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Vol M02 Page 8514

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1470 NE First Street, Suite 100
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State of Oregon, County of Klamath

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Vol M02, Pg 8514-24

Linda Smith, County Clerk

Fee \$ 71.00 # of Pgs 11

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AMENDED AND RESTATED

DECLARATIONS, COVENANTS AND CONDITIONS

for

THE DIAMOND PEAKS TRACT #1355 HOMEOWNERS ASSOCIATION, INC.

KLAMATH COUNTY, OREGON

The undersigned, pursuant to the vote of more than 75 percent of the Association's Owners, hereby amends the Declarations, Covenants, Conditions and Restrictions for the real property described on Exhibit "A," recorded at M00, Page 17884, on May 17, 2000, in the Real Property Records of Klamath County, Oregon (the "Declaration"), by amending and restating the Declaration in its entirety as provided herein. This restated Declaration is intended to supercede and replace all of the previous declarations and amendments to such previous declarations as they apply to the real property described on Exhibit "A," by amending and restating the Declaration as follows:

State of Oregon, County of Klamath

Recorded 06/20/2003 3:27 p. m.

Vol M03 Pg 42377-87

Linda Smith, County Clerk

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**ARTICLE I
DEFINITIONS**

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

1. "Association" shall mean "The Diamond Peaks Tract #1355 Homeowners Association, Inc.," a corporation organized under the laws of the State of Oregon, its successors and assigns.
2. "Said Property" or "the 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.

Page 1.

**AMENDED AND RESTATED DECLARATIONS,
COVENANTS AND CONDITIONS**

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**This document is being re-recorded to correct the legal description of the real property described on Exhibit "A".

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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.
7. "Declarant" shall mean American Cash Equities, Inc. or its successor in interest.

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 membership shall not terminate. The Contract purchaser's membership shall commence and the Owner's obligation shall be 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 and 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 Assessment. 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. The presence at any meeting of Members (including proxies entitled to cast ballots) of twenty percent (20%) of all the votes of the membership shall constitute a quorum.

Section 6. Date of Commencement of Annual Assessments:

A. Roads. All Lots not exempt shall be subject to the regular or periodic assessments provided for herein on July 1, 2000. 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 Hydrant System.** All Lots not exempt shall be subject to the regular or periodic assessments provided for herein on July 1, 2000. 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 hydrant system.

2. **Water Hook-Up Fee.** All Lots not exempt shall be subject to the regular or periodic assessments provided for herein on July 1, 2000. 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 \$500.00 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 \$14,760.00 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 the Declarant, as the case may be, shall file in the office of the Directors of Records, County Clerk, or appropriate recorder of 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 properly. 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 on 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 expense, 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 personally 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. Future Exemptions. 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

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:

1. Owners of the proposed annexation must record current Declarations, Covenants and Conditions which are approved by the Board of Directors.
2. Owners of the proposed Annexation must sign and agree to abide by the Articles and By Laws of the Association.

3. The annexation must be approved by a majority of all Members voting at a meeting of the Members called for that purpose.
4. Owners of the proposed Annexation 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. Invalidity of any one of these covenants by judgment or court order shall in no wise affect any other provision which shall remain in full force and effect. However, if any roads 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 seventy-five percent (75%) 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 assigns, 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.

ARTICLE VII
BUILDING AND USE RESTRICTIONS

Section 1. Use. Each Lot shall be used for residential purposes only, nor shall more than one detached single-family dwelling (not to exceed two stories in height from the nearest road to the dwelling) and not more than one double-car garage or carport and two accessory buildings (such as workshops or stables) shall be constructed or placed upon each lot in the subdivision. The combined square footage of all buildings on any lot other than the single-family dwelling shall not exceed the total square footage of the single-family dwelling and any attached garage located on such lot.

Section 2. Maintenance. Each Lot and its improvements shall be maintained in a clean and attractive condition in good repair and in such fashion as not to create a fire hazard. No Owner shall litter their property with metal objects of other objects, i.e. car or other vehicle parts, thus creating a visual disturbance to the continuity of the neighboring properties.

Section 3. Driveways. All driveways must be composed of cinders, gravel, concrete or asphalt.

Section 4. Size. Each single family dwelling shall be at least 1,000 square feet in size exclusive of one-story porches and garages.

Section 5. Building Standards. All buildings, fences, and improvements must be constructed in workmanlike manner and kept in a condition of good repair. Exposed portions of foundation must be painted or sided if more than 12 inches above the ground. House trailers and mobile homes are strictly prohibited throughout the Property. Manufactured homes are allowed provided they meet the following standards:

- (A) The manufactured home shall be multi-sectional and enclose a space of not less than 1,000 square feet.
- (B) The manufactured home shall be placed on an excavated and back-filled foundation with perimeter concrete stem walls and enclosed at the perimeter such that the manufactured home is located not more than 24 inches above grade.
- (C) The manufactured home shall have a pitched roof, except that no standard shall require a slope of greater than a minimal six feet in height for each 12 feet in width.
- (D) The manufactured home shall have exterior siding of cedar shingles or logs. The manufactured home shall have roofing which in color, material, and appearance is similar

to the roofing material commonly used on residential dwellings within the community or which is comparable to the predominant materials used on surrounding dwellings as determined by the local permit approval authority.

(E) The manufactured home shall be certified by the manufacturer to have an exterior thermal envelope meeting performance standards which reduce levels equivalent to the performance standards required of single-family dwellings constructed under the state Building Code as defined in ORS 455.010.

(F) The manufactured home shall comply with all other architectural, landscaping and building standards set forth herein.

