

After Recording, Return To:  
Gisler Management, Inc.  
1470 NE First Street, Suite 100  
Bend, Oregon 97701

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K-53002

**DECLARATIONS, COVENANTS AND CONDITIONS**  
**for**  
**DIAMOND PEAKS AT LEISURE WOODS**  
**KLAMATH COUNTY, OREGON**

THIS DECLARATION made on the date hereinafter set forth by the undersigned, hereinafter referred to as "Declarant":

WHEREAS, Declarant is the owner of certain real property in the County of Klamath, State of Oregon, hereinafter referred to as "said property", more particularly described as follows:

See attached Exhibit "A" for Legal Description.

WHEREAS, Declarant desired to subject said property to certain covenants, conditions, liens, and charges for the benefit of said property, and its present and subsequent owners as hereinafter specified, and will convey said property subject thereto.

NOW, THEREFORE, Declarant hereby declares that all of the said property is and shall be held and conveyed upon and subject to the conditions, and covenants hereinafter set forth, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of said property and for reimbursing Declarant for advances in aid of utility construction which benefit said property and which benefit other properties, the owners of which may utilize and benefit from said advances. These covenants and conditions shall constitute covenants to run with the land and shall be binding upon all persons claiming under them and also that these conditions, and covenants shall inure to the benefit of and be limitations upon all future owners of said property or any interest therein.

**ARTICLE I**  
**DEFINITIONS**

Whenever used in this Declaration, the following terms shall have the following meanings:

1. "Association" shall mean THE DIAMOND PEAKS ROAD & UTILITY ASSOCIATION, a corporation organized under the laws of the State of Oregon, its successors and assigns.
2. "Said Property" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may be hereafter brought within the jurisdiction of the Association by recorded declarations in the manner hereinafter set forth.
3. "Lot" shall mean any numbered plot of land set forth above or hereafter added, the front of such lot being that boundary subject to a front yard set back.
4. "Member" shall mean every person or entity who holds membership in the Association.
5. "Owner" shall mean the recorded owner, whether one or more persons or entities, of fee simple title to any lot situated upon said property, or a contract purchaser if his record owner retains such title merely to secure an obligation and is registered as a purchaser in the Association records.
6. "Roadway" shall mean any street, highway, or other thoroughfare as shown on the recorded plat of said property, and access thereto.

## ARTICLE II MEMBERSHIP

Members of the Association shall be every Owner and shall be subject by covenants of record to assessments or charges by the Association or the Declarant. There shall be no other qualification for membership except as set forth above. Membership shall terminate on transfer of fee simple title by an owner or the contract purchaser's interest by a contract purchaser who qualifies as a member. If an owner sells the Lot by contract of sale, upon written notification to the Association the owner's member shall not terminate. The Contract purchaser's membership shall commence and the owner's obligation held in abeyance so long as the purchaser fulfills all owner's obligations. The owner's liability shall terminate upon recordation of a deed conveying all right, title and interest, voluntary or involuntary to another owner.

## ARTICLE III VOTING RIGHTS

All members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Article II. When more than one person holds such interest in any Lot, all such persons shall be members. The vote for each Lot shall be exercised as they among themselves determine, or if unable to agree, they may cast fractional votes proportionate to their ownership interest, but in no event shall more than one vote be cast with respect to any one Lot.

## ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENT AND UTILITY REIMBURSEMENTS

### Section 1. Creation of the Lien and Personal Obligation of Assessments.

The Declarant hereby covenants for all of said Property, each Owner of any Lot by acceptance of a deed or contract of purchase therefore, whether or not it shall be so expressed in any such deed or other conveyance or agreement for conveyance, is deemed to covenant and agree to pay to the Association: Regular annual or other regular periodic assessments or charges and utility reimbursements to the Declarant when applicable. The regular assessments and reimbursements, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charges on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment together with such interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time such assessment was levied. The obligation shall remain a lien on the property until paid or foreclosed, but shall not be a personal obligation of successors in title unless expressly assumed by them.

### Section 2. Purpose of Assessments.

The annual or regular periodic assessments levied by the Association shall be used exclusively for the maintenance of the Roadways and Utility Facilities, costs of administration of a road and utility maintenance program, and costs necessary to operate the Association in a continuous manner. Utility facility reimbursements to Declarant shall be a repayment of the advances in aid of construction paid by Declarant, not to exceed the amounts set forth herein, which benefit the said property.

### Section 3. Annual Assessments.

After consideration of current maintenance costs and future needs of the Association, the Board of Directors may fix a regular flat assessment upon a monthly, quarterly, or annual basis. Any annual assessment paid within 30 days of the date billed shall be entitled to a three percent discount. Utility facility reimbursements may not be amended without consent of Declarant.

### Section 4. Uniform Rate of Assessment.

Both regular and periodic assessments and any special assessments must be fixed as a uniform rate for all Lots not exempt and may be collected on an annual, quarterly, or monthly basis in the discretion of the Directors.

