

**M06-15167**

Klamath County, Oregon

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**After recording, return to:**

Skies the Limit, Inc.  
c/o Dan Zakour  
541 Diego Court  
Central Point, OR 97502

**DECLARATION  
OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
REGENCY 3, 4 & 5 SUBDIVISION**

To: The Public

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

The Declarant is the developer and owner of the planned community known as Regency 3, 4, and 5 Subdivision. For the purpose of the preservation enhancing and perfecting the value, desirability, amenities, and attractiveness of the real property, the Declarant has deemed it desirable to create an agency to which should be delegated and assigned certain powers relating to the maintenance and architectural control of the project.

The Declaration states the agency is to:

- (a) Administer and enforce this declaration.
- (b) All of the properties described shall be held, sold, and conveyed, subject to the following covenants, conditions, reservations, restrictions, easements, liens and charges, and shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the described properties or any part thereof and shall inure to the benefit of each owner thereof.

WHEREAS, the Declarant have filed for record in the office of the County Clerk of the County of Klamath and State of Oregon, a plat designated as a tract of land situated in the NW1/4 and NE1/4 of Section 14, Township 39 South, Range 9 East, Willamette Meridian, Klamath County, Oregon. See legal description attached hereto as Exhibit "A".

WHEREAS, Skies the Limit, Inc, an Oregon Corporation is the owner of all the real property included therein.

106✓

NOW, THEREFORE, these parties, the above described Declarant, do hereby adopt the following general scheme and plans for the improvements, use and restrictions in the use of benefits of themselves, as owners, of said land, and also for the owners of any part of said land claiming through them, their successors or assigns; and they do hereby declare that having adopted all of the said land and each part and parcel thereof and that all their successors, representatives and assigns who shall derive title from the said Declarant shall take little subject to such general scheme and plan, even though no reference to such plan shall be made in the deed of conveyances as to any such successor, representative or assign; and the passing of title to any part of parcel of said land to any successor representative or assign shall carry with it as an apourtenance the obligation and burden of such general scheme and plan. The said general plan shall consist of the above described property being and remaining subject to the following conditions, covenants and agreements, to wit:

## **ARTICLE 1 PLANNED COMMUNITY**

1.1 NAME: The name of the planned community shall be Regency 3, 4 & 5 Subdivision. The said property shall be a Class II planned community as defined by ORS 94.550(4). Said property contains 49 lots and has annual assessments that exceed \$1,000 for all lots

1.2 RESERVATIONS: The Declarant may, without approval of the owners of the lots construct or complete construction of the improvements which the Declarant deems advisable and necessary.

1.3 COMPLIANCE WITH OREGON PLANNED COMMUNITY ACT. Notwithstanding any provision of this Declaration that might be construed to the contrary, all activity with relationship to the REGENCY 3, 4 & 5 SUBDIVISION and the REGENCY 3, 4 & 5 SUBDIVISION HOMEOWNERS ASSOCIATION, including but not limited to management and operation of REGENCY 3, 4 & 5 SUBDIVISION and the REGENCY 3, 4 & 5 SUBDIVISION HOMEOWNERS ASSOCIATION, shall be conducted in accordance and subject to the Oregon Planned Community Development Act, and those rules set forth in ORS 94.550 to 94.783.

1.4 BYLAWS: Pursuant to ORS 94.580, the Bylaws of REGENCY 3, 4 & 5 SUBDIVISION HOMEOWNERS ASSOCIATION shall be recorded with the County Clerk of Jackson County.

1.5 LOTS: The term lot shall refer to any separately designated plot of land shown upon any recorded subdivision map of the properties with the exception of the common area. Each lot is intended for residential use as permitted by the City of Klamath Falls.

## **ARTICLE 2 ASSOCIATION AND MEMBERSHIP**

2.1 ORGANIZATION. The name of the homeowners association shall be REGENCY 3, 4 & 5 SUBDIVISION HOMEOWNERS ASSOCIATION. The Association is a

non-profit Oregon corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, the Bylaws and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. In the event of any such inconsistency, the provisions of this Declaration shall prevail. The Board of Directors of the Association, and such officers as the Board may elect or appoint, shall conduct the affairs of the Association in accordance with the Articles and Bylaws, as from time to time amended.

