exclusive property rights to that owner's Unit, as well as a fractional undivided interest as a tenant-in-common in the Common Elements of the Project and the exclusive right to use any Limited Common Elements appurtenant to each Unit as shown on the attached exhibit or described herein. For identification and descriptive purposes the following exhibit is attached and made a part of this Condominium Plan by this reference:

#### EXHIBIT "A"

A site map of the Property, showing Lots 1 through 6 and the Common Areas that are part of the residential portion of The Village at Elk Hills; a site plan showing the location of the residential and garage buildings; a key to setting forth architectural designations for each unit and garage, addresses and unit designations; basic building floor plans for each of the two floors of the six residential buildings showing with particularity the area of each unit, the floor plan of each unit, the number and types of units contained in each building and on each floor and the parking accommodations for each unit.

Each Condominium shall be inseparable, and may be conveyed, leased, devised or encumbered only as a Condominium. Each Unit shall be bounded as to both horizontal and vertical boundaries as described in Paragraph 1(n) of the Definitions above and shown on the floor plans attached as Exhibit A, subject to such encroachments as are contained in the building whether the same exists now or are created by construction, settlement, or movement of the building or by permissible repairs, reconstruction, or alterations.

Each Condominium may be equipped with and include fixtures or appliances which are located within or attached to the interior walls of the Unit. Each Condominium shall include any doors or windows within a perimeter wall, the interior decorated surfaces of bearing walls, party and perimeter walls and ceiling, and the outlets of all utility installations in the Unit. Each Unit shall also be deemed to include any pipes, wires, conduits, or other utility lines which are within the upper, lower and perimetrical boundaries as described in Paragraph 1(n) of the Definitions set forth above, that are utilized by and serve that single Unit. The respective Units shall not be deemed to include utility service facilities, including any water, sewer and gas pipes and plumbing, electrical wires and cables, and any heating and/or air-conditioning systems running through each Unit which are utilized for or serve more than one Unit; these elements are deemed General Common Elements.

Each Owner shall be responsible for the upkeep and maintenance of the interior of his or her Unit and for the upkeep of all other areas, features or parts of his Condominium in accordance with the Declaration and this Condominium Plan. An Owner shall not permit any act or work to be performed that will impair the structural soundness or integrity of the Unit or

impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the other Condominiums or their Owners.

4. Appurtenances. Each Condominium shall also include each of the following as an inseparable appurtenance, whether or not separately described, conveyed or encumbered:

- (a) A fractional undivided interest as tenant-in-common in the Common Elements as set forth in paragraph 5 of this Condominium Plan.
- (b) An exclusive right to use any Limited Common Elements appurtenant to each Unit as set forth in paragraph 7 of this Condominium Plan.
- (c) A membership in the Association and an undivided interest in the funds and assets held by the Association for the benefit of the Owners.
- (d) The easements for the benefit of the Condominium as set forth in the Declaration.

5. Common Elements. Each Owner shall have a one forty-sixth (1/46) undivided interest in the Common Elements as shown on attached Exhibits A and described herein. Such percentage represents the Owner's ownership interest in the Common Elements and the Owner's liability for Common Expenses.

6. General Common Elements. The General Common Elements are shown on Exhibit A to this Condominium Plan, are those portions of the Common Elements designated for the use of all the Owners, consist of those items listed in Paragraph 1(i) of the Definitions above and include the Common Elements except for those Limited Common Elements that are designated for the use of fewer than all of the Owners.

7. Limited Common Elements. The Limited Common Elements are shown on Exhibit A to this Condominium Plan, are those portions of the Common Elements designated for the exclusive use of one (1) or more, but fewer than all of the Owners, and consist of those items listed in Paragraph 1(j) of the Definitions above.

8. Uses. The Condominiums are for residential purposes only (except as set forth in the Declaration), and shall be occupied and used in accordance with the Declaration.

