

TENANCY IN COMMON AGREEMENT

THIS TENANCY IN COMMON AGREEMENT ("Agreement") is dated and effective this [] day of [], 2007. The Parties ("Parties") to this Agreement are [], [] and [], the undersigned individuals.

RECITALS

A. The Parties have acquired undivided ownership interests in certain recreational property located in King County, Washington, which is more fully described in *Exhibit A* attached to and made a part of this Agreement (the "Property"). The Parties' percentage ownership interests in the Property are set forth in *Exhibit B* attached to and made a part of this Agreement (the "Ownership Interests").

B. The Parties have determined that it is in their mutual best interests to limit and establish procedures under which the Parties may dispose of or transfer their Ownership Interests in the Property, without prohibiting such dispositions or transfers, and to provide for the disposition of the Property upon the approval of less than all of the Parties.

C. It is the Parties' hope that the property will be maintained for use by their respective descendants, but they also recognize that due to unforeseeable circumstances this may not be possible or appropriate.

D. The Parties desire to facilitate the convenient and orderly use and maintenance of the Property by providing for one (1) of the Parties to act as a Managing Owner of the Property (the "Managing Owner").

E. The Parties further desire to facilitate the speedy and mutually satisfactory resolution of disputes that can be anticipated in any family, especially one that owns property together and the Parties hope that this understanding is kept in mind by their descendants when the inevitable dispute does occur.

NOW, THEREFORE, the Parties agree as follows:

I. Definitions.

The following terms shall have the following meanings as used in this Agreement:

A. Owner.

1. The term "Owner" shall mean one or more individuals designated on *Exhibit B* as holding a specific Ownership Interest in the Property, or the successors in interest to such individuals, all of whom are descendants of Matriarch and Patriarch.

or sale is unnecessary to protect the interests of the Owners and would result in a great prejudice to all of the Remaining Owners.

- C. Temporary Restriction on Disposition. No Owner may Transfer all or any portion of his or her respective Ownership Interest in the Property to Non Owner(s) until such Transferring Owner has reached the age of thirty (30) years.

III. Transfers to Owners. Any Owner may at any time Transfer all or any portion of such Owner's Ownership Interest to any other Owner or Owners, or to a descendant or descendants of an Owner [alternative: descendant of Patriarch and Matriarch], or to a trust for the benefit of such individual(s), subject only to the provisions of Section X.F. of this Agreement. Provided, however, in the event any Owner transfers all or any portion of his or her Ownership Interest to any other Owner or Owners, or to a descendant or descendants of an Owner, then he or she shall immediately notify all Remaining Owners in writing of the name of the new Owner, the effective date of the transfer, and the Ownership Interest transferred to the new Owner.

IV. Option to Purchase Ownership Interest.

- A. Transfers Affected By This Section. The following provisions apply to all Transfers of Ownership Interest, except those defined at Section III immediately above.
1. In the event that any Owner at any time desires to Transfer all or any portion of such Owner's Ownership Interest in the Property, the Remaining Owners will have an option to purchase ("Purchase Option") all (but not less than all) of the Ownership Interest the Selling Owner desires to transfer, as provided in this Section IV.
 2. In the event that any Owner's interest is transferred to a non-owner as the result of a divorce or bankruptcy, the Remaining Owners will have an option to purchase ("Purchase Option") all (but not less than all) of the Ownership Interest the Selling Owner desires to transfer, as provided in this Section IV.
- B. Notice of Sale. Prior to providing notice of a bona fide offer to the Remaining Owners in accordance with the Right of First Refusal provisions of Section V, the Selling Owner will notify the Remaining Owners, in writing, advising them of such desire to sell all or any portion of the Ownership Interest. The Remaining Owners will have the Option to purchase such Ownership Interest by giving written notice to the Selling Owner within thirty (30) days after receipt of such notice, for the Sale Price set forth in Section VI.C. of this Agreement and under the terms and conditions set forth in Section IV.D. of this Agreement.
- C. Sale Price. The "Sale Price" of an Ownership Interest shall mean the fair market value of an Ownership Interest determined in accordance with the provisions of this Section IV.

