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DECLARATION OF COVENANTS AND RESTRICTIONS FOR ELK SPRINGS RESORT, A PLANNED UNIT DEVELOPMENT

This Declaration made this 14 day of July, 2005, by Mountain Top Developers, LLC, hereinafter called Developer.

WITNESSETH:

WHEREAS; Developer is the owner of the real property known as Elk Springs Resort (a Planned Unit Development), as described and shown on Plat of record in Large Map Book 6, Page 104, (Phase 1, Part A, and all areas of future development) in Register's Office, Sevier County, Tennessee, and being part of the property conveyed to Developer by warranty deed from Josephine M. Moore, Trustee of the Josephine M. Moore Revocable Trust Agreement dated August 28, 2000 and Robert G. Moore, Trustee of the Robert G. Moore Revocable Trust Agreement dated August 28, 2000 dated October 5th, 2004, recorded in Book 2085 Page 681 in said Register's Office; and

WHEREAS; Elk Springs Resort (a Planned Unit Development) has been approved as a Planned Unit Development in accordance with the provisions of the City of Gatlinburg's Planning Region Planning and Zoning Ordinances, and the Tenn. Horizontal Property Act; and

WHEREAS; Developer desires to impose certain Covenants, Restrictions, Easements, as well as the terms and conditions of the Charter and Bylaws of the Association, and other derogation of title on said property for the purpose of maintaining the appearance of the property, to prevent nuisances, and to thereby secure to each property owner, the full benefit and enjoyment of their property, herein declaring the same to be for the benefit of said property and each and every owner of any and all parts thereof; and

WHEREAS; Developer deems it advisable to create an entity to be known as the Elk Springs Resort Homeowner's Association, Inc., which shall be delegated and assigned the power and authority to maintain and regulate the use of any common areas and to administer and enforce the Covenants and other provisions as are provided for hereinafter.

NOW THEREFORE, the Developer declares that said real property as described on the above referenced map is and shall be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, restriction, conditions, easements, charges, assessments, obligations, and liens (generally herein referred to as "Covenants and Restrictions") hereinafter set forth in order to provide an orderly plan of construction and development and to protect the common interests of the property owners.

The following Covenants and Restrictions are hereby imposed and shall be covenants running with the land and shall be binding upon the Developer and all subsequent owners thereof in any capacity whatsoever.

ARTICLE I

Definitions

Section 1 <u>Definitions</u>. The following words and terms, when used in this Declaration, (unless the context clearly shall indicate otherwise) shall have the following meanings:

(a) "Association" shall mean and refer to the Elk Springs Resort Homeowner's Association, Inc., a Tennessee Nonprofit Association. The

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Association shall be governed by the Charter and By-Laws of the Association which are recorded with this instrument, in Book 225, Page 294 (Charter) and Book 225, Page 301 (By-Laws), and which are hereby incorporated into this instrument by reference.

- (b) "Common Areas" shall mean and refer to all common grounds, roads, easements, swimming pools, pavilions, entrance signs, entrance sign lights, walking trails, streetlights, and other facilities located on the Property, including all portions of the Property that are not part of a Unit as designated on the recorded plat, or those portions that are labeled as "Common Area" on the recorded plat.
- (c) "Developer Control Period" shall commence on the date of the recording of these covenants and restrictions and shall continue until the Developer sells 100% of the Units owned, transfers all of its rights, powers and responsibilities to the Association, or the expiration of ten years, whichever shall occur first. A partial transfer of its rights, powers or responsibilities to the Association or a third party will not terminate the Developer Control Period. For the purpose of this instrument, the sale of 100% of the Units shall include the sale of any lots or units developed as additional phases of Elk Springs Resort regardless as to whether said additional phases are subject to different Covenants and Restrictions.
- (d) "Member" shall mean and refer to all those Owners who are members of the Association, as provided in Section 1 of Article III hereof.
- (e) "Owner" shall mean and refer to the record owner, whether one or more persons, firms association, corporations, or other legal entities, of the fee simple title to any Unit situated upon the Property. It shall not mean or refer to the trustee or mortgagee under a Deed of Trust or Mortgage unless and until such mortgagee has acquired title pursuant to foreclosure proceeding or any proceeding in lieu of foreclosure; nor shall the term "Owner" mean or refer to any lessee or tenant of an Owner.
- (f) "Property" shall mean and refer to the property as shown on plat of record in Large Map Book 6, Page 104, (Phase 1, Part A, and all areas of future development) in the Sevier County Register's Office.
- (g) "Unit" shall mean and refer to any improved or unimproved plot of land intended for the construction of a residence, as shown upon any recorded final map of any part of the Property.

