

Upon recording please
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Jennings Law Office, P.C.
1704 West Babcock, Suite A
Bozeman, Montana 59715

AMENDMENT TO DECLARATION FOR
THE ESSENCE CONDOMINIUM

Scott V. Johnson and Monica O'Brien as Board members of the Owners Association of The Essence Condominium, do hereby certify that owners of the units within the condominium did unanimously adopt the following amendment to the Declaration for The Essence Condominium, which was recorded on August 16, 2008, as document number 2275851 records of Gallatin County, Montana, and as subsequently amended. This Amendment does not affect the number of units, change their configurations, reallocate interests in common elements, or change the right of any Owner to use such common elements, and therefore does not require approval of the Planning Department of the City of Bozeman.

RECITALS

1. That in order to meet the requirements for Fannie Mae, it has become necessary to amend the Declaration.
2. That a mail ballot of the owners was held and the following provisions were unanimously adopted.

Therefore, the parties hereto declare that the above Declaration is amended as follows:

1. That Article I. DEFINITIONS, Section 2 of the Declaration is hereby deleted and the following substituted in its place:
2. Association or Owners' Association means all of the Unit Owners acting as a group and in accordance with duly adopted Bylaws and this Declaration. Articles of Incorporation for The Owners' Association of The Essence Condominium have been filed with the Montana Secretary of State on March 19, 2008.



2. That Article IV. OWNERSHIP AND VOTING - EXHIBITS - USE, Section 2. Use, Subsection a. is hereby deleted and the following substituted in its place:

2. Use: The Units and common elements shall be occupied and used as follows:

a. No part of the property shall be used for other than single family residential purposes; except that an Owner may use a portion of his or her Unit for an office or studio, provided that the activities therein shall not interfere with the quiet enjoyment or comfort of any other Owner or occupant and further that such activities do not violate any applicable zoning regulations or other use restrictions applicable to the property. Nothing contained herein shall prevent an Owner of a unit from renting or leasing his or her unit to third parties for single family residential purposes, provided that such leases are for a minimum term of six months. Any use of the Unit by the Owner, or any party renting the Unit from the Owner, is made subject to the covenants and restrictions contained in this Declaration and further subject to the Bylaws. There shall be a further exception in favor of the Declarant, to allow the Declarant to own and maintain a model unit for sales purposes. The model unit may also contain a sales office for that purpose.

3. That Article IV. OWNERSHIP AND VOTING - EXHIBITS - USE, Section 2. Use, Subsection f. is hereby deleted and the following substituted in its place:

f. No nuisances shall be allowed upon the property, nor shall any use or practice be allowed which is a source of annoyance to residents of the Condominium, or which interferes with the peaceful possession and proper use of the property by its residents. No immoral, improper, offensive or unlawful use shall be made of the property, nor any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. For purposes of the foregoing, any activity within a Unit or the common areas which can be heard within another Unit in which the windows are open shall be considered a nuisance if such activity occurs



between 10:00 p.m. and 8:00 a.m., although the definition of a nuisance shall not be limited to noise violations. The first such occurrence shall result in a warning from the Board, the Declarant if a Board has not yet taken over management of the condominium, or the manager of the condominium if one has been hired. Any offenses committed in violation of this paragraph, regardless of the nature of the offense, may be subject to a fine of up to \$100.00 for the second offense (following the warning for the first offense) and \$200.00 for each subsequent offense. In the event that fines are levied and not paid, the Association, acting through the Board, may file a lien against the Unit in the same manner as an assessment lien, and may foreclose upon such lien as provided herein.

4. That the following shall be added to the Declaration as Article IV. OWNERSHIP AND VOTING - EXHIBITS - USE, Section 2. Use, Subsection j.:

j. Owners shall have the right to erect fences in the rear yards of the condominium, upon the following conditions:

i) All fences erected shall be in strict compliance with all applicable laws and the design standards created by the Declarant, a copy of which is attached hereto as Exhibit D. Such standards include the design of the fence as well as the materials to be utilized.

ii) All fences shall be erected only on the property line along the side and rear lines of the lot upon which the unit is located, or upon that line which is an extension of the center line of the building in which the Owner's unit is located, running from the building to the rear property line of the lot upon which the unit is located. The fence along the side lot line of lot shall run only from the rear lot line to a point which is the intersection with the extended rear line of the building in which the Owner's unit is located, and the side lot line. If the side lot line upon which the fence is to be built is a common lot line between lots within the condominium, then the fence erected upon such



side lot line shall be centered upon the lot line. Any fence erected upon a rear lot line or upon a side lot line which is not a common line between two lots within the condominium shall be erected in such a manner as to not encroach upon an adjacent lot. There shall only be one fence upon any lot line or extended center line within the condominium.

