

Return To:
Pedersen & Hardy
1001 South 24th Street West, Suite 110
Billings MT 59102
Copyright 2006
File No. 34144

State of Montana }
County of Carbon } ss: This instrument file #322350 was filed in my
office this 13th day of April 2006
at 12:02 o'clock P. m.
Linda M. Ladvala
County Clerk - Recorder
by Marcin Hargan, Apt.
fee \$ 139.00

322350

**BYLAWS OF THE ASPENS ON ROCK CREEK
HOMEOWNERS ASSOCIATION**

1. APPLICABILITY OF BYLAWS.

The provisions of these Bylaws are applicable to The Aspens On Rock Creek which have been submitted to the provisions of the Montana Unit Ownership Act pursuant to the Declaration of Unit Ownership for said townhomes. The townhomes are located upon the following described real property located in Red Lodge, Carbon County, Montana:

Lot 1 of Island at Rock Creek Subdivision, Phase 1, according to the official plat thereof on file and of record in the office of the Clerk and Recorder of Carbon County, Montana, as Plat No. 1552 AM.

All present or future owners, tenants, or any other person who might use the facilities of the above-described property in any manner, are subject to the provisions of these Bylaws. The acquisition, rental, or occupancy of any of the units will signify that these Bylaws are accepted, ratified, and will be complied with.

Developer, or its assigns, has the right, but is not obligated, to expand The Aspens on Rock Creek project in the future, to include all or part of the following real property, hereinafter referred to as the expansion property:

Tracts A and B of Certificate of Survey 1552 lying in the City of Red Lodge and located in the NE1/4 and the SE1/4 of Section 27, Township 7 South, Range 20 East, P.M.M., Carbon County, Montana.

EXCEPTING therefrom Lots 1, 2 and 3 of Island at Rock Creek Subdivision, Phase 1, according to the official plat thereof on file and of record in the office of the Clerk and Recorder of Carbon County, Montana, as Plat No. 1552 AM.

THESE BYLAWS PROVIDE FOR BINDING ARBITRATION OF DISPUTES

In the event an amendment to the Declaration of Unit Ownership for The Aspens on Rock Creek which includes all or any part of the expansion property in The Aspens on Rock Creek project, is placed of record in the office of the Carbon County Clerk and Recorder, the provisions of these Bylaws shall thereafter be applicable to all of the property included in The Aspens on Rock Creek project and to all persons who use the facilities of the project.

2. **MEMBERSHIP, MEETINGS AND VOTING.**

(a) **Membership.** The Association shall have two Classes of Membership, Class "A" and Class "B". Each unit owner, except Developer, shall be a Class "A" member of The Aspens On Rock Creek Homeowners Association, hereinafter called "the Association". However, if the ownership of any unit is vested in more than one person, and while each such owner shall be a member, the co-owners or joint owners of the unit shall be deemed to be one member for the purpose of voting and the determination of any required quorum. Developer shall be the only Class "B" member. Until completion or termination of the project, Developer shall be deemed the owner of each unit not yet sold, including those on expansion property, whether or not construction of the unit has begun, and shall have five votes for each such unit.

(b) **Ownership.** Ownership shall be determined according to the records of the Clerk and Recorder of Carbon County, Montana; except that a personal representative, conservator or trustee shall be deemed to be the owner of any unit owned or held by him or her in such capacity, whether or not the same shall have been transferred to his or her name by a duly recorded conveyance. Owners shall also include those purchasing units under purchase contracts who have an equitable interest in the unit as disclosed by the public record in the office of the Carbon County Clerk and Recorder, and in such an event the equitable owner shall be considered as the only owner of such unit. Tenants shall be deemed to be owners and Class "A" members only if the record owner has complied with the provisions of 70-23-102(16) MCA.

(c) **Voting.** The Class "A" members of each unit shall be entitled to one vote per unit and the vote for any unit owned by more than one person shall be exercised as such co-owners may among themselves determine. Whenever a unit is owned by two or more persons, any one of such owners may vote, in the absence of protest by the other or others. The Class "B" member shall have five votes for each unit owned by it, including units not yet constructed and expansion units, even if the expansion unit has not yet been added into the project, unless that member has filed a notice with the Carbon County Clerk and Recorder stating that expansion property will not be added to the project.