2.2 MEMBERSHIP. Every person or entity who is a recorded owner of a fee or undivided fee interest in any lot which is subject by covenants of record to assessment by the Association, including contract sellers, shall be a member of the Association. Each member shall have the rights, duties and obligations set forth in this Declaration, the Articles and the Bylaws, as the same may from time to time be amended.

The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No owner shall have more than one membership. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment by the Association and shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon the transfer of title to such lot, and then only to the transferee of title thereto. Ownership of such lot shall be the sole qualification for Membership and shall automatically commence upon a person becoming such owner and shall automatically terminate when such ownership shall terminate or be transferred.

2.3 VOTING RIGHTS. All Membership and voting procedures are governed by the Articles and Bylaws of the Association. Members shall be all those owners as defined in section 2.2. Members shall be entitled to one (1) vote for each lot in which they hold the interest required for membership by section 2.2. When more than one person holds such interest in any lot, all such persons shall be members. However, the vote for each lot must be cast as a unit, and fractional votes shall not be allowed. In the event joint owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If an owner (or owners) casts a vote representing a certain lot, it will thereafter be conclusively presumed for all purposes that such owner was acting with the authority and consent of any other owners of said lot. The right to vote may not be severed or separated from the lot ownership to which it is appurtenant, and any sale, transfer or conveyance of such lot to a new owner or owners shall operate to transfer the appurtenant vote without the requirement of any express reference thereto.

2.4 SUSPENSION OF VOTING RIGHTS. The voting rights of an owner shall be suspended during such period as any assessment due hereunder from such owner remains unpaid; provided, however, that the Board shall give any such owner at least fifteen (15) days notice prior to such suspension.

2.5 DUTIES OF ASSOCIATION. The Association shall have the obligation and duties, subject to and in accordance with this Declaration and Bylaws, to do and perform the following acts for the benefit of its Members and for the maintenance and improvement of the said property.

(a) Common Area Maintenance and Operation. To maintain, repair, and otherwise manage the common area, landscaping and retention pond after such property is conveyed or otherwise transferred to it, all easements for operation and maintenance purposes over the common area, and all easements for the benefit of Members of the Association within the common area.

(b) Utilities. To acquire, provide and/or pay for water, sewer, garbage disposal, refuse pickup, electrical, telephone, gas and other necessary utility services for the common area as needed.

(c) Other. To perform such other acts, whether or not expressly authorized by this Declaration and Bylaws, as may be reasonably necessary to enforce any of the provisions of this Declaration and Bylaws.

2.6 POWERS AND AUTHORITY OF THE ASSOCIATION. The Association shall have all of the powers of a non-profit corporation organized under the Oregon Non-profit Corporation Act, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, the Bylaws, or this Declaration. The Association shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Association under this Declaration, and the Bylaws, and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association, including without limitation:

(a) Assessments. To levy assessments on the Owners and to enforce payment of such assessments, all in accordance with the provisions of Articles 8 and 9 of this Declaration.

(b) Easements and Rights-of-way. To grant and convey to any third party easements and rights-of-way in, on, over and under the common area for the purpose of constructing, erecting, operating or maintaining thereon, therein or thereunder overhead or underground lines, cables, wires, conduits, or other devices for the transmission of electricity for lighting, heating, power, telephone and other purposes, public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, cable TV lines, security system lines and any similar public or quasi-public improvements or facilities

(c) Services. To contract for materials and/or services for the common area or the Association.

### **ARTICLE 3 PROPERTY RIGHTS AND EASEMENTS**

3.1 CONVEYANCE OF COMMON AREA. The Declarant hereby covenants for itself, its successors and assigns, that, prior to or at the Turnover Meeting required by ORS 94,609, it will convey fee simple title to the common area of the Project to the Association, free and clear of all liens and encumbrances, except the covenants, conditions and restrictions herein

set forth, easements and utility rights-of-way then of record. Declarant shall maintain control of the Association until the Turnover Date which shall be within 12 months of the recording of these Declarations. The Declarant will deed the common area to the Association within 12 months of the recording of these Declarations. The Association may only sell, convey or subject the common area to a security interest as provided by ORS 94.665.

