

TENANTS IN COMMON AGREEMENT

This Tenants in Common Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between \_\_\_\_\_ (“\_\_\_\_\_” herein) and \_\_\_\_\_ “\_\_\_\_\_” herein); collectively referred to as “Owners” and individually as “Owner” or “\_\_\_\_\_” or “\_\_\_\_\_” and \_\_\_\_\_, herein referred to as “Corporation.”

WITNESSTH:

WHEREAS, \_\_\_\_\_ and \_\_\_\_\_ have, simultaneous with the execution hereof, each acquired a Fifty Percent (50%) undivided interest as tenants-in-common in and to that certain real property described generally as \_\_\_\_\_ (the “Property”) as described on Exhibit “A”; and

WHEREAS, the \_\_\_\_\_ and \_\_\_\_\_ own their respective interests in the Property as tenants in common, subject to the terms, covenants and conditions set forth below, which terms are necessary to ensure the proper and orderly management and operation of the Property during the period of the Owners’ co-ownership;

WHEREAS, \_\_\_\_\_ and \_\_\_\_\_ own and control Corporation which will receive rents and pay capital for the maintenance and improvements of the Property and act as the manager of the Property.

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

1. Term; Automatic Renewal. This Agreement shall be for a term of successive one (1) year periods, commencing on the date of execution hereof, and terminating on December 31, 20\_\_, unless (i) either party terminates this Agreement by delivering written notice to the other on or before October 31 of any year during the pendency of this Agreement; or (ii) termination of this Agreement by both parties, in writing.

2. Management. \_\_\_\_\_ and \_\_\_\_\_ shall execute a Management Agreement naming Corporation as manager of the Property, on a renewable annual basis, to handle such matters as the lease, operation and maintenance of the Property as more fully set forth in said agreement, a copy of which is attached hereto as Exhibit “B”. Said agreement shall provide a twelve month termination provision. Instructions to Corporation may be issued by either of the Owners, except that, in the event of the sale or refinancing of the Property, the consent of both Owners shall be required.

3. (a) Operating Capital and Expenses. In the event Corporation determines, from time to time, that additional capital from the Owners is required (whether for capital improvements or ordinary and routine operating expenses, including insurance, taxes, snow removal, utilities, and furniture for the Property) to operate, improve, or otherwise manage the Property, Corporation shall so notify the Owners, in writing, of the total additional sum required, and request that each Owners submit Fifty Percent 50% (or the amount of each Owners proportionate share of said total, if different), within ten (10) days after receipt of said written

notice.

(b) Operating Capital and Expenses; Emergency Advances. Regardless of the determination by the Corporation regarding additional capital needs and requirements from the owners, should either owner determine that an “emergency condition” exists, that owner shall be entitled to make advances to protect and preserve the value of the real estate. An “emergency condition” shall include any necessary expense or capital improvement to protect and preserve the value of the real estate from immediate threat of significant harm. Should either owner make such an advances, he should give the other owner written notice thereof within fifteen (15) days after making the advance.

The failure of any Owner to make such additional contribution within ten (10) days after receipt of notice requesting same shall constitute a material breach of this Agreement and the non-contributing Owner shall be considered in default hereunder. The amount of any delinquent additional contribution plus interest at the prime rate as published from time to time in the Wall Street Journal plus three (3%) percent, shall be offset against any further distributions due the defaulting Owner.

The non-defaulting Owner shall have the right, but not the obligation, to pay the defaulting Owner’s pro rata share of such additional contribution. The non-defaulting Owner so electing to pay the defaulting Owner’s share shall be entitled to a percentage of the defaulting Owner’s interest. A portion of the defaulting Owner’s interest shall be transferred to the non-defaulting Owner who has made said payment under the following formula: the percentage of the defaulting Owner’s interest that will be transferred to the non-defaulting Owner shall be the quotient wherein the dividend is the amount paid by the non-defaulting Owner and the divisor is the current amount of all sums paid, to date, by the defaulting Owner for the purchase or operation of the Property. For example, if the amount paid by the non-defaulting Owner is \$10,000.00 and the current total sums paid by the defaulting Owner for the purchase and operation of the Property is \$200,000.00, then five (5%) percent of the defaulting Owner’s interest will be transferred to the non-defaulting Owner. The defaulting Owner shall have a period of sixty (60) days from the date of said payment to redeem its interest from the non-defaulting Owner by paying to said non-defaulting Owner the amount of the funds advanced by the non-defaulting Owner together with interest thereon at the Wall Street Journal prime rate plus three (3%) percent.

4. Right of First Refusal as Condition Precedent to Sale to Third Party or Partition of the Property.

(a) Sale of the Property. Either Owner shall have the right to sell, exchange or otherwise transfer its interest in the Property, or any part thereof, after having first offered to sell said interest to the other Owner in accordance with the following procedure:

(i) The interest in the Property which the transferring Owner intends to sell, exchange or otherwise transfer (whether such interest includes all or a portion of the Owner’s interest) shall first be offered in writing to the other Owner at the stated price at which the interest is proposed to be sold to a third party. The other Owner shall have a period of thirty (30) days after receipt of such notice in which to accept or reject said offer, in writing.