(d) Proxies. Votes may be cast in person or by proxy. Proxies may be made by any person entitled to vote. They shall be valid only for the particular meeting designated and must be filed with the Secretary on or before the appointed time of the meeting.

(e) Annual Meeting. The annual meeting of the Association shall be held on the first Tuesday of March of every year at 7:00 p.m. Additional regular and special meetings of the Association may be held at such times and places as shall be agreed upon by the unit owners. Notice of all meetings shall be given to each member personally or by mail, telephone or facsimile, at least 10 days prior to the day named for such meeting. The presence at such meeting in person or by proxy, of owners of 75% of the units, including units which have not yet been built and expansion units, shall be required for the transaction of any business by the Association.

The agenda for the annual meeting shall include the following:

- (1) Determination of quorum;
- (2) Approval of minutes of last annual meeting;
- (3) Presentation of financial report for past year and budget for coming year;
- (4) Report Board opinion of adequacy of limits on insurance coverage;
- (5) Election of Directors;
- (6) Appointment of Arbitrator, as provided below;
- (7) Old business, if any; and
- (8) New business.

(f) Arbitrator. At each annual meeting, the owners shall mutually agree upon and appoint one person who is not a member to serve as Arbitrator for the Board and members for the coming year. In the event of a dispute or disagreement between the directors or members which cannot otherwise be resolved without a lawsuit, except non-payment of assessments, the issue shall be presented to the Arbitrator and the decision of the Arbitrator shall be binding upon the Association, its members, and its Board of Directors. The Arbitrator shall be paid a reasonable amount for the arbitration services. If an Arbitrator is not selected by the members, one or more Arbitrators shall be appointed in the manner provided by the Montana Uniform Arbitration Act, or any successor to that Act. Claims of non-payment of assessments

and foreclosure of a lien for unpaid assessments are not subject to binding arbitration.

(g) Manner of Obtaining Approval of Unit Owners. Approval of all decisions and resolutions of the Association which require the approval of unit owners may be obtained by vote at an annual or special meeting, or by written ballot or petition, circulated among the owners.

3. BOARD OF DIRECTORS.

(a) Number of Directors. The affairs of the Association shall be governed by a Board of Directors composed of three (3) owners. Directors shall be elected by the members, provided, however, that WILLIAM KIELY shall serve as one of the elected Directors until all units, including expansion units, are sold. After sale of all units, including expansion units, the number of Directors may be increased upon affirmative vote of 75% of the Class "A" members entitled to vote.

(b) Term of Office. Two Directors shall be elected at the first annual meeting of the Association for a one year term and one shall be elected for a two year term, subject to the requirement that WILLIAM KIELY must be one of these three Directors until sale of all units. Thereafter, the term of office of each Director shall be for two years.

(c) Nomination and Election. Except as otherwise provided above, candidates for vacant Director positions shall be nominated from the floor at each annual meeting. Each Class "A" member shall be entitled to one vote for each vacancy in the Board of Directors and the Class "B" member shall be entitled to five votes per unit owned for each vacancy; cumulative voting shall be permitted. The candidate receiving the greatest number of votes shall serve for the term. If a quorum cannot be obtained for an annual meeting, the existing Directors shall continue to serve until the next annual or special meeting is held and new Directors are elected, or as an alternative, the existing Directors may contact members to determine who is willing to serve as a Director, and deliver a written ballot to all owners for voting. The ballot shall include the names of all owners willing to serve for the term(s) to be filled.

(d) Qualifications of Directors. Directors must be members of the Association, or, in the case of partnerships, LLCs, LLPs and corporate members, a designated representative of the corporate member, partnership, LLP or LLC.

(e) Compensation. No compensation shall be paid to Directors for their services as Directors unless salaries for Directors are approved by vote of one owner of each unit. However, Directors shall be reimbursed for actual expenses incurred in the performance of their duties.