ARTICLE II

Property Subject to This Declaration

The real property which is and shall be held, transferred, sold, conveyed, leased, and occupies, subject to this Declaration, is located, in the Planning Region for the City of Gatlinburg, County of Sevier, State of Tennessee, and is more particularly described as shown on map of record in Large Map Book 6, Page 104, (Phase 1, Part A, and all areas of future development) in the Sevier County Register's Office.

ARTICLE III

Membership and Voting Rights in the Association

Section 1. <u>Membership</u>. Every person, firm, association, corporation, or other legal entity who is a record owner or co-owner, as defined herein, of the fee simple to any unit which is subject by this Declaration to assessment by the Association, shall be a Member of the Association <u>provided that</u> any person, firm, association, corporation or legal entity who holds such title or interest merely as a security for the performance of an obligation (including but not limited to mortgagees or trustees under deeds of trust) shall not be a member of this Association.



In addition, the Developer shall be the Class B Member as referenced in the Bylaws of the Association incorporated herein.

Section 2. <u>Voting Rights</u>. Members of the Association, as defined in Section 1 of Article III, shall be entitled to one (1) vote for each unit owned, to be exercised in person or by proxy. When more than one person holds the fee simple title to any unit as co-owners (including but not limited to tenants by the entirety, joint tenants or tenants in common), the vote for such unit shall be exercised as the co-owners among themselves determine, but in no event shall more than one vote be cast with respect to any one unit.

Any one co-owner may vote on behalf of all other co-owners unless any co-owners has notified the Association in writing to the contrary.

All voting shall be conducted in accordance with the By-Laws of the Association, which are incorporated herein and made a part of this instrument.

ARTICLE IV

Covenant for Maintenance and Capital Improvement Assessments

Section 1. Creation of the Lien and Person Obligation of Assessments. The Developer covenants for itself, it's successors and assigns that no contract will be made for the sale of any Unit and no deed conveying a Unit shall be delivered unless the same shall include provisions obligating the purchaser or grantee and his, her or its heirs, executors, administrators, successors and assigns to pay to the Association (1) Monthly Assessments for charges and (2) Special Assessments for capital improvements, which will be fixed, established and collected from time to time as herein provided. Each person who accepts a deed for a Unit or accepts title as an heir or devisee shall be deemed to have consented to make such payments and to have agreed to all the terms and provisions of this Declaration whether or not the above mentioned provision was included in the contract or deed or other instrument by which he, she or it acquired title. The Monthly and Special Assessments, together with such interest thereon and costs of collection thereof (including reasonable attorney's fees), as hereinafter provided, shall be a charge and shall constitute a continuing lien upon the land against which each assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof, as hereinafter provided, shall also be the personal obligation of the person or persons or entity who was the owner of such property at the time when the assessment fell due. In the case of co-ownership of a Unit all of such co-owners of the Unit shall be jointly and severally liable.

Section 2. <u>Purpose of Assessment</u>. The Monthly Assessment levied by the Association shall be used exclusively for promoting the health, safety pleasure and welfare of the owners of Units and the costs and expenses incident to the operation and administration of the Association, common areas and facilities, including, without limitation, payment of all taxes and insurance premiums, improvements and maintenance of common areas, all in accordance with the By-laws. In addition, the Assessments will be used to pay the common water bill for the subdivision. Assessments may also be used for the employment of attorneys to represent the Association when the need arises.

In addition to the monthly assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of a natural disaster, any construction, reconstruction, repair or replacement of a capital improvement upon the Common area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of three fourths (3/4) of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose. All special assessments shall be fixed at a uniform rate for all Units and may be collected monthly or in a lump sum.

Section 3. Monthly Assessments-Maximum Assessment. The amount of the Monthly Assessment shall be set by the Developer during the Developer Control Period, and then by the vote of three-fourths of the members of the Association for the first year following the Developer Control Period and subsequent years.. The initial Monthly Assessment shall be \$100.00, which shall be paid in advance on a quarterly basis. In the event that the votes necessary to set the succeeding year's Monthly Assessments are



unavailable or unobtainable, the previous year's quarterly assessment shall become the Monthly Assessment for the succeeding year.