3.2 TURNOVER OF ADMINISTRATION: The Declarant makes no other specific provisions for turnover, except as otherwise provided in this Declaration and the Bylaws and as provided by the Oregon Planned Community Act.

3.3 EASEMENTS IN COMMON AREA. Every owner shall have a right of enjoyment in and to the common area and any easements shown on the final plat and a non-exclusive easement for ingress and egress over and through the common area. Such easements shall be subject to the right of the Association to sell, transfer or encumber all or any portion of the common area to a person, firm or entity, whether public or private, and the right of the Association to dedicate or transfer all or any part of the common area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the owners. No such sale, transfer, encumbrance or dedication shall be effective except upon the prior vote or written consent of seventy-five percent (75%) of the lots of the Association; provided, however, that a dedication required by a governmental agency as a condition to a recording a final plat covering any portion of the Property shall require no such prior vote or written consent.

3.4 DELEGATION. Any owner may delegate his or her right of use and enjoyment to the common area to the members of his or her family or tenants who reside on his or her lot. Tenants shall not have the right to further delegate the owner's right to use and enjoy the common area. As to tenants, such owner shall notify the Association in writing of such delegation and the names of such delegees, and such member shall not thereafter be entitled to use and enjoy the common area so long as his right shall be so delegated. The rights and privileges of any delegee shall be in accordance with and subject to this Declaration and the Bylaws; provided, however, that the owner making such delegation (and his or her lot) shall remain liable for the assessments herein provided for and subject to all of the terms and conditions of this Declaration.

3.5 UTILITY EASEMENTS. Each common area parcel shall be conveyed to the Association and thereafter held by such Association, its successors and assigns subject to any and all easements of record at the time of the initial conveyance of the particular lot involved to an owner for the use and benefit of the several authorized public and/or other utilities, including but not limited to, cable television, sanitary sewers, water, gas, electrical, and drainage easements, and no owner shall damage or interfere with the installation and maintenance of such utilities, or in any manner change the direction or flow of drainage channels in any such easements, or in any manner obstruct or retard the flow of water through drainage channels in any such easements.

3.6 ALTERATIONS TO COMMON AREA. Only the Association shall have the right to construct, reconstruct, or alter any improvement situated on any common area. No member shall be permitted to cut any trees in the common area without the prior vote or written consent of seventy-five percent (75%) of the lots of the Association

#### **ARTICLE 4**

#### **CONDITIONS, COVENANTS & RESTRICTIONS**

4.1 LAND USE AND BUILDING TYPE: No lot shall be used except as designated, R5 or R5a, the purpose as outlined in the Klamath Falls zoning ordinance. Beings erected are to be approved by the Architectural Control Committee.

4.2 DWELLING COST: Quality and Size: The ground floor are of the main structure, exclusive of one-story open porches and garages, shall not be less than 1,600 square feet for a one-story dwelling, not less than 1,200 square feet for a dwelling of more than one story. A basement or partial basement structure shall not be considered a two-story structure. No dwelling with a construction cost of less than \$100,000 shall be permitted on any lot.

4.3 LIMITATIONS ON BUILDINGS: No more than one Dwelling may be erected or constructed on any Lot. All Dwellings shall be on-site, stick-built buildings. No Modular Homes or Mobile Homes shall be allowed. Each Dwelling shall have a two-car garage. There will be no carports allowed. No other building, except a single garden shed, shall be allowed on any Lot, and no building or structure of any kind shall be erected prior to the construction of the Dwelling. Accessory building shall be, at the maximum 10'x 12' and shall not be used for or in connection with multi-family living, and each building site shall be used for no more than one family. All such building shall conform to all Klamath County Ordinances. All accessory buildings must be of similar style to the main dwelling unit and must be painted to match the main dwelling unit.

4.4 TIME: All Dwellings and other structures shall be completed within one year after construction has commenced, except in cases where completion is impossible or will result in great hardship to the owner or the builder because of strikes, fires, national emergencies, natural calamities or other like events.