- iii) Any Owner electing to erect a fence to enclose a rear yard shall do so at his or her own expense; provided, however, that in the event an adjacent owner within the condominium thereafter elects to fence the rear lot behind his or her unit, he or she shall utilize the common fence between the units as one of the boundaries of his or her yard area and he or she shall, within 15 days of erecting such fence, reimburse the owner of the adjacent unit(s) whose fence(s) constitute a part of the new enclosure, for the reasonable value of such section of fence utilized, based upon the actual construction costs of such fence. It shall be the responsibility of the owner erecting the first section of fence utilized to maintain such records if no fence is initially erected upon the adjacent lot. In the event that an owner elects to erect the fence himself or herself, rather than contracting for such fence, he or she shall only be allowed to charge the adjoining owner for the materials utilized for that section of fence, together with a pro-rata portion of any necessary equipment rental for the construction of the fence, such as a posthole digger.
- iv) All fences erected shall include a gate allowing access through the side yard of the lot upon which the unit is located, which shall be kept unlocked, in order to provide access to the Association for any repairs or maintenance to be performed by the Association, and to allow for access by emergency workers.
- v) In the event that any owner elects to fence in the rear yard behind his or her unit, as set



forth above, such act shall be deemed an implicit waiver on the part of such owner(s) of the right of such owner(s) to receive yard care services through the Association in that section of his or her yard. The Association shall not be required, however, to prorate the assessments related to yard care for any such owner and all owners shall pay their proportionate share of such lawn care as if they had not erected fences and were receiving such services.

- vi) Any owner erecting a fence shall thereafter be responsible for the maintenance of such fence, on both sides, except in the case of a portion of a fence which is shared between two units within the condominium, in which case each owner shall be responsible for maintenance of the fence on the side facing his or her unit. In the event that any portion of a shared fence must be replaced, the owners of the units sharing the fence shall each pay one-half of the cost of such replacement.

- vii) In the event of a dispute involving any common fence, the parties agree that if they cannot resolve the dispute through direct discussions, they will submit the matter to mediation. In the event that they cannot agree upon a mediator, they parties shall request a list of names from the president of the Gallatin County Bar Association which shall consist of one more name than the number of parties involved in the dispute, which shall be presumed as two, since each unit shall be deemed to be one party, regardless of the number of actual owners of the unit. Upon receipt of the list of potential mediators, each party shall strike one name from the list and the remaining person shall act as the mediator for the parties. The parties shall each be obligated to pay one-half of the fee charged by the mediator. In the event that the parties cannot resolve the matter through mediation, they shall then be free to pursue other remedies available to them through this Declaration or Montana law.



5. That Article V. PLAN OF DEVELOPMENT shall be deleted in its entirety and the following substituted in its place:

V. PLAN OF DEVELOPMENT.

1. The project may be developed in phases by the Declarant. Declarant may add the additional units contemplated herein without the necessity of receiving prior consent from the Association or unit owners, subject to the following conditions:

- a. Prior to conveyance or occupancy of any unit, Declarant shall record an amendment to this Declaration with the Gallatin County Clerk and Recorder, which shall include floor plans for the new building(s), a site plan showing the location of the building(s) and the changes to the percentages of ownership in the common elements. Owners of newly completed units will not be obligated to pay common expenses until such time as the above-described amendment is recorded.
- b. Upon completion of the project, Declarant shall record a final amendment to this Declaration, setting forth the percentages of interest of each unit in the common elements. Upon completion of the project, each unit owner will have an interest in the common elements as set forth in the final amendment.
- c. Each new building shall be similar in materials, style and quality to the other buildings, but Declarant reserves the right to modify the design and mixture of floor plans to meet market or regulatory conditions.
- d. All general common elements within a Phase shall be completed prior to conveyance of any unit within that Phase.
- e. All liens arising in connection with the Declarant's ownership of, and construction of improvements upon the property to be included in any subsequent phase, including liens for taxes, shall be satisfied at the time of addition to the condominium property and no such lien shall be allowed to adversely affect the rights of any existing unit owners or holders of first mortgages



within the condominium.

- f. Each unit owner, by acceptance of the deed or security instrument, hereby consents to all such amendments and grants unto the Declarant, as well as its successors and assigns, a limited irrevocable power of attorney, coupled with an interest, to amend this Declaration in accordance with this plan of development. Recordation of amendments modifying the percentages of interest in common elements attached to each unit shall be deemed a conveyance, transferring title in the common elements in accordance with the amendment. No expansion of the condominium shall take place unless all holders of first mortgages, as well as insurers or guarantors of any mortgage in the existing condominium approve such expansion in writing, and such approval shall not be unreasonably withheld.
 - g. When additional units are developed, they shall be added to the condominium regime, but shall not be fully included for assessment purposes until they are sold by the Declarant, unless the Declarant retains ownership of one or more units, in which case the date of the first occupancy of the units owned by the Declarant shall be deemed the equivalent of a sale by the Declarant for purposes of inclusion in the condominium regime. From the time that they are added to the condominium until the time of the first conveyance or occupancy, the additional units shall be assessed for their share of insurance only.
 - h. The right to expand set forth herein shall expire seven years from the date of recordation of this Declaration.
6. That Article VI. THE ASSOCIATION, Section 1. shall be deleted and replaced by the following paragraph:
1. Membership: An Owner of a Unit in The Essence Condominium shall automatically, upon becoming the Owner of the Unit, be a member of the The Essence Condominium Unit Owners Association, hereinafter referred to as the Association. It is anticipated that the Association will be incorporated as a mutual benefit nonprofit corporation in the state