9. Agent. The person designated to receive service of process in cases provided in section 70-23-901, MCA, is Rea Hook, whose address is 1096 Bear Creek Trail, Victor, Montana 59875. Notwithstanding the provisions in paragraph 10 of this Condominium Plan, the agent for service of process may be changed by a resolution amending this declaration, approved by a majority of the Owners, and filed with the Missoula County Clerk and Recorder in the manner provided by section 70-23-902, MCA.



10. Administration. The administration of the Project shall be in accordance with the provisions of this Condominium Plan, the Declaration and the Bylaws. The obligation of each Owner, including Declarant, to pay for Common Expenses assessed by the Association, including amounts and times of commencement, shall be set forth in the Declaration.
11. Revocation and Amendment. This Condominium Plan shall not be revoked except by approval of a majority of seventy-five percent (75%) of the voting power of the Association, but it may be amended by the Declarant, only, should circumstances change and the need arise.
12. Assessments. The Association shall levy assessments upon Owners for the purposes and in the manner provided in the Bylaws and in the Declaration.
13. Waiver. The failure of the Association or of an Owner, including Declarant, to enforce any right, provision, covenant or condition which may be granted by this Condominium Plan, the Declaration or the Bylaws shall not constitute a waiver of the right of the Association, Declarant or Owner to enforce such right, provisions, covenant or condition in the future.
14. Cumulative Rights, Etc. All rights, remedies and privileges granted to the Association, Declarant or Owner pursuant to any terms, provisions, covenants or conditions of this Condominium Plan, the Declaration or Bylaws shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be granted to such party by this Condominium Plan, the Declaration, the Bylaws or law or in equity.
15. Covenants Running With Land. All provisions of this Condominium Plan, the Declaration and the Bylaws validly adopted pursuant hereto shall be construed to be covenants running with the land and with every part thereof and interest therein including but not limited to every Condominium, and every Owner and claimant of the Condominium or any part thereof or interest therein, and his or her heirs, executors, administrators, successors and assigns shall be bound by all of the provisions of this Condominium Plan, the Declaration and the Bylaws.
16. Termination. This Declaration of Unit Ownership shall be terminated, if at all, only in the manner provided in sections 70-23-801 through 70-23-803, MCA.
17. Limited Representations and Warranties. Declarant specifically disclaims any intent to have made any warranty or representation in connection with the Project, this Condominium Plan, the Declaration or the Bylaws, except as specifically set forth herein and therein and no person shall rely upon any warranty or representation not so specially made herein and therein. Estimates of Common Expenses, if any have been given, are deemed accurate, but no warranty or guaranty is made nor intended, nor may anyone rely on such estimates.

18. Conflict with Montana Law. If any provision of this Condominium Plan conflicts with the mandatorily applicable provisions of the Montana Unit Ownership Act (§§ 70-23-101 through 70-23-1002, MCA) such mandatorily applicable provisions shall supersede and apply in place of the provisions of this Condominium Plan so in conflict with the Montana Unit Ownership Act.

19. Construction with Declaration. This Condominium Plan has been prepared and recorded in connection with the Declaration and, accordingly, this Condominium Plan and Declaration shall be construed together.

20. Arbitration. Excepting a dispute involving a first mortgage holder, an action for collection of money or an injunction sought to prevent or compel an action, all other disputes ("dispute") shall be settled and finally determined by binding arbitration in the City of Missoula, Montana, in accordance with the Commercial Arbitration Rules of the American Arbitration Association now in force or as hereafter amended. The Board shall select one arbitrator, the homeowner or homeowners that are adverse to the Board shall select one arbitrator, and the two arbitrators shall select a third arbitrator. The parties involved in the dispute shall confer with the arbitrators and together shall decide upon the time and place for the hearing. The arbitrators' fees and all arbitration costs shall be shared by the parties involved in the dispute, unless the panel of arbitrators unanimously determines that a party has asserted an unreasonable position during the arbitration; if this determination is made then the arbitrators' fees shall be paid by the party who asserted the unreasonable position.