(f) Meetings. Regular and special meetings of the Board of Directors may be

held at such times and places as shall be determined by the Directors. Notice of such meetings shall be given by the Secretary to each Director and to the Treasurer and President of the Association, personally or by mail, telephone or facsimile, at least three (3) days prior to the day named for such meeting. A majority of the Directors shall be needed for a quorum. Directors may have telephone meetings, so long as all Directors are present, or given the opportunity to be present, and each Director is able to speak to and be heard by the others. Information concerning major actions by the Board shall be promptly disseminated to all members of the Association in a manner to be determined by the Board. Owners may attend Board meetings, but their participation in the meetings may be limited to the extent determined by the Directors present at the meeting.

(g) Powers and Duties. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and may do all acts and things as are not by law, the Declaration or these Bylaws directed to be exercised by the members. In addition, the Board of Directors shall have the following powers and duties:

- (1) To enforce the provisions of the Declaration of Unit Ownership and these Bylaws by appropriate action.
- (2) To determine the amount of assessments payable by the unit owners for common expenses and to allocate and assess said expenses among unit owners in proportion to their respective interests in the common elements. Assessments shall include reasonable reserve funds. The Board shall have the authority to invest reserve funds in any manner not inconsistent with the needs of the Association.
- (3) In its discretion, to impose special assessments for approved capital expenses and for emergencies, as they are incurred.
- (4) To send written notice of any change in the regular assessments and written notice of any special assessment to each owner at least thirty (30) days before its due date.
- (5) To record and foreclose a lien against any unit for unpaid assessments or to bring an action at law against the owner personally obligated to pay the same.
- (6) To adopt a schedule of late payment fees, with consent of 75% of the members entitled to vote.
- (7) To issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment.

- (8) With consent of a majority of the unit owners, to adopt a schedule of fines for violation of the Declaration, these Bylaws, the Covenants and Restrictions, or duly adopted rules and regulations of the Association.
 - (9) To cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate.
 - (10) To procure and maintain insurance required or authorized to be purchased by the Association.
 - (11) To pay all debts of the Association.
 - (12) To grant and accept easements, permits and licenses on behalf of all unit owners, as necessary for the proper operation of the project.
 - (13) To contract for repairs, maintenance, alterations, additions and improvements which are the obligation of the Association.
 - (14) Upon written request from any person, agency or corporation having an interest or prospective interest in a unit, to prepare and furnish within a reasonable time an audited financial statement of the Association for the immediately preceding tax year, at the requesting party's expense.
 - (15) To review and approve or disapprove all requests from unit owners for consent to modify, alter or add to the exterior of a completed unit, or any limited or general common element after completion by Developer, and to remove or replace any unapproved modifications or additions, at the expense of the offending unit owner.
 - (16) To file annual corporate reports with the Montana Secretary of State and to pay the required fee.
 - (17) To prepare income tax returns for the Association, if required by state or federal law, and to pay all taxes owed.
 - (18) To provide any notices required by these Bylaws or the Declaration of Unit Ownership for The Aspens On Rock Creek.
 - (19) In its discretion, to delegate any of the above-mentioned powers and duties to one or more officers or employees of the Association, or to an independent contractor or agent.
 - (20) To engage the services of a paid manager or managing agent. If the Board hires a professional management agent, the contract with that agent must permit termination of the contract by either party, without penalty, after a ninety (90) day advance notice of termination is given.
 - (21) To supervise all officers, agents and employees of the Association, to ensure that they properly perform their duties.
- (h) Directors as Agent and Attorney in Fact for Unit Owners. The Board of Directors is hereby irrevocably appointed as agent and attorney-in-fact for the unit

owners of all of the units and for each of them to manage, control and deal with the interests of such unit owners in the common elements and the exterior of the townhomes as necessary to permit the Board of Directors to fulfill all of its powers, rights, functions and duties.

The Board of Directors is hereby irrevocably appointed as agent and attorney-in-fact for each unit owner, each mortgagee, other named insureds, and their beneficiaries and any other holder of a lien or other interest in the townhomes or the property to:

- (1) Adjust and settle all claims arising under insurance policies purchased by the Board of Directors;
- (2) Execute and deliver releases upon the payment of claims; and
- (3) Act on their behalf in any condemnation proceeding or act of eminent domain.

Provided, however, that the consent of a mortgagee shall be required if such mortgagee notifies the Board of Directors within thirty (30) days after receipt of notice of the damage or notice of the taking in condemnation or by eminent domain.