(ii) In the event the non-transferring Owner rejects the offer, then the transferring Owner shall be free to sell its interest in the Property on the terms set forth in the notice and on no other terms. In the event the non-transferring Owner accepts the offer, then the non-transferring Owner shall purchase the interest of the transferring Owner on the terms set forth in said notice within sixty (60) days after the acceptance of said offer. The selling Owner shall pay any and all title insurance premiums and reasonable closing costs associated with said transfer.

(b) Partition of the Property. Either Owner shall have the right to partition the Property, after having first offered to sell his interest therein to the other Owner in accordance with the following procedure:

(i) The Owner desiring to partition the Property shall notify the other Owner, in writing, of such desire. In such notice, the Owner seeking partition shall name an appraiser active in the appraisal of recreational property in Gallatin or Madison County, Montana. The non-partitioning Owner shall have twenty (20) days to consent to such appraiser, or identify another appraiser active in Gallatin or Madison County, Montana. Failure to submit an alternative appraiser's name within the twenty (20) day period constitutes consent to the initial named appraiser. If the non-partitioning Owner identifies a second appraiser, then the two identified appraisers shall promptly designate a third appraiser to appraise the Property. The partitioning Owner shall pay the cost of an appraisal of the Property conducted by the designated or agreed appraiser. Within five days after receipt of the appraisal report, and prior to the initiation of any partition action, the partitioning Owner shall offer to sell his interest in the Property to the non-partitioning Owner, in writing, at a discounted price equal to (I) the Property's appraised value, times (ii) the partitioning Owner's percentage ownership interest in the Property, times (iii) 1.0; (provided, however, for a period from November 1, 2005 to October 31, 2010, such shall multiplier shall be .70, to reflect a Thirty Percent (30%) Discount negotiated by the parties for the initial phase of ownership of the Property). The other Owner shall have a period of thirty (30) days after receipt of such written offer in which to accept or reject said offer, in writing. Failure to follow the procedures set forth in this section shall constitute a complete defense to any partition action brought by any Owner.

(ii) In the event the non-partitioning Owner rejects the offer, then the partitioning Owner shall be free to initiate a partition action in the appropriate court. In the event the non-partitioning Owner accepts the offer, then the non-partitioning Owner shall purchase the interest of the other Owner at the price set forth in said notice within one hundred twenty (120) days after the acceptance of said offer. The selling Owner shall pay any and all title insurance premiums and reasonable closing costs associated with said transfer. The parties acknowledge and agree that, in the event of default under the terms of this Agreement by either Owner, the non-defaulting Owner shall have the right to seek specific performance of the terms of the Agreement by the defaulting Owner and money damages.

5. Status of Relationship. The parties acknowledge that it is their intention to hold the Property as tenants in common and that they have expressly elected not to become partners and that neither this Agreement nor any provision of this Agreement shall be interpreted to impose a partnership relationship at either law or equity on the parties. Accordingly, no Owner shall have any liability for the debt or obligation of any other Owner.

6. Notice. Any notice required or desired to be given under this Agreement shall be deemed given, if in writing and hand delivered or sent by United States certified mail, to the other party at the address shown for said party below:

To \_\_\_\_\_:

[INSERT]

With Copy to:

[INSERT]

To \_\_\_\_\_:

[INSERT]

With Copy to:

[INSERT]

7. Dispute Resolution/Attorneys' and Arbitrator's Fees. In the event of any deadlock of the Owners and or the Corporation lasting greater than ten (10) days time, or in the event of any controversy or dispute arising out of or relating to this Agreement, such deadlock or controversy or dispute shall be settled or made by binding arbitration in Lewis and Clark County, Montana, pursuant to the Montana Uniform Arbitration Act or other applicable Montana law, and where not inconsistent, in accordance with the Commercial Arbitration Rules of the American Arbitration Association now or hereafter in effect. The Owners shall unanimously select the arbitrator. In the event the Owners are unable to unanimously select an arbitrator within ten (10) days of meeting to appoint an arbitrator, the American Arbitration Association shall select the arbitrator. The Owners shall confer with the arbitrator and together shall decide upon a time and place for the arbitration hearing. If the Owners and the arbitrator are unable to agree upon a time and place for the arbitration hearing, the arbitrator shall determine the time and place for the arbitration hearing. In the event any Owner or Owners have asserted an unreasonable business position during the arbitration, in the sole determination of the arbitrator, the arbitrator shall have the discretion to assess against the Owner or Owners who asserted the unreasonable business position payment for part or all of the arbitrator's fees and costs, as well as the Owner or Owners' attorneys fees.

8. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed to be an original and all of which together will constitute one and the same instrument.

9. Governing Law. This Agreement is entered into in the State of Montana and shall be governed in all respects by the laws of such State.

Dated \_\_\_\_\_, 20\_\_.

IN WITNESS WHEREOF, the undersigned have set their hands and seals on the date and year first above written.

By: \_\_\_\_\_  
Date: \_\_\_\_\_  
Manager

By: \_\_\_\_\_  
Date: \_\_\_\_\_  
Manager