Subject to the limitations of Section 3 of this Article, and for the successive periods therein provided, the Association may change the maximum amounts of the assessments fixed by Section 3 of this Article for any such period, provided that any such change shall have the assent by the vote in person or by proxy of three-fourths of all of the votes eligible to be cast by all of the Members at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance, which notice shall set forth the purpose of the meeting.

Section 5. <u>Period for which Monthly Assessments are made: Due Dates.</u> The quarterly payment of the Monthly Assessments shall be paid in advance, and shall be due and payable on or before the first day of the Months of January, April, July and October of each calendar year.

Developer is exempt from Assessments during the Developer Control Period. Upon the purchase of a Unit from the Developer, the Monthly Assessments due for the quarter in which the closing occurs shall be prorated as to the amount owed by the purchaser and collected at closing.

Section 6. <u>List of Assessments, notice of Assessment, Certificate as to Payment.</u> The Board of Directors of the Association shall cause to be prepared, at least thirty (30) days in advance of the due date of each assessment, a list of the Units according to the record owner thereof and the assessments applicable thereto. Written notice of the assessment shall be sent to every Owner prior to the due date.

The Association shall, upon the request of any Owner liable for an assessment or of the mortgagee of the Owner's premises, furnish to such Owner or mortgagee, a certificate in writing signed by an officer of the Association, setting forth whether or not such assessment has been paid.

Section 7. Effect of Non-Payment of Assessment: The Personal Obligations of the Owner; the Lien; Remedies of the Association. If the assessments are not paid promptly on the due date thereof as specified in Section 5 of the Article, then such assessment shall become delinquent automatically and shall incur a late fee of \$35.00, which, together with interest thereon at the rate of fifteen percent (15%) per annum from the due date, and costs of collection thereof, as hereinafter provided, thereupon become a continuing lien on the property against which it is levied, which lien shall bind such property in the hands of the then Owner, his, her, or it's heirs, executors, devisees, personal representatives, successors, and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his, her, their or it's personal obligation for a period of six (6) years from the due date thereof, and shall not pass as personal obligation to his, her, their or its successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the due date specified in Section 5 of this Article, the assessment, together with interest thereon at the rate of fifteen percent (15%) per annum, may be enforced and collected by the Association by the institution of an action at law against the Owner or Owners personally obligated to pay the same, or by an action to foreclose the lien against the property, and there shall be added to the amount of such assessment and interest, the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include, in addition to the assessment, interest, court costs, advertising expenses, mailings, and a reasonable attorney's fee. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Unit.

Section 8. <u>Subordination to the Lien of Mortgages</u>. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Unit shall not effect the assessment lien. However, the sale or transfer of any Unit pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Unit from liability for any assessments thereafter becoming due or from the lien thereof.

Section 9. Exempt Property. All property dedicated to, and accepted by a local public authority shall be exempt from assessments herein. All units owned by the Developer shall be exempt from assessments herein.



Section 10. <u>Liens.</u> In any event where a delinquent assessment (whether Monthly or Special) creates a lien, the Developer, during the Developer Control Period, and then the Association, shall have the right to file a Notice of Lien in the Register's Office for Sevier County, Tennessee regarding any such Assessment.

ARTICLE V

Basic Restrictive Covenants

Section 1. Residential Environment. The Property shall be used for residential purposes only (or as a residential model approved by the Developer). No illegal, noxious, or offensive activity, or excessively loud noise shall be permitted or carried on any part of the Property, nor shall anything be permitted or done therein which is or may become a nuisance or a source of discomfort or annoyance to the neighborhood, or any of it's residents; nor will goods or services be offered for sale to the public from the Property, with the exception of a yearly garage sale. All undue or unnecessary loud noise on the Property is prohibited. No Unit will be used for commercial or business purposes, unless expressly provided for in these restrictions. All Unit Owners will maintain the areas immediately surrounding their Unit, and any landscaping thereon, as is necessary to maintain the attractiveness and appearance of the subdivision, and to fail to do so shall be deemed a nuisance under this provision. No part of the Property shall be used as access to lands lying outside the Property unless approved by the Developer during the Developer Control Period, or by the Association after the Developer Control Period. Developer retains the right to use any portion of the Property (including common area) to access lands lying outside the Property, even if the Property is reacquired by Developer before or after the Developer Control Period, without the necessity of approval by any Unit owner or by the Association.