(i) Transfer of Control by Developer. Developer shall transfer control of the Association to the unit owners four (4) months after 75% of the units, including expansion units, have been conveyed or ten (10) years after the first unit is conveyed, whichever occurs first. In the event of a conflict between this provision and any other provision in these Bylaws, this provision shall control.

(j) Resignation and Removal of Directors. Any Director, except William Kiely, may be removed from office by the majority vote of the unit owners. In the event of resignation or removal of a Director, the vacancy shall be filled at a special meeting of the unit owners or by written ballot circulated among the owners in the manner provided for the election of Directors, with the person so elected serving the balance of the unexpired term.

4. OFFICERS.

(a) Board Elects Officers. The Board of Directors shall annually elect a President, a Secretary, and a Treasurer. The Board in its discretion may also elect a Vice-President. No two offices may be held by the same person except the offices of Secretary and Treasurer. The officers of the Association shall hold office at the pleasure of the Board and may be removed by the Board, with or without cause. In the event of a vacancy the Board shall elect a successor at any regular meeting or at any special meeting called for such purpose. WILLIAM KIELY and SUE KIELY

shall serve as interim President and Secretary respectively until the first annual meeting of the Association.

(b) Qualifications of Officers. Directors may also serve as officers but are not required to do so. Officers may be Directors, other members of the Association, or persons who are not members.

(c) Duties. The President shall preside at all meetings of the Association and of the Board of Directors, shall supervise the affairs of the Association and its officers, shall have all of the powers and duties usually vested in the office of President and shall also perform such other duties as from time to time may be imposed by the Board of Directors. The Vice-President, if any, shall act in the place of the President and shall have such other duties as may be assigned by the Board of Directors. The Secretary shall keep all books and records of the Association and the Board of Directors and record all minutes of meetings of both, shall keep a record of all members of the Association, and shall serve all required notices. The Treasurer shall have responsibility for Association funds and securities and shall be responsible for keeping full and accurate itemized accounts of all receipts and disbursements in books belonging to the Association, in chronological order. The Treasurer shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit, of the Association in such depositories as may from time to time be designated by the Board of Directors. All checks over \$500.00 must be signed by two officers.

(d) Compensation. Any officer may be compensated, in a reasonable amount, as determined by the Board of Directors.

5. LIABILITY OF OFFICERS AND DIRECTORS.

The officers and Directors of the Association shall not be liable to the Association or any unit owner for any mistake of judgment, negligent or otherwise, except for their own individual willful misconduct or bad faith. Except to the extent that such damages and expenses are satisfied by officer's and director's liability insurance, the Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by reason of the fact that the person is or was an officer or director of the Association against damages and expenses, including attorney fees, judgments, fines and amounts paid in settlement incurred by the person in connection with such action, suit or proceeding if the officer or director acted in good faith and in a manner the officer or director reasonably believed to be in, or not opposed to, the best interest of the Association. If not satisfied by insurance proceeds, such damages and expenses shall be a common expense.

6. INSPECTION OF RECORDS.

The books, records and papers of the Association and a copy of the current Declaration of Unit Ownership, Bylaws, Covenants and Restrictions, Articles of Incorporation and rules and regulations, if any, for The Aspens On Rock Creek, shall be open for inspection by any unit owner and by holders, insurers and guarantors of first mortgages on units, at any reasonable time, after reasonable notice to the Secretary.

7. EMERGENCY ACCESS.

Directors, and the Association manager, if any, shall have the right to enter any unit in case of an emergency originating in or threatening such unit whether or not the owner or occupant is present at the time.

8. INSURANCE.

(a) Except as otherwise provided in subsection (k) below, the Board of Directors shall insure all of the townhome units and all common element improvements, including every part of every building and all fixtures attached or affixed to any part of a building by screws, nails, glue, cement or other building material, against loss or damage by fire and other casualty in an amount representing the full insurable value thereof, less a deductible in an amount to be determined by the Board. Such insurance shall be "all-in" coverage. Works of art or purely decorative items normally not considered to be part of the real estate when a townhome unit is sold are not fixtures, even though temporarily attached to a wall with nails or screws.

