

STATE OF WISCONSIN

AT 8:30 O'CLOCK A M x

Reference: Volume 002

Page 489

COUNTY OF SAUK

ON July 13 1994

Document No. 527216

Mary Kluge
REGISTRAR 40.00 ch

THIRD AMENDMENT

TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR THE TIMBERS AT CHRISTMAS MOUNTAIN

THIS THIRD AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS for The Timbers at Christmas Mountain is made as of the 17th day of June, 1994 by Dellona Enterprises, Inc., a Wisconsin corporation, hereinafter, together with its successors and assigns who come to stand in the same relation to the property as did their predecessor in title, referred to as "Declarant."

W I T N E S S E T H:

WHEREAS, Declarant did record in the office of the Register of Deeds for Sauk County, Wisconsin on July 26, 1989 in Volume 002, commencing on page 489, as Document No. 57216, that certain Declaration of Covenants, Conditions and Restrictions for The Timbers at Christmas Mountain (hereinafter referred to as the "Original Declaration");

WHEREAS, the Declaration has previously been amended by (1) a First Amendment recorded in the office of the Register of Deeds for Sauk County, Wisconsin on November 21, 1989 in Volume 002, commencing on page 527, as Document No. 531724 (the "First Amendment"); and (2) a Second Amendment recorded in the office of the Register of Deeds for Sauk County, Wisconsin on March 24, 1994 in Volume 003, commencing on page 218, as Document No. 598719 (the "Second Amendment") (the Original Declaration, as amended by the foregoing amendments, is hereinafter referred to collectively as the "Declaration");

WHEREAS, the Declarant wishes to further amend the Declaration as provided herein;

WHEREAS, pursuant to Article IX, paragraph B of the Declaration, the Declaration may be amended by an instrument signed by the Declarant (so long as it retains a right to appoint a majority of the directors);

WHEREAS, Declarant continues to retain a right to appoint a majority of the directors;

WHEREAS, pursuant to Article II, paragraph E of the Declaration, no singular Undivided Interest shall be further divided, partitioned, or in any way fractionalized or

segmented unless approved in writing by the Declarant, so long as Declarant owns any Undivided Interest;

WHEREAS, the Declarant continues to own one (1) or more Undivided Interests primarily for the purpose of sale and by these presents approves in writing the further division, fractionalization and segmentation of Undivided Interests as set forth herein;

NOW THEREFORE, Declarant does, by these presents, hereby amend the Declaration as follows:

1. Article I, subparagraph (a) of the Declaration is amended by inserting after the words "Undivided Interests" the words "and Resort Interests."

2. Article I, subparagraph (b) of the Declaration is amended by inserting after the words "Undivided Interests" the words "and Resort Interests."

3. Article I, subparagraph (e) of the Declaration is amended by inserting after the words "Undivided Interests" the words "and Resort Interests."

4. Article I, subparagraph (g) of the Declaration is amended by inserting after the words "Undivided Interest" wherever they appear the words "or Resort Interest."

5. Article I, subparagraph (h) of the Declaration is amended by deleting that subparagraph in its entirety and substituting therefore the following:

(h) "Owner" shall mean the Owner of an Undivided Interest and shall also include the Owner of a Resort Interest. The rights of Owners are as set forth in the Declaration, as amended, and except to the extent otherwise provided in such Declaration, as amended, and in the Rules and Regulations of the Association, the rights of Owners shall be the same. Owners of Resort Interests may be described as "Preferred Resort Interest Owners" or "Regular Resort Interest Owners," as hereinafter defined.

6. Article I, subparagraph (n) of the Declaration is amended by deleting that subparagraph in its entirety and substituting therefore the following:

(n) "Undivided Interest" shall mean an undivided One Two Thousand Five Hundredth (1/2500th) fractional interest as tenant-in-common in the Property, which shall entitle the Owner to the exclusive use and occupancy of a specific Accommodation for a specific week each year, as identified in the Owner's Land Contract and/or Warranty Deed or, which shall entitle an Owner

who has enrolled in the Flexible Use Program to the use and occupancy of an Accommodation of the same type as such Owner's Accommodation at any time, subject to availability and the Reservation Procedure for the Flexible Use Program, as set forth in Article II below.

7. Article I, subparagraph (o) of the Declaration is amended by inserting after the words "Undivided Interest" the words "or Resort Interest."

8. Article I, subparagraph (p) of the Declaration is amended by inserting after the words "Undivided Interest" the words "or Resort Interest."