4.5 CONSTRUCTION: All Dwellings, exclusive of open porches, decks and garages shall contain not less than 1,600 square feet of habitable floor area. All buildings and structures shall have Composition Shingle roofing material, unless otherwise approved in writing by the Architectural Control Committee. Each roof shall have a minimum pitch of five inches for each 12 inch span. Each Dwelling shall have lap siding, unless otherwise approved by the Architectural Control Committee. Tarpaper, roll brick, sheet aluminum, masonry block or T-111 siding shall not be permitted on a Dwelling. All buildings of any kind shall conform to city set back requirements and building codes. The color of all exterior paint used on a Dwelling or any other improvement on a Lot shall be subject to approval of the Architectural Control Committee.

4.6 BUILDING LOCATION: All buildings shall be located to comply with Klamath Falls Zoning Ordinances and variances granted therefrom. No building shall be located on any lot nearer to the front lot line than 20 feet. No dwelling shall be located on any interior lot nearer than 20 feet to the rear lot line. On corner lots, the direction towards which the dwelling faces shall be the front property line. A side yard of 20 feet or more on the side street will be maintained. On corner lots, a rear yard of 20 feet will be maintained and may be measured from either the rear or side building line to either the shorter or the longer property line. For the purpose of this covenant, coves, steps and open porches shall not be considered as a part of a building, provided, however, that this shall not be construed to permit any portion of a building on a lot to encroach upon not more than 6 feet into a required yard or not closer than 2 feet to a side setback.

4.7 UTILITY CONNECTIONS: On each of the lots in the tract all telephone service wire connections to the main telephone system and all power connections to the main power system must be placed underground. Electrical conduit cannot be exposed on side of house. Exposed television antennas shall be prohibited. Digital Satellite Disc not to exceed 3' diameter.

4.8 FENCES: No fence, wall or hedge in excess of forty-two (42) inches in height shall be permitted to extend from the minimum front setback line of the house to the curb line of the Street. No fence shall exceed six (6) feet high on any portion of the lot. All fences shall be made of materials that are compatible with the main dwelling. No chain link fence. The provisions of this paragraph shall not apply to fences built on the exterior boundary of the development. All fences shall be constructed of good materials and, at all times, be kept in a like new condition.

4.9 MAINTENANCE OF LOTS: Each parcel and its improvements shall be maintained in a clean and attractive condition, in good repair and in such a fashion as not to create a fire hazard or visual pollution.

4.10 REPLACEMENT: If a home is partially damaged by fire or other hazard, the home is to be replaced to approval of the Architectural Control Committee within six (6) months. If a home is totally destroyed by fire or other hazard, and the owners prefer not to replace the home, the lot is to be cleared and put in a clean and attractive condition within six (6) months.

4.11 NUJANCES: No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. Parking of vehicles of a commercial use is prohibited except for pickup sized vehicles.

4.12 TEMPORARY STRUCTURES: No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at anytime as a residence either temporarily or permanently. Campers, trailers, boats, etc. may not be parked for storage purposes in the front setback of the lot or at street.

4.13 SIGNS: No sign of any kind shall be displayed to the public view on any lot except one sign of not more than nine square feet advertising the property for sale or rent.

4.14 LANDSCAPING: All lots shall be landscaped within one year after the exterior of the main building is finished, not with less than 20% of front yard to be in grass, the rest to be natural, or with bark chips and evergreens in a professional manner. No Chinese Elm shall be permitted. Cottonwoods and Poplars may be considered.

When a dwelling has been constructed on a lot, all adjacent vacant lots owned or controlled by the dwelling owner shall be landscaped in a manner consistent with the landscaping on the dwelling lot.

4.15 DRIVEWAYS: The first forty (40) feet of all driveways must be composed of concrete. Thereafter, the driveway may be composed of concrete, gravel or asphalt.

4.16 COMPLETION OF CONSTRUCTION: All dwellings shall be completed within one (1) year from the beginning of construction. Upon completion of the exterior of all buildings under construction, the owner may petition the Architectural Control Committee for permission to leave certain interior portions unfinished. The decision of the Committee is final.

4.17 PARKING: Parking of recreational vehicles is not permitted on the street in front of the residences. The streets shall not be used for parking vehicles except on a 24 hour temporary basis. No parking or storage of trailers, trucks, campers, boats, boat trailers, snowmobiles, or other off-road vehicles shall be permitted unless they are garaged, screened or concealed from the view of any neighbor.