(b) The Board of Directors shall purchase public liability and property damage insurance, insuring the Association and the unit owners for liability for personal injuries to, or the death of, any person, or damage to property resulting from the ownership, use or occupancy of the property, with policy limits to be determined by the Board, but no less than \$1,000,000.00 per occurrence and \$2,000,000.00 per aggregate.

(c) The Board of Directors shall purchase fidelity insurance coverage for all persons handling Association monies, naming the Association as insured, in an amount equal to the maximum funds held by the Association. If the Board employs a management agent, the agent must have its own fidelity insurance policy, providing the same coverage required above.

(d) The Board shall purchase officer's and Director's liability insurance, covering each member of the Board and each officer of the Association; the amount of coverage shall be determined by the Board.

(e) The cost of all insurance purchased by the Association shall be a part of the common expense.

(f) All insurance policies shall be issued by an "A" rated or better company approved by FNMA; Directors shall seek to obtain the best insurance value, considering the coverage, the price, the financial stability of the insurer, and the history of the insurer in promptly and properly handling claims.

(g) In the event of a loss exceeding one thousand dollars (\$1,000.00), all Association insurance proceeds shall be paid to the Board of Directors as trustee for disbursement.

(h) Each policy shall contain a standard mortgagee clause in favor of each mortgagee or trust indenture beneficiary, or contract of sale endorsements in favor of the contract sellers of any units and shall require the insurer to notify the Association, each unit owner, and each first mortgage holder, in writing, of any cancellation or substantial change to the policy at least ten (10) days prior to the date on which such cancellation or change takes effect. Duplicate originals of all new insurance policies and of all policy renewals, together with proof of payment of premiums, shall be delivered to all mortgagees and contract sellers of units at least ten (10) days prior to expiration of the then current policies.


Buy the
insurer

(i) The Board of Directors shall annually review the adequacy of limits of coverage of insurance policies, shall obtain an appraisal from an insurance company or other knowledgeable person or business of the full replacement value of the covered improvements, without deduction of depreciation, for the purpose of determining the amount of property insurance required under this section, and report its findings and opinion regarding insurance to the membership of the Association at its annual meeting.

(j) Insurance policies shall contain waivers of subrogation and waivers of any defense based on co-insurance or of invalidity arising from any acts of the insured.

(k) Unit owners shall not be prohibited from carrying other insurance for their own benefit provided that all policies shall contain waivers of subrogation and provided that the liability of the carriers issuing insurance obtained by the Board of Directors shall not be affected or diminished by reason of any such additional insurance carried by any unit owner. Insurance purchased by the Association shall not cover personal items, such as furniture or clothing inside the units. Owners must insure their personal property and obtain liability insurance to cover injury or damage occurring on or within their unit, if they wish such insurance coverage. If any major improvements are made to the interior of a unit after initial purchase of the unit, those improvements (betterments) must be insured for fire or other casualty on the owners personal insurance policy, if the owner wishes to have insurance. Insurance on such betterments will not be purchased by the Association.

(l) Insurance payments for a fire or other property loss insured by the Association shall be applied by the trustee to repair or replacement of the damaged property. In the event of loss to one or more, but not all units, any amount needed to repair or replace the unit, in excess of insurance payments, shall be paid by the owner of that unit. If insurance proceeds exceed the replacement cost of the units, excess proceeds shall be credited to the accounts of all unit owners. Units which are repaired or replaced after a loss shall conform in style, quality and appearance to the unit as it existed prior to the loss.

(m) The Association shall pay, as a common expense, the deductible amount for any property loss insured by the Association if the damage is only to the common elements. In all other cases, owners of the damaged units shall pay the deductible in proportion to the amount of the loss to each damaged unit reported on the insurance claim.

9. PROPERTY LOSS.

Property damaged by fire or other casualty must be repaired or rebuilt unless there is a total loss of all units and all unit owners agree not to rebuild. Insurance payments for a property loss insured by the Association shall be applied by the Board, or its designated trustee, to repair or replacement of the damaged property, except in the event of a total loss of all units and a unanimous decision of all owners not to rebuild. Units which are repaired or replaced after casualty shall conform, in style, quality and appearance, to the unit as it existed prior to the casualty.