The discharge of firearms or other devices designed or intended to propel projectiles or other dangerous materials is strictly prohibited. This includes, but is not limited to, firearms, bb guns, pellet guns, paintball guns, slingshots, crossbows and other types of bow and arrow combinations.

Section 2. Vehicles. Occupants may have no more than one vehicle per bedroom (based upon the lesser of the number of bedrooms approved by the appropriate government authority, or the number of actual bedrooms located within the improvements on said Unit) parked outside on an ongoing basis which must be in good mechanical and physical condition. The term "Vehicles" shall include, but not be limited to cars, trucks, motorcycles, scooters and golf carts. Vehicles shall be parked in the spaces designated for each Unit. Street parking is prohibited, except for brief or temporary parking by invitees of the Unit owners, provided that such parking doesn't obstruct the flow of traffic or another Unit owners access to their Unit. No inoperable car, truck or other vehicle may be parked on the Property, except in a garage. No major vehicle repairs will be undertaken except in a garage. No trucks or other vehicles larger than one and one half (1 1/2) ton pickup variety shall be parked on the Property, except those reasonably necessary to complete approved improvements. Recreational vehicles, trailers, buses, lawn equipment and boats will be parked only in garages. No go-carts, three or four wheelers, or All Terrain Vehicles are allowed to be stored other than in a garage or basement.

Section 3. Signs. No sign of any kind shall be displayed to the public view on any of the Property without the written permission of Developer, or their designated representative, with the exception of a small sign denoting home ownership. Also allowed will be one sign of not more than 24 inches wide x 16 inches tall with a Hunter Green background and White Lettering advertising the Unit for sale or rent. Sign shall be constructed in wood and painted to the above colors with post-painted Hunter Green. The bottom of Sign shall not be higher than 24 inches off the ground. No Riders or attachments to the sign. The Developer, or the Association after the Developer Control Period, prior to display, must approve signs advertising the sale or rent of a Unit in writing. Developer retains the right to approve, in writing, variances from this Section on an individual basis, and may deny approval at it's discretion.



All unapproved signs shall be removed by the Developer, or the Association after the Developer Control Period.

Section 4. Animals. No stables or other quarters shall be erected, maintained or used on the Property for stabling or accommodating any horses, cattle, swine, goats, sheep, poultry, fowl, or other non-domesticated animals; and such non-domesticated animals shall not be kept on the Property. The only pets allowed are cats, dogs, fish, and exotic birds, and only if such pets are not mean spirited and do not pose a threat of injury or death to humans. All pets shall be kept indoors and shall not be an annoyance or nuisance to the neighborhood. No outdoor tied-up animals shall be allowed. All pets that are outdoors shall be physically with the homeowner and on a leash. Breeding of pets or other animals for commercial purposes shall not be permitted.

No fences, pet runs, pet houses, or any other types of animal restraints are allowed within the Common Areas. Such enclosed pet areas are allowed only below the existing decking of the Unit, and must be enclosed by a fence approved by the Developer or the Association after the Developer Control Period. Any such fence will be landscaped along the exterior of the fence, so as to maintain the natural beauty of the subdivision.

Section 5. Construction. When the construction of any improvement upon any Unit on the Property has begun, work thereon shall be pursued diligently and continuously until the full completion thereof. The improvement shown on the plans and specifications approved by the Developer or the Association after the Developer Control Period must be completed in accordance with said plans and specifications within twelve months after the commencement of construction of such improvement, unless such completion is rendered impossible as the direct result of strikes, fires, national emergencies or natural calamities. During construction on any Unit on the Property, all vehicles involved in such construction, including those delivering materials and supplies, shall enter upon the Property, and be parked upon the Property, only at such locations as shall be approved by the Developer.

During the construction phase of any improvements to any part of the Property, at no time shall any owner, his employees or agents, expose the surface of the road to track machines or any other type of equipment which causes surface damage. Any and all road damage caused by any owner, his employees or agents, shall be the responsibility of such owner to promptly correct and repair. In the event that it is not repaired in a timely manner, the Developer or the Association shall have the right to repair the damage and a Special Assessment shall be deemed to exist against the Unit for the cost of the repairs. The Association shall have the right to file a Notice of Lien in the Register's Office for Sevier County, Tennessee regarding any such Special Assessment.