of Montana and the Articles of Incorporation for the Association shall be incorporated into this Declaration as if the same were more fully set forth herein.

7. That the following shall be added to Article VI. THE ASSOCIATION as Section 8:

8. Notice to mortgagees and guarantors of any mortgage shall be provided as follows:

Written Notice. Upon receipt of a written request from the holder, insurer or guarantor of a mortgage on any Unit within The Essence Condominium, the Association must provide timely written notice to any such mortgagee, insurer, or guarantor at the address provided by such party, concerning any of the following:

- (a) Any condemnation or casualty loss that affects either a material portion of The Essence Condominium, or any unit securing such mortgage;
- (b) and sixty day delinquency in the payment of assessments or charges by the owner(s) of any unit on which it holds the mortgage, or has insured or guaranteed the payment of the same;
- (c) a lapse, cancellation, or material modification of any insurance policy maintained by the Association; and
- (d) any proposed action that requires the consent of a specified eligible mortgage holder.
- (e) In any such written request for notice, the mortgagee, insurer or guarantor must identify the name and address of the mortgagee, insurer or guarantor and number and address of the applicable Unit.

8. The following shall be added to Article VIII. AMENDMENT, Section 1. as new subsection c:

c. Mortgagee approval of Declaration changes shall be as follows:



Eligible Mortgagee Approvals: A change to any of the provisions of the Declaration pertaining to the following items requires the affirmative vote of eligible mortgagees who represent at least fifty-one percent (51%) of the Units that are subject to mortgages held by eligible mortgagees:

- (i) voting rights;
- (ii) increases in assessments that increase the previous assessment amount by more than twenty-five percent (25%), assessments liens, or the priority of assessment liens;
- (iii) reductions in reserves for maintenance, repair, and replacement of common elements;
- (iv) responsibility for maintenance repair;
- (v) reallocation of interests in the general or limited common elements, or rights to their use;
- (vi) changes in the descriptions of any unit boundaries;
- (vii) convertibility of units to common elements, or vice-versa;
- (viii) expansion or contraction of the condominium, annexation or withdrawal of property from the condominium;
- (ix) restoration or repair of the condominium (after damage or partial condemnation) in a manner other than that specified in the Declaration;
- (x) any provisions that expressly benefit mortgagees, insurers or guarantors; or
- (xi) any action to terminate the legal status of the condominium after substantial destruction or condemnation occurs, or for any other reason.

Deemed Approvals. If any eligible mortgagee fails



to attend any meeting, in person or by proxy, which is called for the purpose of amending the Declaration, notice of which is properly sent to the eligible mortgagee by certified mail, return receipt requested, or if any eligible mortgage holder fails to submit a response to any written proposal for an amendment to the Declaration within sixty (60) days after proper notice of the proposal is deemed delivered to the mortgagee by certified mail, return receipt requested, then the eligible mortgagee is deemed to have approved the proposed amendment. Delivery is deemed to be made three days after the document is placed in the United States mail.

9. That Article IX. CHANGES, REPAIRS AND LIENS, Section 6. is hereby deleted and in its place shall read:

6. Liens and Foreclosure: All sums assessed, but unpaid, for the share of general common expenses and limited common expenses chargeable to any condominium Unit shall constitute a lien on such Unit superior to all other liens and encumbrances, except only for taxes and special assessment liens on the Unit in favor of any assessing authority, and all sums unpaid on the first mortgage or a first trust indenture of record, including all unpaid obligatory sums as may be provided by such encumbrance. To evidence such lien, the Board, or its authorized agent, shall prepare a written notice of assessment lien setting forth the amount of such unpaid indebtedness, the amount of accrued interest and late charges thereon, the name of the Owner(s) of the Unit and a description of the Unit. Such notice shall be signed and verified by one of the officers of the Association or by its authorized agent, and shall be recorded in the office of the County Clerk and Recorder of Gallatin County, Montana. Copies of such notice shall be mailed to the Owner against whose interest the lien has been filed and the holder of any first lien of record and shall attach from the date of recording such notice. Such lien may be enforced by the foreclosure of the defaulting Owner's unit by the Association, in the manner provided in the Unit Ownership Act and as provided for the foreclosure of a mortgage on real property, upon the recording of a notice of claim thereof. In any such



foreclosure the Unit Owner shall be required to pay a reasonable rental for the unit and the Association shall be entitled to the appointment of a receiver to collect the same. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosure or waiving the lien securing the same. In any such proceeding the Owner may be required to pay the costs, expenses and attorney's fees incurred in filing a lien, and in the event of foreclosure proceedings, additional costs, expenses and attorney's fees incurred.