9. Article I, subparagraph (q) of the Declaration is amended by deleting that subparagraph in its entirety and substituting therefore the following:

(q) "Flexible Use Program" shall mean the plan by which (i) an Owner of an Undivided Interest may submit his or her Undivided Interest to a common pool of Undivided Interests with other Owners; or (ii) an Owner of a Resort Interest may submit his or her Resort Interest to a common pool of Resort Interests with other Owners. The Owner of an Undivided Interest who so submits his or her Undivided Interest to the common pool surrenders his or her right to the exclusive use and occupancy of a specific Accommodation for a specific week (as identified in the Owner's Land Contract or Warranty Deed) in exchange for a nonexclusive right with all other Owners who have submitted their Undivided Interests to the Flexible Use Program to the use and occupancy at any time of an Accommodation of the same type as that submitted by the Owner, subject to the Reservation Procedure described in Article II, Section C below. The Owner of a Resort Interest who so submits his or her Resort Interest to the common pool surrenders his or her right to the exclusive use and occupancy of a specific Accommodation for a specific week (as identified in the Owner's Land Contract or Warranty Deed) in exchange for a nonexclusive right with all other Owners who have submitted their Resort Interests to the Flexible Use Program to the use and occupancy of an Accommodation for a Unit Week during a time period of the same type as that submitted by the Owner, subject to the Reservation Procedure described in Article II, Section C below.

10. Article I of the Declaration is amended by adding thereto a new subparagraph to be labeled subparagraph (r) which new subparagraph shall read as follows:

(r) "Preferred Resort Interest Owner" shall mean an Owner of a Resort Interest who has acquired rights to reserve Preferred Time, as herein defined.

11. Article I of the Declaration is amended by adding thereto a new subparagraph to be labeled subparagraph (s) which new subparagraph shall read as follows:

(s) "Preferred Time" shall mean Unit Weeks 21 through 43, inclusive and is sometimes referred to as "Red Time."

12. Article I of the Declaration is amended by adding thereto a new subparagraph to be labeled subparagraph (t) which new subparagraph shall read as follows:

(t) "Regular Resort Interest Owner" shall mean an Owner of Resort Interests who is entitled to reserve Regular Time.

13. Article I of the Declaration is amended by adding thereto a new subparagraph to be labeled subparagraph (u) which new subparagraph shall read as follows:

(u) "Regular Time" shall mean Unit Weeks comprised of 1 through 20, inclusive and 44-52, inclusive, sometimes referred to as "White and Blue Time."

14. Article I is amended by adding thereto a new subparagraph to be labeled subparagraph (v) and entitled "Resort Interests," which new subparagraph shall read as follows:

(v) "Resort Interests" shall mean an undivided one-third (1/3) fractional tenant-in-common interest in an Undivided Interest, as defined hereinabove, such, therefore, being construed as a one-third (1/3) fractional tenant-in-common interest of an undivided One Two Thousand Five Hundredth (1/2500) fractional Undivided Interest as tenant-in-common in the Property. Such interest shall entitle the Owner to the exclusive use and occupancy of a specific Accommodation for a specific week, as identified in the Owner's Land Contract or Warranty Deed or, which shall entitle an Owner who has enrolled in the Flexible Use Program to the use and occupancy of an Accommodation for a Unit Week during a time period of the same type as such Owner's time period, subject to availability and the Reservation Procedure for the Flexible Use Program, as set forth in Article II below.

15. Article I of the Declaration is amended by adding thereto a new subparagraph to be labeled subparagraph (w) which new subparagraph shall read as follows:

(w) "Unit Weeks" shall mean a one week time period and shall be computed as follows:

Unit Week One (1) is the seven (7) days commencing on the first Saturday in each calendar year. Unit Week Two (2) is the seven (7) days succeeding Unit Week One (1). The remaining Unit Weeks, up to and including Unit Week Fifty-One (51) are computed in a like manner. Unit Week Fifty-Two contains the seven (7) days succeeding the end of Unit Week Fifty-One (51) without regard to the month or year and contains any excess days not assigned to Unit Week One (1) through Fifty-One (51). Such Unit Weeks run from 12:00 p.m. on the first Saturday of the Unit Week to 12:00 p.m. on the last Saturday of the Unit Week and are usable subject to the terms of this Declaration and the Rules and Regulations governing Unit Weeks, including, but not limited to regulations for check-in and check-out.

16. Article II, paragraph A of the Declaration is amended by inserting after the words "Undivided Interest" wherever they appear the words "or Resort Interest." Where appropriate, the words "or Resort Interests" shall be inserted if the previous words used regarding an Undivided Interest are, as well, in the plural.