IN WITNESS WHEREOF, the Declarant has executed this Condominium Plan this 18 day of October, 1996.

R & H DEVELOPMENT,  
a Montana Limited Liability Company

By: E. Alan V. Russo

Its Member



STATE OF MONTANA     )  
                                  )     ss.  
COUNTY OF MISSOULA    )

This instrument was acknowledged before me on October 18, 1996 by  
Edwin V. Russo, as a member of R & H DEVELOPMENT, a Montana  
Limited Liability Company.

(SEAL)

Sandra Smith  
Notary Public for State of Montana  
Residing at Missoula  
My commission expires: 10/7/99

CERTIFICATE OF REGISTERED ARCHITECT

The undersigned is the registered architect for residential portion of The Village at Elk Hills constructed on :

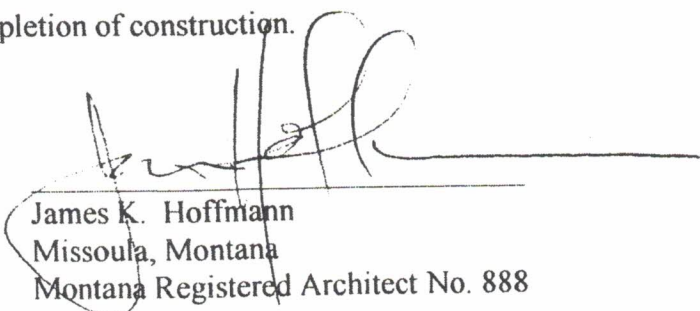
A portion of the Village at Elk Hills being a portion of the Southeast quarter of section 6, Township 12 north, Range 19 west, P.M.M., City of Missoula, Montana and being described as follows:

Commencing at the Southeast corner of Elk Hills - Phase 1, a recorded subdivision in Missoula County, thence S88°15'00"W along the southern boundary of said Elk Hills - Phase 1, 232.18 feet to the point of beginning; thence, continuing S88°15'00"W, 90.82 feet; thence S84°20'45"W, 169.73 feet; thence S05°31'30"E, 152.30 feet; thence S84°00'00"W, 100.00 feet; thence S40°00'00"W, 50.00 feet; thence S15°00'00"E, 125.00 feet; thence S67°04'30"E, 123.64 feet; thence S61°51'24"E, 204.56 feet; thence S48°05'43"E, 189.96 feet; thence N22°47'57"E, 187.34 feet; thence northerly 175.24 feet along the arc of a tangent curve with a radius of 924.93 feet; thence N76°35'13"W, 50.07 feet; thence N62°59'29"W, 170.81 feet; thence N04°46'56"W, 183.86 feet to the point of beginning.

SUBJECT TO those rights, reservations, exceptions and easements of record including the easement for ingress, egress and utility purposes for Lot 7 as shown on the approved plat for The Village at Elk Hills.

Said tract containing 4.4 acres, more or less.

I hereby certify that the attached plans set forth on Exhibit A are an accurate copy of the plans prepared by our office and filed with the City of Missoula for the condominium development on the above identified property. The attached plans fully and accurately depict the layout, location, unit designation and dimensions of each unit. All dimensions shown are nominal. I will recertify the documents upon completion of construction.



James K. Hoffmann  
Missoula, Montana  
Montana Registered Architect No. 888



STATE OF MONTANA )  
COUNTY OF MISSOULA )

SS

James K. Hoffmann, being first duly sworn, deposes and says:

That he is the registered architect named in the above Certificate of Registered Architect and knows the contents thereof, and that the matters and things therein stated are true of his own knowledge.



DESCRIBED AND SWORN to before me this 29th day of October, 1996.

Tia M. Hammack  
Notary Public for State of Montana  
Residing at Missoula, MT  
My commission expires: 6-12-98

EXHIBIT A

BOOK **490** PAGE **0031**

SITE MAP, SITE PLAN, BUILDING AND UNIT PLANS  
FOR THE RESIDENTIAL PORTION OF THE VILLAGE AT ELK HILLS