1. Sale Price Established by Owners. The Owners shall be entitled to establish the Sale Price of the Ownership Interests, based upon the fair market value of the Property, by unanimous consent of all the Owners, and shall negotiate in good faith in an attempt to so establish such Sale Price. In the event the Sale Price is established by such unanimous consent, it will be binding and conclusive upon all of the Owners and their respective personal representatives, successors and assigns for a period of one (1) year following the date such Sale Price is established.
 2. Appraisal. In the event that no binding and conclusive Sale Price has been established and is effective as provided in this Section IV, the Parties will use their best efforts to determine and agree upon a fair market value of the Property. The Sale Price of an Ownership Interest shall equal the fair market value of the Property multiplied by the respective Ownership Interest. In the event either the Selling Owner or the Remaining Owners determine that such an agreement cannot be reached, such Owner shall be entitled to give notice to that effect, in which event the fair market value of the Property shall be determined by valuation by an appraiser selected by unanimous consent of the Owners. In the event the Owners cannot agree on an appraiser, the valuation shall be by three (3) appraisers. The Selling Owner shall select one (1) appraiser. The Remaining Owners shall select a second appraiser and the two appraisers so selected shall select a third appraiser. The decision of the third appraiser as to the fair market value of the Property shall be final, conclusive and binding on all of the Parties. The cost of appraisal shall be shared equally by the Selling Owner and the Remaining Owners, irrespective of outcome.
- D. Purchase Terms. The Sale Price will be payable by the Remaining Owners executing and delivering one or more promissory notes to the Selling Owner providing for the payment of the sale Price in equal monthly installments over a term of five (5) years or less, the principal of which shall accrue interest at the then existing Applicable Federal Rate within the meaning of I.R.C. §1274(d). Upon request of a Selling Owner, such note or notes shall be secured by a trust deed, mortgage or other perfected security interest in the pro rata portion of the Seller's Ownership Interest in the Property which is being sold.
- E. Pro Rata Obligation By Remaining Owners. The Purchase Option of the Remaining Owners to purchase any Selling Owner's Ownership Interest, as provided by this Section IV shall be pro rata based upon the proportionate Ownership Interests held by the Remaining Owners. In the event any Remaining Owner fails to exercise this Option, the other Remaining Owners shall be entitled to exercise such Option.

V. **Right of First Refusal in the Event that The Remaining Owners Have Not Exercised the Purchase Option.**

- A. **Right of First Refusal.** In the event that any Owner at any time intends to Transfer, for any consideration whatsoever (other than the assumption of indebtedness to which the Property is subject), all or any portion of his or her Ownership Interest in the Property, and the Remaining Owners have not exercised the Purchase Option, the Remaining Owners will have the right of first refusal to purchase such interest, as provided in this Section V (“Right of First Refusal”). This Right of First Refusal shall apply to an involuntary transfer to a lien holder, creditor or other party in connection with the foreclosure of a security interest or the satisfaction of a judgment or other claim, as if such pending or anticipated transfer were a sale pursuant to an Offer within the meaning of Section V.B.
- B. **Notice of Bona Fide Offer.** The provisions of this Section V will apply if and when the Selling Owner obtains a bona fide offer of purchase, in writing, setting forth in detail a description of what is being offered for sale and the price, terms and conditions of such offer to purchase (“Offer”). The Selling Owner will notify the Remaining Owners in writing advising them of the Offer and of the Selling Owner’s intention to accept the Offer, and will furnish a copy of the offer to each of the Owners. The Remaining Owners will have the right, for a period of thirty (30) days after receipt of such notice, to purchase all, but not less than all, of the portion of the Selling Owner’s Ownership Interest subject to the Offer (“Offered Interest”) for the same price and upon the same terms and conditions as are set forth in the offer. Such thirty (30) day period shall not commence until the expiration of the period of thirty (30) days to exercise the Purchase Option, as provided for in Section IV.A.1.
- C. **Pro Rata Exercise By Remaining Owners.** In the event more than one Remaining Owner wishes to exercise the Right of First Refusal, the rights of each of such Remaining Owners under this Section V shall be limited to a pro rata amount of the Offered Interest, based upon the proportionate Ownership Interests held by those of the Remaining Owners wishing to exercise the Right of First Refusal.
- D. **Failure to Exercise.** If the Remaining Owners fail to exercise the Right of First Refusal with respect to all of the Offered Interest within the specified 30-day period, then the Selling Owner may sell the Offered Interest subject to the Offer in accordance with its terms and conditions, provided such sale occurs within ninety (90) days after the end of such 30-day period. The failure of such sale to occur within such 90-day period shall require such Offered Interest to be again subject to the provisions of this Section V.