10. ASSESSMENTS FOR COMMON EXPENSES.

(a) When Assessments Begin. The owner of each completed unit shall be obligated to pay monthly and special assessments for common expenses, beginning on the 1st day of the month following completion. Regular monthly assessments for expansion units shall commence at the time of completion of a unit and addition of that unit to the project.

(b) Amount. Prior to the annual meeting, the Board of Directors shall prepare an Association budget for the coming year. A copy of that budget, together with a statement of the amount of each monthly assessment for the coming year, shall be delivered to each unit owner at least one week before the annual meeting. Each monthly assessment for a unit shall be equal to the total estimated common expenses for the coming year, plus a reasonable reserve allowance for replacement of improvements, divided by twelve, divided by the total number of completed units. Assessments shall be due and payable on the first day of each month. If an annual budget is not prepared as required, the monthly assessment due shall be equal to the

amount of the monthly assessment for the previous year until changed by the Board of Directors. The regular monthly assessments may be changed by the Board at any time it determines that the change is necessary or advisable. Written notice of the amount of any changed monthly assessment shall be given, by mail or otherwise, to each unit owner at least thirty (30) days in advance of the first payment due date for the assessment. Except for changes in the amount of the monthly assessments, no bills or other notices that monthly assessments are due need be given by the Association. Assessments must be based upon and computed by using the percentile interest that each unit owner has in the common elements.

(c) Record Keeping. All assessments collected by the Association may be commingled in a single fund from which shall be paid the expenses for which the assessments are made. Separate records of payments received shall be kept for each unit.

(d) Interest and Late Fees. Assessments paid more than 10 days after the date when due shall bear interest at the rate of ten percent (10.0%) per annum from the date when due until paid; in addition, late paying owners shall be obligated to pay a late fee if a schedule of late payment fees has been adopted by the Board of Directors. All payments upon assessments shall be applied first to late fees, then to interest and then to the earliest assessment due.

(e) Special Assessments. Special assessments may be made by the Board of Directors for capital improvements only upon an affirmative vote of 75% of the members entitled to vote. The Board may impose special assessments for unanticipated emergency expenses without a vote of the members.

(f) No Exemption from Payment. No unit owner is exempt from payment of any common expense by waiver of the use or enjoyment of those items paid for or by abandonment of the unit.

(g) Account Balance Transfers with Unit. No unit owner shall be entitled to receive the balance in that owner's assessment account upon sale of the owner's unit. The account balance shall pass with sale of the unit, to the credit of the new unit owner. This provision shall not be deemed to prohibit a selling owner from collecting the balance of that owner's assessment account from a purchaser.

(h) Remedies for Failure to Pay. The remedies for failure to pay assessments are set forth in the Declaration of Unit Ownership.

11. MAINTENANCE OF UNITS AND COMMON ELEMENTS.

(a) Unit Owner Responsibilities. Every unit owner shall be responsible for all maintenance of and repairs to the interior of his unit, for replacement of broken glass

in the unit, for repairs to garage doors, and for routine maintenance of the deck or patio which is part of the unit. Each owner shall be responsible for all damages to the other units or to the common elements resulting from his failure to effect such maintenance and repair. Each unit owner shall be responsible for paying all taxes and assessments on his unit and for payment for all utilities provided to his unit. All utility lines and pipes, fixtures and equipment serving only one unit shall be maintained, replaced and kept in repair by the unit owner.

All maintenance and repairs for which an owner is responsible shall be paid for by the owner. In the event an owner or tenant fails or refuses to provide adequate maintenance or repairs, the Association may, after 10 day advance written notice to the owner, enter onto the owners unit and make the needed repairs or do the maintenance, and charge the actual cost of such repairs or maintenance to the unit owner. Any such costs shall be a lien on the unit on which repairs were made or maintenance was done, and if unpaid, may be foreclosed in the same manner as a lien for common expenses.

Each owner shall use a reasonably high standard of care in performing the maintenance and repairs for which the owner is responsible so that the entire Aspens On Rock Creek project will reflect a high pride of ownership. The Board of Directors of The Aspens On Rock Creek Homeowners Association shall be the final authority in determining whether an owner is providing adequate maintenance.