17. Article II, paragraph B of the Declaration is amended by deleting that paragraph in its entirety and substituting therefore the following:

B. Rights of Owners. Subject to the payment of all assessments as might be levied by the Association or Declarant hereunder, and subject to the provisions of the Declaration including Section D of this Article II and the Rules and Regulations as might be adopted applicable to the Property and Accommodations, each Owner shall have the exclusive right to the use and occupancy of a specific Accommodation for a specific week each year, as identified in the Owner's Land Contract and/or Warranty Deed, unless such Owner has submitted his or her Undivided Interest or Resort Interest to the Flexible Use Period, and the nonexclusive right with the other Owners to use and occupy the Property, including the Accommodations located thereon (as tenants in common), and to use and occupy the Accommodations otherwise available, for the purposes permitted by this Declaration. Use of Accommodations by Owners enrolled in the Flexible Use Program shall be subject to the reservation procedures as set forth herein and in the Rules and Regulations applicable to The Timbers at Christmas Mountain. Use of

Accommodations shall be limited by an Owner's designated class of use as hereinafter specifically defined.

18. Article II, paragraph C of the Declaration is amended by deleting that paragraph in its entirety and substituting therefore the following:

C. Reservation Procedure.

(a) This subparagraph (a) and the reservation procedures established herein shall be applicable only to Owners of Undivided Interests. Only Owners who have submitted their Undivided Interests to the Flexible Use Program may reserve use of an Accommodation pursuant to the procedure hereinafter described. An Owner who has not submitted his or her Undivided Interest to the Flexible Use Program shall be entitled to the use and occupancy of the Accommodation purchased during the week purchased, without reservation, but may not reserve an Accommodation at any other time. Prior to use of any Accommodation, an Owner enrolled in the Flexible Use Program must reserve use of an Accommodation in accordance with this Declaration. The Management Firm, with the approval of the Board of Directors, shall promulgate general guidelines and procedures for the purpose of maximizing the use of the Accommodations by all Owners. The Management Firm shall notify the Owners of the guidelines and procedures (i) at the time that each Owner acquires an interest in the Property, by inclusion in the disclosure materials, (ii) each time there is a material change, by written notice as provided below in Article IX, paragraph C, and (iii) by posting at the Reservation Office and such other locations on the Property as may be designated for notices of general information to Owners. The reservation may be made for such period of time as desired by the Owner, provided, however, that no Owner's use of an Accommodation shall exceed a period greater than 14 consecutive days. Any Owner who has occupied an Accommodation for 14 consecutive days must vacate the Property and all Accommodations for a period of no less than 7 consecutive days following the expiration of the first 14 days before such Owner shall be allowed to occupy the same Accommodation or another Accommodation as may be available for use.

(b) This subparagraph (b) and the reservation procedures established herein shall be applicable only to Owners of Resort Interests. Only Owners who have submitted their Resort Interests to the Flexible Use Program may reserve use of an Accommodation pursuant to the procedure hereinafter described. An Owner who has not submitted his or her Resort Interest to the Flexible Use Program shall be entitled to the use and occupancy of a specific Accommodation during the time period purchased, without reservation, but may not reserve an Accommodation any other time. Prior to use of any Accommodation, an Owner enrolled in the Flexible Use Program must, in accordance with the then existing rules and regulations of the Association, reserve use of an Accommodation. A reservation may be made for a Unit Week as desired by the Owner; subject, however, to Article II, paragraph D hereinbelow and the provisions thereof regarding Preferred Time, Regular Time and Cabin use. Unless waived by the Management Firm, an Owner of a Resort Interest may not have more than one (1) reservation outstanding at any time and each reservation shall be for a Unit Week. Each Resort Interest shall be entitled to occupy an Accommodation for one (1) Unit Week each calendar year, subject to a reservation first being made pursuant to the Rules and Regulations. The Management Firm may, pursuant to Rules and Regulations as may be adopted, permit a Resort Interest Owner to occupy an Accommodation for additional Unit Weeks, on a space available basis. Reservations shall be prior to the actual time of use, as might be specified by the Management Firm pursuant to the Rules and Regulations of the Association. No Owner enrolled in the Flexible Use Program shall have the express or implied right to use any specific Accommodation or to repeatedly use or occupy any specific Accommodation. Notwithstanding any other provision contained herein to the contrary, use of Accommodations, and the time during which reservations of such Accommodations may be made by the Owners of a Resort Interests shall be limited and restricted by an Owner's class of use designation hereinafter set forth. Notwithstanding any other provision, furthermore, herein to the contrary, an Owner of a Resort Interest, while limited in rights of occupancy of Accommodations as set forth herein and as otherwise provided in the Declaration, may use the Recreational Property as otherwise set forth within the Declaration.

19. Article II, paragraph D of the Declaration is amended by deleting that paragraph in its entirety and substituting therefore the following:

D. Limitation on Use.

(a) At the time of purchase of an Undivided Interest, an Owner (other than Declarant) shall be designated as either a Club User, a Resort Cabin User or a Grand Cabin User, or such additional class User as may be established by the Declarant in respect to Accommodations as might be developed by Declarant in addition to the existing three classes. The rights of Owners shall be as follows:

(1) A Club User shall be entitled to use any of the amenities located on the Recreational Property in accordance with the terms of this Declaration.