VI. **Agreement to Transfer the Property for Full Consideration.**

One-hundred percent (100%) of the Ownership Interests in the Property may be sold or otherwise Transferred for consideration equal to its then fair market value upon the unanimous consent of the Owners, and the proceeds distributed to the Owners in proportion to their Ownership Interest.

Upon the occurrence and notice of any such consent, each Owner agrees to execute any and all documents, instruments and agreements reasonably necessary to effectuate such approved disposition of the Property. The Parties agree that any Owner's breach of this Section VI by failing to execute any and all documents, instruments and agreements necessary to effectuate any such approved encumbrance or disposition would cause irreparable damage to the other Parties, and the recovery by the other Parties of money damages may not constitute an adequate remedy for such breach. Accordingly, the Parties agree that the agreements contained in this Section VI may be specifically enforced against any of them in addition to any other rights and remedies available to the other Parties on account of any such breach.

VII. Management of the Property.

- A. Appointment and Succession of Managing Owners. By entering into this Agreement, each Owner agrees to the appointment of [] as the initial Managing Owner of the Property. The Managing Owner may resign at any time and shall cease to be a Managing Owner upon his/her death or incapacity, in any of which case (s)he may in writing appoint a successor from among the Owners. If no successor Managing Owner has been so appointed, a successor may be designated upon the written approval of Owners holding two-thirds (2/3) of the Ownership Interests. Each Owner agrees to execute any and all documents, instruments and agreements reasonably necessary to effectuate such termination of the Managing Owner and designation of a successor Managing Owner of the Property.
- B. Removal of Managing Owner. A Managing Owner may be terminated by written notice signed by a majority of the number of Owners, excluding the then Managing Owner.
- C. Functions of Managing Owner.
1. Maintain the schedule of use for each calendar year.
 2. Allocate maintenance projects as discussed in greater detail below.
 3. Maintain the Property in its current condition, including maintenance of roof, plumbing, electrical, and HVAC systems; floor, wall and window coverings; lighting; appliances; and landscaping (capital improvements to be made only with authorization unless urgent or to protect the Property).
 4. Maintain insurance (property and casualty) with specified coverage and limits (and additional insurance if the cabin is to be rented to non-owners) at a minimum as follows:
 - a. Fire and extended coverage insurance on the improvements to the extent of 90% of replacement.

- b. Liability insurance in amounts of not less than \$ _____ with respect to injuries or death of one person, \$ _____ with respect of any one accident, and \$ _____ with respect of property damage.
 5. Pay taxes, encumbrances, and other specified charges.
 6. Lease the Property, with specific authorization, to tenants.
 7. Take reasonable compensation and reimbursement for reasonable expenses.
 8. Keep records regarding expenses, assessments and budgeting as indicated in greater detail below.
 9. Vote on each matter submitted to a vote of the _____ Homeowner's Association as instructed by Owners holding a majority of the Ownership Interests in the Property, or if a majority vote cannot be obtained then the Managing Owner shall vote as he/she deems appropriate and reasonable under the circumstances.
- D. Maintenance Projects. The Managing Owner may assign reasonable projects to be accomplished by each Owner to maintain the Property (i.e. painting, yard work, minor repair, etc.). The performance of these projects by Owners will help keep the annual assessments to a minimum. If an Owner does not fulfill his or her project goals, the Managing Owner shall have the right to hire outside firms or individuals to do that work and include the expense in that Owner's assessment the next year.
- E. Budget and Accounting. The Managing Owner shall by April 1 of each year prepare a budget estimating the funds needed for general maintenance of the Property, its repairs, necessary capital expenditures, payments of taxes, insurance, utilities, fees, etc., plus the maintenance of a reasonable reserve fund for the payment of such expenses. This reserve fund shall be in the amount of one-half of the prior year's total expenditures. By April 1 of each year, the Managing Owner shall provide a copy of the budget, and a list of income and disbursements for the previous year to all Owners.
- F. Assessments. Based upon the proposed budget and projected income, the Managing Owner shall by April 1 of each year, either determine that no assessment for the current calendar year is necessary or assess to each Owner twenty-five percent (25%) of the anticipated additional needed income for the current calendar year, said payment to be due on April 1 of that year. In the event of failure of the Managing Owner to make an assessment in a year or determine that no assessment is necessary, the assessment for that year shall be the same as the previous year plus ten percent (10%). Each Owner shall decide among his or her immediate family how the assessment is to be satisfied.
- G. Obligation of Owners to Managing Owner:

1. All other Owners shall, at all times, provide reasonable assistance to the Managing Owner with respect to the Managing Owner's functions.
 2. Upon reasonable notice to the Owners by the Managing Owner, each Owner shall provide sufficient funds to the Managing Owner to allow the Managing Owner to make, on a timely basis, all payments reasonably required for the operation and maintenance of the Property, and to maintain a contingency reserve balance of cash on hand in an amount determined by the Managing Owner to be reasonable and appropriate under the circumstances, which amount shall in no case be less than [] Dollars (\$). The Managing Owner shall incur no liability with respect to other Owners or non-Owners relating to the performance of his/her functions as Managing Owner.
 3. If an Owner fails to meet its full assessment by May 1 of a given year, a late payment fee of ten percent (10%) of the amount of the assessment plus interest on the amount of the assessment at the rate of eight percent (8%) per annum shall be charged to the Owner, unless the Managing Owner decides otherwise.
 4. If an Owner fails to meet its full assessment within ___ months of the date of the assessment, that Owner and his or her immediate family forfeits its rights to the use of the Property for the rest of that given year unless the Managing Owner decides otherwise. If the forfeiture is enforced the other Owners may obtain the forfeited rights of the nonpaying Owner by contributing the funds not paid by the nonpaying Owner; provided, however, the interest and late fee shall be waived.
 5. [**Consider deleting:** The Owners paying the assessment allocable to the defaulting party shall have a lien on the interest in the Property of the defaulting party for the amount of such expenses, including the late fee and interest.]
 6. Notwithstanding the foregoing, if there is a bona fide dispute regarding the amount due no interest shall accrue, use rights shall not be forfeited as otherwise provided above, [~~delete if not using ¶5 above:~~ and there shall be no right to place a lien on such Owner's interest in the Property] until such dispute is settled pursuant to the dispute resolution provisions provided for herein, or by mutual agreement of the Owners.
- H. Limitations on Managing Owner. The following limitations on the Managing Owner shall apply:
1. Any sale or borrowing against the Property, or any improvement of the Property requiring the expenditure of \$1,000 or more may be made only upon the unanimous, written consent of all Owners.

2. Improvements requiring expenditures of less than \$1,000 shall be approved upon a vote of the Owners.
3. An expenditure of \$200 or less which the Managing Owner determines is necessary and reasonable may be made by any Owner without the consent of the other Owners.
4. Owners shall vote on all other nonroutine events, including but not limited to renting the Property to a nonmember, the use of the Property by a non-owner, and amending the rules or operating agreement.
5. Owners have the right to call a meeting to review the decisions of the Managing Owner and generally to provide a safeguard against arbitrary management.

VIII. Allocation of Use of Property.

Version 1:

By entering into this Agreement, each Owner hereby agrees that, with respect to any calendar year, each Owner shall have the right to the occupancy and other use of the Property for one or more periods cumulatively equal to, but not in excess of, such Owner's Percentage Interest multiplied by the number of days in such year. Each Owner agrees to negotiate in good faith with all other Owners to allocate use by one or more Owners at various times during each calendar year so that use fairly and equitably takes into account each Owner's Percentage Interest and the days during each year during which use is feasible and desirable. In the event the Owners are unable, in the judgment of the Managing Owner, to so allocate use of the Property, the Managing Owner shall make such allocation, and all Owners shall be bound thereby. Except with the consent of all Owners, such use must consist of personal use by the Owner or by the Owner's spouse or family.