10. That Article X. INSURANCE, Section 1., shall be deleted and replaced with the following paragraph, leaving all subsections of Section 1. in place:
 1. All insurance policies upon the condominium buildings, common elements and real property shall be purchased by the Association and shall be issued by an insurance company authorized to do business in Montana, which shall be a generally accepted insurance carrier.

11. That Article X. INSURANCE, Section 2. Coverage, subsection c. shall be deleted and replaced with the following paragraph:
 - c. Public Liability: In such amounts and with such coverage as shall be required by the Board of Directors of the Association, including, but not limited to hired automobile and non-owned automobile coverage, if applicable, and with cross-liability endorsement to cover liabilities of the Unit Owners as a group to a Unit Owner. Such policies shall provide coverage of at least \$1,000,000.00 and shall provide coverage for such risks as are customarily covered with respect to condominium developments similar in construction, location and use.

12. That there shall be a subsection "e." added to Article X. INSURANCE, Section 2. Coverage that shall read as follows:
 - e. The policies shall contain a "Special Condominium Endorsement," or it equivalent, providing for recognition of any Insurance Trust Agreements; that the insurance is not prejudiced by any act or neglect of an individual unit owner which is not in the control of the owners collectively; and that



the policy is primary in the event that the unit owner has other insurance covering the same loss. To the extent available, and to the extent required by FNMA or FHLMC, the policies shall also contain an "Agreed Amount Endorsement" and an "Inflation Guard Endorsement."

13. That Article X. INSURANCE, Section 7. shall be deleted and replaced with the following paragraph:

7. Benefit of Mortgagees: Certain provisions in this article entitled "Insurance" are for the benefit of mortgagees or trust indenture beneficiaries of condominium parcels, and all such provisions are covenants for the benefit of any mortgagee of a Unit and may be enforced by such mortgagee or beneficiary. As a protection for such mortgagees or trust indenture beneficiaries, all policies obtained pursuant to this article shall contain a provision that any such policies shall contain a provision that the policies may not be cancelled or amended without at least ten (10) days prior written notice to the Association and to each holder of a first mortgage or trust indenture listed as a holder in the policies.

14. That the Article XV. MISCELLANEOUS, Section 7. and 8. shall be deleted and replaced with the following three (3) Sections, 7., 8., and 9.:

7. All Owners, lenders, first lienholders and insurers of the mortgage on any unit shall have the right to examine the books and records of the Association and any Manager for the condominium upon reasonable notice during regular business hours. Such books and records shall include this Declaration, the Association Bylaws, Articles of Incorporation of the Association, minutes of Association meetings, financial records of the Association, including audited financial statements, if prepared, and all other rules, books, documents, or other records pertaining to the management of the condominium.

8. Upon written request of any of the agencies or corporations which have an interest or prospective interest in the condominium, as set forth in HUD Handbook 4265.1, Change 4, Appendix 24, the Association shall be required to prepare and

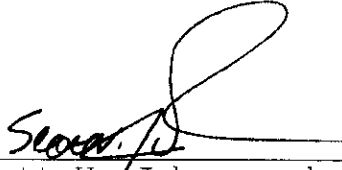


furnish within a reasonable time an audited financial statement of the Association for the preceding year.

9. The Declarant expressly makes no warranties or representations concerning the property, the units, the Declaration, the Bylaws or deeds of conveyance, except as specifically set forth therein and no one may rely upon such warranty or representation not so specifically expressed therein.

15. Except as modified, altered or amended by the provisions of this Amendment, the Declaration described above shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto hereto have executed this Amendment this 29th day of April, 2008.



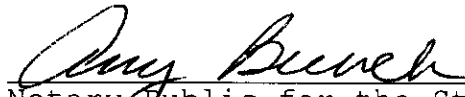
Scott V. Johnson, board member



Monica O'Brien, board member

STATE OF MONTANA)
 : ss
County of Gallatin)

This instrument was acknowledged before me on this 29th day of April, 2008, by Monica O'Brien and Scott V. Johnson as a Board members of the Owners Association of the Owners Association of The Essence Condominium.


Notary Public for the State of Montana
Printed name: Amy Bunch
Residing at Bozeman, Montana
My Commission Expires: 11/10, 2010