The Developer reserves the right to build all or a portion of the improvements to a Unit, including but not limited to decks, porches, patios, and stairs, on the adjacent common areas. In the event of such an encroachment, there shall be a permanent easement in favor of the current and future owners of the subject Unit, said easement to run with the land, to the extent that the improvements encroach on the Common Areas. In the event that the improvements encroach, and the improvements are someday partially or wholly destroyed by fire or otherwise, the Unit Owner shall have the right (and the continuing easement) to rebuild or repair the improvements on the same footprint as the Developer's original improvements.

Any modification, change, addition or renovation to any Unit, including but not limited to changes in color and materials, must be approved by the Developer during the Developer Control Period, and after by the Association.

Section 6. <u>Temporary Structures</u>. No trailer, mobile home, modular home, prefabricated home, shack, temporary structures, or other outbuilding shall be placed or built on any lot temporarily or permanently, nor shall they be used as a residence temporarily or permanently. No house or other structure shall be moved or shall be permitted to be moved or brought onto the subdivision and be placed or erected on any



Unit in any manner. One temporary construction trailer may be placed upon the property during construction, but shall be removed within two weeks of completion of construction.

Section 7. <u>Unit Care/Rubbish</u>. No part of the Property shall be used or maintained as a dumping ground for rubbish or junk. Trash, garbage or other waste shall not be kept except in sanitary containers approved by the Developer during the Developer Control Period, and then by the Association. All incinerators, sanitary containers or other equipment for the storage or destruction of such materials shall be kept in a clean and sanitary condition and shall be kept out of public view. Incinerators and open burning is prohibited on the premises.

Section 8. Fences. No fences are allowed on the Property without the expressed written permission of the Developer, or the Association after the Developer Control Period.

Section 9. Satellite Dishes. The location and type of any satellite dish to be installed upon any Unit, shall be subject to the approval of the Developer during the Developer Control Period, and thereafter by the Association. Satellite Dishes shall be of the smaller variety not to exceed four square feet in size. Every effort should be taken to locate satellite dishes out of the view of other residents of the Property. The approval or disapproval of the satellite dish type or location shall be given within thirty days following the request for same, and if the location is disapproved, the disapproving authority shall recommend a suitable location within thirty additional days thereafter.

Section 10. Maintenance of Natural Environment. No development of, construction upon, nor improvement to, any part of the Property, which may reasonably involve the cutting or removal of live trees that are six inches in diameter or more, may commence without prior approval by Developer or it's designee, including the Association, of a tree-cutting plan submitted by the owner of such Unit. Developer, or it's designee may accept the plan in whole or in part. In the event that Developer, or their designee, fails to approve or disapprove the plan within a period of thirty days following its submission, or if no litigation to enjoin the construction, development or improvement has been initiated prior to completion thereof, such approval shall not be required, and this covenant will be deemed to have been fully complied with. Neither the Developer, nor their designee shall be entitled to any compensation for services performed pursuant to this covenant. The powers and duties of the Developer and their designee transfer to the Association upon the expiration of the Developer Control Period. This restriction shall not apply to the cutting or removal of damaged trees which pose an imminent danger to the safety of persons or property, as determined by the Developer or the Association after the Developer Control Period. Failure to follow an approved plan or failure to submit a plan may subject the owner of the Unit to the requirement by the Developer, or their designee, that such owner replace all trees cut or removed without approval, and face a penalty not to exceed \$2,000.00 per tree, said penalty to be at the sole discretion of the Developer or the Association Board of Directors after the Developer Control Period. Any tree replacement is to be completed within six months of the demand by Developer, or their designee. All penalties will be liens upon the land, and the Board shall have the power to file a notice of lien for said penalties in the Register's Office for Sevier County, Tennessee.

In the event that tree removal is deemed necessary by the Developer or the Association due to the fact that the tree presents potential danger to individual Units, or persons conducting activities near said trees, the Unit owner shall be required to remove the tree within thirty days of notification, at his own expense. This provision shall only apply to trees lying within the platted Unit description as shown on the recorded plat. Any trees outside the platted Unit (and thus being in the Common Area), will be removed by the Association, and will be deemed an expense of the Association (not attributed to any particular Unit owner).

Unit owners have the obligation to monitor the condition of any trees in it's platted Unit, and shall be responsible for all damage and or injury caused by said trees.



Section 11. Easements.