### Section 5. Quorum For Any Action Authorized Under Sections 3 and 4.

At the meeting called, as provided in Section 4 hereof, the presence at the meeting of members or of proxies entitled to cast fifty percent (50%) of all the votes of the membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the requirements of notice set forth in Sections 3 and 4, and the required quorum at such subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the date of the meeting at which no quorum was forthcoming.

Section 6. Date of Commencement of Annual Assessments:  
Due Dates:

A. Roads.

All Lots not exempt shall be subject to the regular or periodic assessments provided for herein on July 1, 1999. The Board of Directors shall fix the amount of the regular assessment at least thirty (30) days in advance of each assessment period. Written notice of the assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. The initial assessment shall be \$50.00 per year for road maintenance.

B. Water.

1. Fire Protection.

All Lots not exempt shall be subject to the regular or periodic assessments provided for herein on July 1, 1999. The Board of Directors shall fix the amount of the regular assessment at least thirty (30) days in advance of each assessment period. Written notice of the assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. The initial assessment shall be \$50.00 per year for fire protection.

2. Water Hook-Up Fee.

All Lots not exempt shall be subject to the regular or periodic assessments provided for herein on October 1, 1998. The Board of Directors shall fix the amount of the regular assessment at least thirty (30) days in advance of each assessment period. Written notice of the assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. The initial assessment shall be \$300.00 at the time of connection. In the event of an unauthorized connection prior to payment of the water hook-up fee, the assessment shall be \$1,000.00.

3. Domestic Water Service.

All Lots not exempt shall be subject to the regular or periodic assessments provided for herein on date of connection. The Board of Directors shall fix the amount of the regular assessment at least thirty (30) days in advance of each assessment period. Written notice of the assessment shall be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. The initial assessment shall be \$50.00 per quarter for domestic water service. For unauthorized use of water, the assessment shall be \$50.00 per month.

4. Systems Development Charge.

All Lots not originally subject to these Declarations prior to connection to the water supply system shall pay Declarant a Systems Development Charge to be connected to the water supply system as reimbursement for contributions in aid of construction. The systems development charge shall be \$9,760.00 per lot at the time of connection, in addition to the cost of any line extension required. All line extensions shall meet standards requirements of Declarant, including provision for fire flow. For unauthorized connection to the water supply system, the charge shall be \$14760.00 per lot.

C. Power.

1. Current Facilities Power Charges.

All Lots not exempt shall be subject to the regular or periodic assessments provided for herein on the date of purchase or upon notification by Midstate Electric Cooperative, whichever occurs later. The initial assessment shall be \$14.00 per month or as may be amended by Midstate Electric Cooperative for standby power until a permanent residence is connected to Midstate Electric Cooperative.

Section 7. Effect of Nonpayment of Assessments:  
Remedies of the Association and Declarant.

Any assessments or charges set forth above which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of one percent (1%) per month. The Secretary of the said Association or Declaration shall file in the office of the Directors of Records, County Clerk, or appropriate recorder or conveyances of Klamath County, State of Oregon, a statement of the amount of any such charges or assessments, together with interest as aforesaid, which have become delinquent with respect to any Lot on said property, and upon payment in full thereof, shall execute and file a proper release of the lien securing the same. The aggregate amount of such assessments, together with interest, costs and

expenses, and a reasonable attorney's fee and collection fees for the filing and enforcement thereof, shall constitute a lien of the Lot, with respect to which it is fixed from the date the notice of delinquency thereof is filed in the office of said Directors of records or County Clerk, or other appropriate recording office, until the same has been paid or released as herein provided. Such lien may be enforced by said Association or Declarant in the manner provided by law with respect to lien upon real property. The owner of said property at the time said assessment is levied shall be personally liable for the expenses, costs and disbursements, including reasonable attorney's fees and collection fees of the Declarant or of the Association, as the case may be, of processing and, if necessary, enforcing such liens, all of which expense, costs and disbursements and attorney's fees shall be secured by said lien, including fees on appeal and such owner at the time such assessment is levied shall also be liable for any deficiency remaining unpaid after any foreclosure sale. No owner may waive or otherwise escape liability from the assessments provided for herein by non-use of his dwelling unit, lot or building site.

#### Section 8. Subordination of the Lien to Mortgages.

The lien of the assessments provided for herein shall be inferior, junior, and subordinate to the lien of all bonafide mortgages and trust deeds now or hereafter placed upon said property or any part thereof. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot which is subject to any mortgage or trust deed, pursuant to a decree of foreclosure under such mortgage or any proceeding in lien of foreclosure thereof, shall extinguish the lien upon the lot of such assessments as to amounts thereof which became due prior to such sale or transfer; and such lien shall attach to the net proceeds of sale, if any, remaining after such mortgages and other prior liens and charges have been satisfied. No sale shall relieve the owner of record prior to the sale from personal liability for any amounts due as set forth above. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

#### Section 9.

At such time as any roadway shall be accepted for maintenance purposes by any such Governmental Agency, or Public District, the Lots fronting on said Roadway shall be exempt from assessment for road purposes. Until such time that lots set forth above are provided water facilities to the lot line, said lots shall be exempt from water, power or road maintenance assessments.