Version 2:

- A. The Property shall be used for recreational and residential purposes and for no other purposes, including without limitation, business commercial purposes, or storage purposes.
- B. There shall be 52 use periods in each calendar year, each period being of equal duration. The term of each use period shall consist of seven consecutive days, commencing at 4:00 pm on Wednesday of each week and ending at 4:00 pm on Wednesday of the following week.
- C. Each Owner shall be entitled to one use period out each four consecutive use periods, beginning with the first use period of each calendar year.
- D. Each Owner shall be entitled to two use periods in each calendar year each of which contains one of the following holidays: New Year's Eve/Day, President's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day, [insert applicable school and religious holidays]. No Owner shall be entitled to consecutive use

periods encompassing Christmas Day and New Year's Day/Eve without the prior consent of the remaining parties.

- E. At the conclusion of the occupancy of each Owner, such party shall be responsible for fully and thoroughly cleaning the Property in preparation for occupancy by the next Owner.
- F. If all of the use period of an Owner is not used during any calendar year or years, the unused portion may be accrued, up to a maximum period of six months, and used in subsequent calendar years provided the unanimous consent of all Owners is obtained for the specific use of same.
- G. If all Owners consent, an Owner may occupy the Property for a period in excess of the use period at a previously agreed rental. The agreed rental shall be determined by considering all of the following factors: market value rent; property expenses; benefits to the co-tenancy resulting from occupancy such as security, maintenance and repairs which would discount the market value rent.
- H. Use of the Property by an Owner may include invited guests and spouses if accompanied by an Owner.

IX. Dispute Resolution.

- A. The Owners have entered into this Agreement in good faith and in the belief that it is mutually advantageous to them. It is with that same spirit of cooperation that they pledge to attempt to resolve any dispute amicably without the necessity of litigation. Accordingly, they agree that if any dispute arises between them relating to this Agreement (the "Dispute"), they will first use the mediation procedures specified in this Article (the "Procedure") prior to commencing additional proceedings as defined below.
- B. The parties agree to participate in good faith in the mediation to its conclusion. If the Disputing Owners (as defined below) are not successful in resolving the Dispute through mediation, then the Disputing Owners agree that the Dispute shall be settled by arbitration in Seattle, Washington in accordance with the provisions of the [insert appropriate procedural rules to be relied upon] ("Additional Proceedings"), and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction.
- C. The Owner(s) seeking to initiate the Procedure (the "Initiating Owner" whether one or more) shall give written notice to the other Owner(s), describing in general terms the nature of the Dispute, the Initiating Owner's claim for relief, and identifying one or more individuals with authority to settle the Dispute on such Owner's behalf. The Owner(s) receiving such notice (the "Responding Owner" whether one or more) shall have five (5) business days within which to designate by written notice to the Initiating Owner one or more individuals with authority to settle the Dispute on such Owner's behalf. The individuals so designated shall be known as the "Authorized Individuals." The Initiating Owner and the

Responding Owner shall collectively be referred to as the "Dispute Owners" or, individually, as the "Disputing Owner."

- D. Provided that [designated mediator] is available and is willing to serve as the mediator, [designated mediator] shall serve as the mediator of the Dispute. Otherwise, the Authorized Individuals shall have thirty (30) business days from the date of the Responding Owner's written response to the Initiating Owner to select a mutually agreeable mediator. In consultation with the mediator selected, the Authorized Individuals shall promptly designate a mutually convenient time and place for the mediation, and unless circumstances require otherwise, such time to be not later than forty-five (45) days after selection of the mediator.
- E. In the mediation, each Disputing Owner shall be represented by an Authorized Individual and may be represented by counsel. In addition, each Disputing Owner may, with permission of the mediator, bring such additional Persons as needed to respond to questions, contribute information, and participate in the negotiations. The Disputing Owners agree to sign a document that provides that the mediator shall be governed by the provisions of Washington law and such other rules as the mediator shall prescribe. The Disputing Owners commit to participate in the proceedings in good faith with the intention of resolving the Dispute if at all possible.
- F. The Dispute Owners agree to participate in the mediation procedure to its conclusion. The mediation shall be terminated (i) by the execution of a settlement agreement by the Disputing Owners, (ii) by a declaration of the mediator that the mediation is terminated, or (iii) by a written declaration of a Disputing Owner to the effect that the mediation process is terminated at the conclusion of one full day's mediation session. Even if the mediation is terminated without a resolution of the Dispute, the Disputing Owners agree not to commence any Additional Proceedings prior to the expiration of five (5) days following the mediation. Notwithstanding the foregoing, any Disputing Owners may commence Additional Proceedings within such five day period if the Dispute could be barred by an applicable statute of limitations.