- (A) GENERAL EASEMENTS. There is reserved a perpetual easement, as noted on the recorded plat, for utility installation, drainage, and roads. The Developer, for themselves and their successors and assigns, hereby reserves and is given a perpetual, alienable and reasonable easement, privilege and right, on, over and under the ground, to erect, maintain and use electric wires, cables, conduits, drainage lines or drainage ditches, and other suitable equipment for drainage and for the installation, maintenance and transmission and use of electricity, telephone, lighting, heating, drainage and other conveniences or utilities on, in, over and under all of the easements shown on recorded plat (whether such easements are shown on said plat to be for drainage, utilities or other purposes), and the Developer shall have the unrestricted and sole rights and power of alienating and releasing the privileges, easements and right referred to in this paragraph until the same is transferred by Developer to the Association.
- (B) OWNERS' EASEMENTS OF ENJOYMENT. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:
- (i) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility leased by the Association situated within or adjacent to Elk Springs Resort; and
- (ii) The right of the Association to suspend the voting rights, use of common areas, and rights to the use of the leased recreational facilities by an owner for any period during which any assessment against his Unit remains unpaid; and for a period not to exceed 60 days for any infraction of the published rules and regulations; and
- (iii) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by a majority of the members agreeing to such dedication or transfer has been recorded. However, no consent shall be required for the dedication of utility and service easements so long as the Developer owns any undeveloped units. The Developer reserves the right of use of the common area roads for access to adjacent phases or future development of property owned by the Developer or acquired by the Developer in the future. THE ASSOCIATION SHALL NOT HAVE THE RIGHT TO ALLOW ADJACENT PROPERTY OWNERS TO CONNECT TO ANY UTILITIES IN ELK SPRINGS RESORT WITHOUT THE EXPRESS CONSENT OF THE DEVELOPER AND WITHOUT PAYMENT OF COMPENSATION TO THE DEVELOPER FOR COSTS OF UTILITIES; and
- (iv) The right of the Association to impose regulations for the use and enjoyment of the Common Area and improvements thereon, which regulations may further restrict the use of the Common Area; and
- (C) Delegation of Use. Any owner may delegate his right of enjoyment to the Common Area and facilities to the members of his immediate family, his tenants, or contract purchasers who reside on the property, provided, however, that any utilization shall be in compliance with the rules and regulations contained in this instrument and the Bylaws of the Association, and any additional rules and regulations promulgated by the Developer or Association in accordance with this instrument and the Bylaws of the Association.

Section 12. Foundations. NA

Section 13. Occupancy and Rental. No residence constructed on any lot in this subdivision may be occupied prior to it's substantial completion. No Unit shall be rented or leased separately from the rental or lease of the entire Unit; and no part of such building shall be used for the purpose of a boardinghouse, hotel, motel, tourist or motor court or other transient accommodation. No duplex residences, apartment houses, multiple family or group homes shall be erected or allowed to remain on the Property, and no building on the Property shall be converted into such prohibited use.

Rentals of any duration, including overnight rentals, are allowed.



Section 14. <u>Lighting.</u> All outdoor lighting (except emergency lighting) shall be of low wattage, no greater than 40 watts, and it shall be turned toward the ground, and shall be shielded completely by frosted (translucent) glass or plastic in all directions so that it does not shine directly toward neighbor's units. Landscape lighting or any other lighting placed on the ground, or at ground level, that is designed to accent the improvements at night, shall be allowed.

Section 15. <u>Roads.</u> The Developer shall convey the roads to the Association, at which time the Association will be responsible for the maintenance, repair and improvement of the private roads.

Section 16. <u>Lawful Use.</u> No immoral, improper, offensive, or unlawful use shall be made on any units or common areas, and all valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction thereof shall be observed.

Section 17. Common Areas. Common Areas are for the use and benefit of the individual owners, their guests, tenants, or other invitees, provided, however, that the individual landowners will be liable for all damage to the common areas or other Units and improvements to the Property, if said damage is a result of the actions of their guests, invitees, renters, tenants, or any other party present in the subdivision by invitation of that owner. Individual Unit owners, by allowing guests, tenants and other invitees onto the Property and it's Common Areas, agree to defend, indemnify and hold harmless the Developer, the Association, and individual Unit owners for all costs, loss or damage relating to the activities of their guest, tenants and other invitees.

Nothing shall be altered or constructed in, or removed from, the Common Area, except upon the written consent of the Developer during the Developer Control Period, and then the Association.

The Association will be responsible for maintaining liability insurance on all Common Areas. The Association shall adopt rules for the use of the Common Areas, and such rules shall be furnished in writing to the Members. The voting rights, and the right to use the Common Areas and facilities, by an owner, may be suspended for a period of up to sixty (60) days for violation of these rules.