(2) A Resort Cabin User enrolled in the Flexible Use Program shall be entitled to use and occupy any Resort Cabin located on the property, subject to the reservation procedures, and to use any amenities located on the Recreational Property, all in accordance with the terms of this Declaration.

(3) A Grand Cabin User enrolled in the Flexible Use Program shall be entitled to use and occupy any Grand Cabin located on the property, subject to the reservation procedures, and to use any amenities located on the Recreational Property, all in accordance with the terms of this Declaration.

(4) The Declarant, by recordation of this Declaration expressly reserves the right to create additional classes of Users in respect to Accommodations other than the designated class Users set forth above.

(5) An Owner who has not submitted his or her Undivided Interest to the Flexible Use Program shall be entitled to use and occupancy of his or her Cabin or other Accommodation during his or her week and to use any of the amenities located on the Recreational Property at any time subject to the terms of this Declaration.

(b) Each Owner of a Resort Interest in the Property (other than Declarant) shall be designated, at the time of purchase of such

Resort Interest, either a Preferred Resort Interest Owner or a Regular Resort Interest Owner or such additional Class User as may be established by the Declarant in respect to Accommodations as might be developed by Declarant. The rights of Owners of Resort Interests shall be as follows:

(1) a Preferred Resort Interest Owner enrolled in the Flexible Use Program shall be entitled to use and occupy an Accommodation during Preferred Time, subject to the Reservation Procedures, and to use any amenities located on the Recreational Property, all in accordance with the terms of this Declaration.

(2) A Regular Resort Interest Owner enrolled in the Flexible Use Program shall be entitled to use and occupy an Accommodation during Regular Time, subject to the Reservation Procedures, and to use any amenities located on the Recreational Property, all in accordance with the terms of this Declaration.

(3) Preferred Resort Interest Owners and Regular Resort Interest Owners shall, unless otherwise designated by the Management Firm, be limited to occupancy of Resort Cabins and shall be required, as provided by the Management Firm, to pay such occupancy fees and charges prior to occupancy of any such Accommodation. All Resort Interest Owners shall be entitled to one (1) Unit Week of use and occupancy each calendar year.

(4) An Owner of a Resort Interest who has not submitted his or her Resort Interest to the Flexible Use Program shall be entitled to use and occupancy of a specific Accommodation during his or her Unit Week and to use any of the amenities located on the Recreational Property at any time subject to the terms of this Declaration.

20. Article II, paragraph E of the Declaration is amended by deleting such paragraph in its entirety and substituting therefore the following:

E. Ownership. Fee simple title to the Property shall be vested in Declarant and the Owners of Undivided Interests and the Owners of Resort Interests, being fractional interests of an Undivided Interest, subject to the Land Contract Vendor's Interest, if any, of Declarant. Other than for the creation of Resort Interests by Declarant, each and every Owner of an Undivided Interest does, by acceptance of a deed to an Undivided Interest, covenant and agree that no Owner shall seek partition of his or her Undivided Interest from the remaining Undivided Interest within the Property until such time as these covenants may expire as provided in Article IX hereof. Furthermore, each and every Owner of an Undivided Interest, by acceptance of a deed to any Undivided Interest, does thereby agree that no singular Undivided Interest shall be further divided, partitioned or in any way fractionalized or segmented unless approved in writing by the Declarant so long as Declarant owns any Undivided Interest. The creation of Resort Interests by the Declarant shall be permitted.

Moreover, each and every Owner of a Resort Interest, by acceptance of a deed to any Resort Interest, does thereby agree that no singular Resort Interest shall be further divided, partitioned, or in any way fractionalized or segmented unless approved in writing by the Declarant so long as Declarant owns any Undivided Interest. The creation of Resort Interests by Declarant shall not be deemed to be a division, partition, fractionalization or segmentation of any Undivided Interest, so long as such Resort Interest is created by Declarant and, once created, each Owner of a Resort Interest shall have the right to further convey such interest in its form as conveyed by Declarant so long as such Resort Interest is not further divided, partitioned, or in any way fractionalized or segmented unless approved in writing by the Declarant so long as Declarant owns any Undivided Interest or Resort Interest.

21. Article II, paragraph G of the Declaration is amended by deleting the first sentence thereof through the word "following" and inserting in its place the following language "Use of an Undivided Interest or Resort Interest in the Property shall be subject to the following:" Article II, paragraph G of the Declaration is further amended by, in each place where the words "Undivided Interest" are used, inserting immediately thereafter the words "or Resort Interest." Where appropriate, the words "or Resort Interests" shall be inserted if the previous words used regarding an Undivided Interest are, as well, in the plural.

22. Article II, paragraph K of the Declaration is amended by inserting after the words "Undivided Interest" wherever they appear therein the words "or Resort Interest."