X. General Provisions.

- A. Prohibitions Regarding Use. No Owner shall permit smoking or the use of illegal substances on the Property. No owner shall permit pets in the residence on the Property, with the exception of necessary trained companion animals.
- B. Duty of Owners to Maintain Property. No Owner shall make any alterations, changes or additions to the real property and improvements without the prior consent of all other Owners, including, without limitation, bulldozing or paving roads, cutting trees, drilling wells, constructing new improvements or additions to existing improvements.

- C. Duty of Owners to Repair. Any damage to or destruction of the Property, caused by an Owner, its guests, invitees or licensees, whether through negligence or otherwise, such Owner shall be solely liable to the other Owners for the cost of repair and restoration of the Property to its pre-existing condition to the extent the same is not covered by insurance.
- D. Standards for Repairs and Improvements. Any repair or improvement to the Property shall be completed in accordance with all laws, ordinances, rules and requirements for such repairs and improvements, and no such repair or improvement shall negatively affect the fair market value of the Property.
- E. Entire Agreement; Amendment. This Agreement contains the entire agreement of the Parties with respect to any matter covered or mentioned in this Agreement, and no prior agreements or understandings pertaining to any such matter shall be effective for any purpose. No provision of this Agreement may be amended or modified except by a written agreement fully executed by the Parties. However, each Party to this Agreement agrees that in the case of a Transfer of any Ownership Interest where the transferee is subject to the provisions of this Agreement, such transferee shall be treated for all purposes as a party to this Agreement, as if such transferee were one of the Parties.
- F. Successor in Interest. The covenants and conditions contained in this Agreement shall apply to, bind and inure to the benefit of the heirs, successors, executors, administrators, and assigns of the Parties. Before any Transfer of any Ownership Interest is made or will be deemed effective, a Selling Owner agrees that the transferee, if not already a Party to this Agreement, shall acknowledge all of the terms and provisions of this Agreement as they have been amended and shall agree to be bound thereto by executing a counterpart to this Agreement. Notwithstanding compliance with the terms of this Agreement regarding Transfers, or obtaining the written consent of all Owners to a Transfer, any party acquiring any Ownership Interest, in a Transfer or otherwise, shall hold such interest subject to all of the restrictions, terms and conditions set forth in this Agreement, to the same extent and effect as if such party were one of the Parties to this Agreement. The Parties acknowledge that the covenants and agreements contained in this Agreement constitute covenants running with the Property, touch and concern the Property and do not constitute personal rights, which covenants shall be binding upon any successor Owners of the Property or the Ownership Interests.
- G. Recordation. This Agreement shall not be recorded or otherwise made a matter of public record, except as required by law. Upon written request of the Managing Owner or Owners holding two-thirds (2/3) of the Ownership Interests, a memorandum or other appropriate notice of this Agreement shall be executed and recorded or otherwise made a matter of public record so as to give notice of the existence of this Agreement to potential transferees of an interest in the Property.

- H. Power of Attorney. Each Owner shall execute a durable power of attorney designating a person or persons to serve as attorney-in-fact, in the event of his or her incapacity, for purposes of carrying out his or her responsibilities provided for in this Agreement.
- I. Tenancy In Common. It is mutually understood and agreed that the Parties are at all times acting and performing as tenants in common, and nothing in this Agreement is intended nor shall be construed to create a partnership relationship among the Parties.
- J. Governing Law. Except for matters required by law to be governed by the law of the jurisdiction in which the Property is located, this Agreement shall be governed by the laws of the State of Washington.

EXECUTED as of the day and year first above written.

“Owner”

[]

“Owner” and
“Managing Owner”

[]

“Owner”

[]

[insert notary blocks for each Owner, Exhibit A (legal description of property),
Exhibit B (Table of Ownership Interests)]