### ARTICLE V ANNEXATION

#### Section 1.

Additional lands not included in the original Declaration may be annexed to and made a part of Diamond Peaks at Leisure Woods, or may become incorporated into the Association if all of the following conditions are met:

- A. Owners of the proposed annexation must record current Declarations, Covenants and Conditions which are approved by the Board of Directors.
- B. Owners must sign and agree to abide by the Articles and By-Laws of the Association.
- C. Annexation must be approved by a majority of all members voting at a meeting of the members called for that purpose.
- D. Owners must pay all utility reimbursements and system development charges due Declarant herein.

### ARTICLE VI GENERAL PROVISIONS

#### Section 1. Enforcement.

The Association, the Declarant, or any Owner, or the owner of any recorded mortgage upon any part of Said Property, shall have the right to enforce, by any proceeding at law or in equity, all conditions, covenants, liens, and charges now or hereafter imposed by the provision of this declaration. Failure by the Association, the Declarant, or by any Owner to enforce any covenant herein contained shall in no event be deemed a waiver of the right to do so thereafter.

#### Section 2. Severability.

Invalidation of any one of these covenants by judgement or court order shall in nowise affect any other provision which shall remain in full force and effect. However, if any Road's become accepted for maintenance purposes by any governmental agency or public district, the road maintenance assessment for Lots on said road

shall be terminated.

**Section 3. Amendment.**

The covenants of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, the Declarant, or the Owner of any Lot subject to this Declaration, their respective legal representative, heirs, successors, and assigns for a term of twenty-five (25) years from the date of this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. Any of the covenants of this Declaration may be amended by an instrument signed by members entitled to cast not less than fifty-one percent (51%) of the votes of membership. All such amendments must be recorded in the appropriate Deed Records of Klamath County, Oregon, to be effective. No amendment shall limit the Declarant's right to receive utility reimbursements or systems development charges as set forth herein.

**Section 4. No Right of Reversion.**

Nothing herein contained in the Declaration, or in any form of deed which may be used by Declaration, or its successors or assign, in selling said property, or any part thereof, shall be deemed to vest or reserve in Declarant or the Association any right of reversion or re-entry for breach of violation of any one or more of the provisions hereof.

**Section 5. Books and Records.**

The books and records of the Association, upon demand in writing, stating the purpose thereof, may be inspected by any member, or his attorney or agent, for any proper purpose, at any reasonable time.

**Section 6. Benefit of Provisions: Waiver.**

The provisions contained in this Declaration shall bind and inure to the benefit of and be enforceable by Declarant, the Association, and the owner or owners of any portion of said property, and their heirs and assigns, and each of their legal representatives, and failure by Declarant or by the Association or by any of the property owners or their legal representatives, heirs, successors, or assigns, to enforce any of such conditions, restrictions, or charges herein contained shall in no event be deemed a waiver of the right to do so.

IN WITNESS WHEREOF, the undersigned, the owner of all Said property has hereunto caused these presents to be executed this 30<sup>th</sup> day of September, 1998.

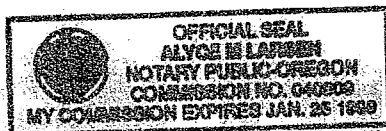
AMERICAN CASH EQUITIES, INC.  
an Oregon Corporation

By: Joel T. Gisler

Joel Gisler, President

State of Oregon       )  
                                      ) ss  
County of Deschutes )

This instrument was acknowledged before me on September 30, 1998, by Joel T. Gisler, as President of American Cash Equities, Inc., an Oregon corporation.



Alyce M. Larsen  
Notary Public for Oregon  
My Commission expires 01-25-99



EXHIBIT "A"  
LEGAL DESCRIPTIONParcel 1:

Lot 16, Block 3; and Lots 4, 6, 7 and 8, Block 4, all in Tract No. 1074, LEISURE WOODS, in the County of Klamath, State of Oregon.

Parcel 2:

Lots 38 through 48 (inclusive), Block 3; Lots 9 through 14 and 16 through 20 (inclusive), Block 4; Lots 31 through 38 (inclusive); Block 5; and Lots 1 through 14 and 26 through 31 (inclusive), Block 6, all in LEISURE WOODS UNIT #2, in the County of Klamath, State of Oregon.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of First American Title the 1st day  
of October A.D., 19 98 at 2:56 o'clock P. M., and duly recorded in Vol. M98  
of Deeds on Page 36239

FEE \$33.00

By Bernetha G. Letsch County Clerk