(b) Association Responsibilities. Except as otherwise provided above, the Association shall be responsible for any maintenance, repair and replacement of common elements, including street lights, if not maintained by Northwest Energy, the waterfall and pond, and the clubhouse, pool, tennis courts or other capital improvements, if built. It shall also maintain and repair the exterior of the buildings, except replacement of glass and repairs to garage doors. The Association shall pay for snow removal from the driveways and front sidewalks. The Association shall also maintain and repair all common water and sewer lines, to the point where they enter the water and sewer mains which are maintained by the City of Red Lodge. The Association may employ personnel necessary for all required maintenance, upkeep and repair. The Association shall use a reasonably high standard of care in providing such maintenance, management and repair, so that the project will reflect a high pride of ownership.

12. WORKING CAPITAL.

The Developer, as agent of the Board of Directors, shall collect from the initial purchaser of each unit, at the time of closing, an initial capital payment equal to the Buyer's prorata share of insurance for the year plus an amount equal to the amount of

the regular monthly assessments for two months. The Developer shall be entitled to retain the Buyers pro-rata share of insurance for the current premium period if Developer paid the premium for the unit sold for that period; otherwise the premium shall be paid to the Association's insurance agent. The remainder of each initial capital payment collected from the buyers shall be delivered to the Board of Directors to provide the necessary working capital for the Association. Such funds may be used for certain prepaid items, including initial maintenance, equipment, supplies, organizational costs, furnishings for common areas, and other start up costs and for such other purposes as the Board of Directors may determine. These funds may not be used by Developer to defray any of its expenses, construction costs, or other financial obligations, and shall not be considered to be prepayment of regular monthly assessments.

In addition, at closing, the Developer shall collect from the initial purchaser of each unit, the buyer's pro-rata share of the assessment for that month.

13. LIABILITY OF THE ASSOCIATION AND UNIT OWNERS.

The Association shall not be liable to any unit owner or any occupant of a unit for any failure to provide services paid for as a common expense, or for any uninsured injury or damage to person or property caused by the elements, or resulting from water, snow or ice which may leak or flow from any portion of the common elements or from any pipe, drain, conduit, appliance or equipment onto a unit. The Association shall not be liable to any unit owner or any occupant of a unit for uninsured loss or damage, by theft or otherwise, of articles which may be stored upon any of the common elements. This shall not be deemed to be a waiver of any liability between unit owners. No diminution or abatement of any assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the common elements, or from any action taken by the Association to comply with any law, ordinance or with the order or directive of any government authority. The Association shall not be liable to any unit owner or any occupant of a unit for uninsured injury or damage to person or property caused by another unit owner. Any such liability shall be attributed solely to the responsible unit owner. The Association shall not be liable to any unit owner or any occupant of a unit for uninsured personal injuries or uninsured injuries to property occurring on common elements.

14. AMENDMENT.

(a) Prior to sale and closing of all townhomes, including expansion units, these Bylaws may be amended by Developer. Each owner, by acceptance of a deed to any

townhome, shall be deemed to have approved any such amendment by Developer and to have granted to Developer the power, pursuant to 70-15-301 MCA, to make such amendments. Each lender, by recordation of a mortgage, trust indenture or contract for sale on any unit shall be deemed to have approved any amendment except those listed in Section 14(c) below, and to have granted to Developer the power, pursuant to 70-15-301 MCA, to make such amendments.

(b) These Bylaws may also be amended by the Association in a duly constituted meeting called for such purpose or by written petition, circulated among the owners; provided, however, that no amendment shall take effect without the approval of the Developer, until such time as all units, including those on the expansion property, have been sold by the developer. No amendment shall take effect unless also approved by at least 75% of the Class "A" members entitled to vote and until a copy of the amendment, certified by the President and Secretary of the Association, is recorded in the office of the Clerk and Recorder of Carbon County, Montana; provided, however, that the Bylaws shall always include those particulars required to be included therein by the Montana Unit Ownership Act.