Section 18. No Reciprocal Negative Easements. Notwithstanding any other provisions of this instrument, the remaining properties of the Developer, whether adjoining the Property addressed herein or not, shall not be bound by these Covenants and Restrictions. However, the Developer, his heirs, successors and/or assigns, in and to said adjoining lands, reserve the right to enforce these Covenants and Restrictions even after the sale of all of the lands that are subject to this instrument.

Section 19. <u>Landscaping Restrictions</u>. Any landscaping other than trees, shrubs and flowers must be approved by the Developer or the Association after the Developer Control Period. Items requiring approval include, but are not limited to statues, fountains, railroad ties, landscaping timbers, figurines, and ornaments. Landscaping shall be done so as not to obstruct mowing, and shall leave at least four (4) feet of open space between all landscaping for that purpose. All landscaping shall be kept neat and clean in appearance.

Seasonal decorations may not be put up more than thirty (30) days prior to the holiday to be celebrated, and shall be removed no later than thirty (30) days after said holiday. Window treatments that can be seen from outside shall be white or neutral tones, and shall be specifically designed to be window treatments. No patterns, including but not limited to flags (either current or historical), confederate flags, banners, sheets, quilts, blankets, and skulls and crossbones.

Flags may be flown if attached to the home, and are not offensive to the general membership of the Association. Any flags must be of the standard size typically flown when attached to a home. No freestanding flagpoles are allowed. The Developer, and



the Association after the Developer Control Period, shall have sole discretion in determining what is considered a standard size flag, and their determination shall control.

Section 20. <u>Miscellaneous.</u> There shall be no basketball courts or hoops or above ground pools (a small, portable children's pool is allowed behind the Unit and out of site). No outdoor recreational equipment, including but not limited to trampolines, play houses, tree houses, forts, tents, playground equipment, swing sets, slides, or any other children's toys shall be allowed.

There will be no riding of go-carts, three or four wheelers, All Terrain Vehicles, or any other types of recreational vehicles on the Property and it's streets. There will be no skateboarding or roller skating allowed, nor shall any ramps or equipment for such activities be constructed on the Property.

Open Clothes lines are prohibited. Mailboxes, yard decorations and identification signs shall be approved in writing by the Developer during the Developer Control Period, and then by the Association.

- **Section 21.** <u>Air Conditioners.</u> No Window Unit Air Conditioners are allowed on the Property.
- Section 22. <u>Resort Rentals.</u> In order to maintain the integrity of the resort as a quality resort area, the Developer or it's assignee or designated agent shall be the exclusive rental company for nightly rentals in Elk Springs Resort.
- Section 23. Exclusive Use of Amenities. Only rentals generated by the Developer or it's successors and/or assigns shall have the right to use the amenities, and the owners of lots that pay an admission fee to use the amenities.
- Section 24. Rental Agency. In order to maintain uniformity in the subdivision, the Developer shall designate in writing, one overnight rental agency to service the subdivision. All owners of Units in the subdivision shall be required to utilize said rental agency in the event they decide to rent out their Unit. Developer reserves the right to designate, in writing, alternative rental agencies, and to waive this restriction as to one or more of the lots. All other rental agencies are prohibited.
- Section 25. <u>Architecture Review</u>. In order to maintain the conformity and uniformity in the appearance of Elk Springs Resort, only Log or Log siding may be used in the resort. All exteriors shall be stained upon completion and maintained to prevent "natural" discoloration and deterioration of exterior. The Developer, or the Association after the Developer relinquishes control, must approve roof and cabin staining colors.

ARTICLE VI

General Provisions

Section 1. <u>Duration</u>. The Covenants and Restrictions set forth herein shall run with and bind all of the land included in the Property described in Article II hereof, and shall insure to the benefit of and be enforceable by the Developer, the Association, and the owners of any land subject to this Declaration, their respective successors, assigns, heirs, and personal representatives, for a period of twenty (20) years from the date hereof, at the end of which period such Covenants and Restrictions shall automatically be extended for successive periods of ten (10) years each, unless at least three-fourths of the Owners of the Units, at the time, shall sign an instrument, or instruments in which they shall agree to change said Covenants and Restrictions in whole or in part, but no such agreement shall become binding unless written notice containing the terms of the proposed agreement is sent to every Owner of every Unit at least ninety (90) days in advance of the action taken in authorizing said agreement.