Section 6. Setbacks. The Setback line shall be at least twenty (20) feet back from all lot lines to any structure upon the lot with the exception of a fence, not to exceed 72 inches in height. Fences must be constructed of properly finished material and shall harmonize with the surroundings.

Section 7. Compliance with Law. All land Owners must comply with the laws and regulations of the State of Oregon, County of Klamath, and any municipality applicable to fire protection, building construction, water, sanitation, and public health.

Section 8. Progress of Construction. No more than 12 months' construction time shall elapse for completion of a permanent dwelling nor shall a temporary structure be used as living quarters. An exterior latrine shall be allowed only during the construction of a permanent residence.

Section 9. No Commercial Use. No commercial, industrial, noxious, or offensive trade or activity shall be carried on upon any lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood.

Section 10. Tree Cutting. The cutting or removal of living trees will only be permitted where necessary for the construction of buildings or thinning for beautification and wildfire safety of the property.

Section 11. Domestic Animals. No animals or fowl other than domestic household pets, horses or cattle shall be kept on any part of said property.

Section 12. Leashes. All animals including dogs must be kept within the confines of the property or on a leash to protect those residents wishing to use the roadways for recreational walking, jogging, etc.

Section 13. Firearms. No hunting nor discharging firearms permitted.

Section 14. Screen. All garbage trash, cuttings, refuse, garbage and refuse containers, fuel tanks, clothes lines and other service facilities shall be screened from view from neighboring properties.

Section 15. Fire Hazard. Each lot and its improvements shall be maintained in a clean and attractive condition in good repair and in such fashion as not to create a fire hazard.

Section 16. Parking. Parking must be provided for each building site. Parking and/or storage of recreational vehicles, i.e. camp trailers, boats, etc., must be done in such a manner that they do not distract from the appearance of any particular property including the property on which it is parked or stored.

Section 17. Sewage. Sewage disposal systems shall meet County Health Department standards.

Section 18. Siding; Color; Pitch. All homes and any other structure shall be sided with cedar shingles, lap siding, log, and/or board and bat. In addition, the exterior color (including roofing materials) of all homes and other structures (whether paint, stain or otherwise) shall be in earth tones which blend with the surrounding natural terrain and vegetation. Exterior reflective metals must be painted to blend with surrounding materials. Roof pitch on all homes shall be 6-12 or steeper. Any garage, carport, or any other accessory building shall be constructed with the same architectural style, including siding and roof pitch, as the home located on the lot.

Section 19. Landscaping. All landscaping shall blend with the surrounding terrain and vegetation. All vegetation used in landscaping shall be comprised of native grasses, shrubs and/or trees. Any terrain disturbed in construction shall be either landscaped or restored to its natural state.

Section 20. Exterior Lighting. Exterior lighting shall be used primarily for safety purposes rather than illumination of any building or landscaping so as to eliminate glare and annoyance as well as to preserve the natural setting. All exterior lighting shall not cast light on adjoining properties and shall be shielded so that light rays are directed to the ground.

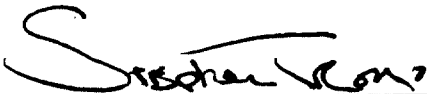
Section 21. Grading. Construction grading shall be limited and shall minimize cut and fill.

Section 22. Review of Plans. Prior to commencing construction of improvements on any lot, including any remodel or expansion, the lot Owner shall submit to the Association's Board of Directors plans, including exterior elevations, in sufficient detail to demonstrate that such improvements shall comply with the Declaration. The Board of Directors shall have 15 days from the date of submission to approve such plans. Unless the Association's Board of Directors provides a written notice to the lot Owner otherwise within such 15-day period, the plans shall be deemed approved. No construction shall commence on any lot without the approval of the Association's Board of Directors whether by approval in writing or by lapse of time. Any plans which are disapproved shall be modified so that the completed project shall comply with the Declaration and shall then be resubmitted for approval by the Board of Directors following the same procedures described above.

IN WITNESS WHEREOF, the undersigned, hereby certifies that the foregoing amended and restated covenants, conditions, and restrictions were adopted by a vote of more than seventy-five percent of the Associations' Owners, executed this ____ day of _____, 2002.

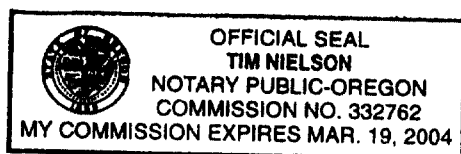
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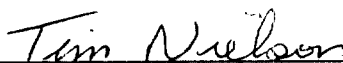
THE DIAMOND PEAKS TRACT #1355 HOMEOWNERS ASSOCIATION, INC.,
an Oregon nonprofit corporation

By: 
STEPHEN TRONO, Secretary

State of Oregon)
)ss.
County of Deschutes)

This instrument was acknowledged before me this 8TH day of
FEBRUARY 2002, by STEPHEN TRONO, as Secretary of THE DIAMOND PEAKS
TRACT #1355 HOMEOWNERS ASSOCIATION, INC., an Oregon nonprofit corporation.




NOTARY PUBLIC FOR OREGON

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EXHIBIT "A"

LEGAL DESCRIPTION

Lots 1 through 21 (inclusive), Lots 26 through 29 (inclusive), and Lots 32 through 59 (inclusive), of Tract #1355, Diamond Peaks, in the County of Klamath, State of Oregon.

****Lots 1 through 11 (inclusive), all in Block 1, Tract No. 1074, Leisure Woods, Klamath County, Oregon.**