(c) The consent of at least fifty-one (51%) percent of eligible mortgage holders shall be required for a change in any of the following:

- (i) Increases in annual assessments of more than 25% of the prior assessment;
- (ii) Reductions in the Association's reserve account, except when the reduction is made to pay for major maintenance or emergency expenses;
- (iii) Changes in insurance requirements; and
- (iv) Changes in any provisions which expressly benefit mortgage holders, insurers or guarantors.

15. **BYLAWS ARE COVENANTS.** The provisions of these Bylaws shall be covenants running with the land and shall be binding on all owners, their tenants and guests, for so long as the real property described herein is subject to the provisions of the Montana Unit Ownership Act.

16. **CONFLICTS.**

In the event of any conflict between these Bylaws and the provisions of the Montana Unit Ownership Act, or the Declaration of Unit Ownership for The Aspens On Rock Creek, the latter two shall govern and apply.

17. **ENFORCEMENT AND WAIVER.**

These Bylaws and the Covenants and Restrictions for The Aspens on Rock Creek

may be enforced in the manner set forth in the Declaration of Unit Ownership for The Aspens On Rock Creek and in these Bylaws. In the event the Board of Directors shall refuse or neglect to enforce the provisions of these Bylaws or the Declaration of Unit Ownership or the Covenants and Restrictions or duly adopted rules and regulations, any unit owner shall have the right to do so.

Failure of the Association, its Board of Directors or any of its members to enforce the provisions of these Bylaws, the Covenants and Restrictions, or the Declaration of Unit Ownership of The Aspens On Rock Creek or any rules and regulations adopted by the Association shall not be deemed a waiver of the right to do so in the future.

The losing party in any lawsuit or arbitration proceeding brought to enforce these Bylaws or the Covenants and Restrictions, the Declaration, or to foreclose a lien described in the Declaration, these Bylaws, or the Covenants and Restrictions shall be obligated to pay the reasonable attorney fees incurred by the prevailing party, together with costs incurred in the lawsuit or arbitration proceeding. In the event the services of any attorney are used by the Association or its Board of Directors to enforce these Bylaws without filing a lawsuit or initiating arbitration, the party violating these Bylaws or the Covenants and Restrictions shall be obligated to pay the attorney fees incurred by the Association; the attorney fees shall be a lien on the unit of the violating owner. The lien may be enforced in the same manner as a lien for unpaid assessments for common expenses.

18. DEFINITIONS.

The terms used herein shall have the definitions set forth in the Declaration of Unit Ownership for The Aspens On Rock Creek.

19. HEADINGS.

The headings used in these Bylaws are for convenience only and shall not be deemed to limit the provisions of these Bylaws.

20. NOTICE.

Any written notice required or provided for in these Bylaws, or in the Declaration of Unit Ownership for The Aspens On Rock Creek shall be hand-delivered or mailed by certified mail, return receipt requested to the last address provided by the owner to the Association. A notice sent by certified mail shall be deemed delivered three (3) days after the date when mailed, whether or not actually received by the owner to whom it was sent.

IN WITNESS WHEREOF, the undersigned, being the owner of the property to which these Bylaws apply and being the interim President and Secretary of the Association, have executed this instrument as evidence of the adoption of the aforesaid

Bylaws of the Association and hereby certify that the foregoing is a true and correct copy of the Bylaws of the Association.

DATED this 12th day of April, 2006.

THE ASPENS ON ROCK CREEK
HOMEOWNERS ASSOCIATION

By: [Signature]
WILLIAM KIELY, President

By: [Signature] Secretary - Treasurer
SUE KIELY, Secretary-Treasurer

STATE OF MONTANA)

County of CARBON : ss.
)

On this 12th day of April, 2006, before me, the undersigned, a Notary Public for the State of _____, personally appeared WILLIAM KIELY, known to me to be the President of THE ASPENS ON ROCK CREEK HOMEOWNERS ASSOCIATION, and SUE KIELY, known to me to be the Secretary-Treasurer of THE ASPENS ON ROCK CREEK HOMEOWNERS ASSOCIATION, whose names are subscribed to the foregoing Bylaws and acknowledged to me that they executed the same.

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

[Signature]
PATRICIA M. WALLILA
(print or type name of notary)
Notary Public for the State of MONTANA
Residing at Roberts Mt
My Commission Expires 1-6, 2002010