Section 2. <u>Enforcement.</u> Enforcement of these Covenants and Restrictions shall be by any appropriate proceeding in law or equity in any court or administration tribunal having jurisdiction over or against any person or persons, firm or corporation violating or



attempting to violate or circumvent any Covenants, to enjoin such violation or threatened violation, and/or recover damages, and against the land of any Member to enforce any lien created by this Declaration in any covenant herein contained. Failure by the Developer, the Association, or any Owner or Member to enforce any covenant or restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to thereafter enforce the same.

Section 3. Severability. Should any covenant or restriction herein contained, or any Article, Section, Subsection, sentence, clause, phrase or term of this Declaration be declared to be void, invalid, illegal or unenforceable, for any reason, by the adjudication of any court of competent jurisdiction, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable, and which shall remain in full force and effect.

Section 4. Amendment. This Declaration may be amended at any time or times by the recordation of any instrument executed by Owners holding not less than seventy five (75%) percent of the voting interests of the membership; provided that:

- (a) So long as the Developer is the owner of any unit or any property affected by this Declaration, as it may then have been amended, the Developer's consent to the Amendment must be endorsed in recordable form on the Amendment Instrument.
- (b) No Amendment shall impair any right then existing of the holder of any first mortgage or deed of trust.

Section 5. <u>Developers' Reserved Rights.</u> Notwithstanding any provision herein to the contrary, this Declaration shall be subject to:

- (a) The right of the Developer to execute all documents and take such actions and do such acts affecting the property as, in the Developer's sole discretion, are desirable or necessary to facilitate the general plan of development, or the actual construction or development of the property.
- (b) Easements of record on the date hereof and any easements which may hereafter be granted by Developer to any public or private utilities or governmental bodies for the installation and maintenance of electrical and telephone conduits and lines, gas pipes, sewers or water pipes, or any other utility service or drainage facility serving any unit within the Property or any portion thereof.
- (c) The right of the Developer to add additional property to Elk Springs Resort, which property will only be subject to these Covenants and Restrictions to the extent so noted in the instrument subjecting said additional property to these Covenants and Restrictions. Developer shall have no obligation to follow any general plan of development in regards to additional properties, and any such additional properties shall not be obligated to comply with any of the covenants and restrictions in this instrument, unless so required in the instrument subjecting the additional property to these Covenants and Restrictions.
- (d) Developer's right, during the Developer Control Period, to unilaterally amend these restrictions in any manner deemed appropriate to the Developer.

IN WITNESS WHEREOF, the undersigned has executed this instrument the day and year above written.

 ~ 117

Mountain Top Developers, LLC

BY: John A. Davis ITS: Chief Manager

STATE OF TENNESSEE COUNTY OF SEVIER

Personally appeared before me, the undersigned authority, a Notary Public in and for said County and State aforesaid, personally appeared John A. Davis with whom I am personally

acquainted, or proved to me on the basis of satisfactory evidence, and who, upon oath acknowledged himself to be the CHIEF MANAGER of Mountain Top Developers, LLC, the within named bargainor, a limited liability company, and that he as such CHIEF MANAGER being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself as CHIEF MANAGER.

Witness my hand and official seal at office, this 19th day of 2005

My Commission expires 3-20-07 No

Notary Public

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ATTORNEY'S CERTIFICATION

I, Daniel Hellman, a licensed attorney in the State of Tennessee, do hereby certify that in my legal opinion, that this Declaration of Covenants and Restrictions for Elk Springs Resort, a Planned Unit Development, the Charter and Bylaws for Elk Springs Resort Homeowner's Association, Inc, and the plat, constitute all of the documentation necessary for the creation of a planned unit development, and upon filing of all of the above, a planned unit development will be properly organized and constituted under the laws of the State of Tennessee.

Daniel Hellman, Esq.

115 Sugarfoot Way

Pigeon Forge, TN 37863

STATE OF TENNESSEE

COUNTY OF SEVIER

Personally appeared before me, the undersigned authority, a Notary Public in and for said County and State aforesaid, **DANIEL HELLMAN**, the within named bargainor, with whom I am personally acquainted, or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged that he executed the within instrument for the purposes therein contained.

Witness my hand and seal, at office, this 19 day of April, 2005.

My Commission expires: 4-22-200% NOTARY PUBLIC



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STATE of TENWESSEE, SEVIER COUNTY

SHERRY ROBERTSON HUSKEY

Jaz