4.18 SIGHT DISTANCE AT INTERSECTIONS: No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight line limitations shall apply on any lot within 10 feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

4.19 OIL AND MINING OPERATIONS: No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, or shall oil wells, tanks, tunnels, mineral excavation or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

4.20 LIVESTOCK AND POULTRY: No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be



kept provided they are not kept, bred or maintained for any commercial purposes. No animals are to be allowed to roam outside owner's premises without being controlled by owner or on a leash. Household pets shall be maintained in a clean and sanitary condition and shall not be obnoxious or a nuisance to the surrounding owners. Pet owners shall be liable for all damages by their pets.

4.21 GARBAGE AND REFUSE DISPOSAL: No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition and not allowed in front set back. No rubbish may be burned or buried on or near any property in this planned community, nor shall any parcel be used for the storage of any property or thing that will cause such lot to appear in an unclean or untidy condition, including firewood which must be stored in an orderly manner and not be covered with colored coverings, or which be will obnoxious to the eye, nor shall any substance, thing or material be kept upon any lot that will, or might, disturb the peace, comfort or serenity of occupants of surrounding property. All lots must be maintained at all times to control and prevent grass and range fires upon the property. All garbage containers, cuttings, refuse, and other service facilities must be screened from view of neighbor parcels. Fuel tanks and clotheslines are not permitted.

4.22 LIGHTING: No offensive exterior lighting or noise making devices shall be installed or maintained on a lot without written Architectural Control Committee approval.

4.23 WATER SUPPLY: No individual water-supply system shall be permitted on any lot unless such system is located, constructed and equipped in accordance with the requirements, standards and recommendations of the State Public Health Authority.

4.24 SEWAGE DISPOSAL: No individual sewage-disposal system shall be permitted on any lot.

## **ARTICLE 5**

### **ENFORCEMENT OF COVENANTS, CONDITIONS & RESTRICTIONS**

5.1 ENFORCEMENT: These Declarations and Covenants may be enforced by the Undersigned, any owners of the lots in the planned community, or any member of the Architectural Control Committee. Should suit or action be instituted to enforce any of the foregoing covenants or restrictions, after written demand for the discontinuance of a violation thereof, and any failure to so do, then, whether said suit be reduced to degree or not, the Board or owner seeking to enforce or restrain any such violations, shall be entitled to have and recover from such defendant or defendants, in addition to the costs and disbursements allowed by law, such sum as the Court may adjudge reasonable as attorney's fees in said suit or action.

5.2 PROVIDING NOTICE OF VIOLATION. Any property owner within the subdivision may enforce this Declaration by serving written notice of an alleged violation on the offending or violating property owner. If, within thirty (30) days after delivery of a written

notice, the violation has not been corrected or the property owner receiving such notice has not delivered written assurances to the complaining property owner that the violation will be corrected without unreasonable delay under the circumstances, the aggrieved property owner shall have the right to commence a proceeding in Klamath County Court or any court of competent jurisdiction for the enforcement of this Declaration.

5.3 FAILURE TO ENFORCE. The failure of the Developer, or any lot owner to enforce any provision of this Declaration, or to fail to take action on any purported violation hereof, shall not constitute a waiver of the right to do so, and the Developer shall incur no liability whatsoever for such failure.

## **ARTICLE 6 DEVELOPMENT RIGHTS**

6.1 CONTEMPLATED IMPROVEMENTS: The Declarant does not agree to build any specific improvement and does not choose to limit Declarant's right to add improvements not included in this Declaration.

6.2 EASEMENTS: Declarant hereby reserves in them self, their successors and assigns, perpetual easements under, over and across strips of land five (5) feet in width running along and interior to the side lines and rear lines of each building site owned by itself for the purpose of erecting, constructing, maintaining and operating sewers and drainage systems and poles, pipes, wires, cables, guys, anchor and conduits for lighting, heating, power, telephones and any other method of conducting and performing any public utility service or function beneath, upon and above the surface of the ground within said five-foot strips of land, and Declarant reserves the right to put and/or trim any trees or other growth on such five-foot strips which may interfere with or menace the construction, maintenance or operation of said utilities.

6.3 LIMITATIONS OF RESTRICTIONS. Declarant is undertaking the development of 49 Lots in accordance with the Final Plat. The completion of this development and the sale, rental, lease or other disposal of the lots is essential to the establishment and welfare of said property as a residential community. In order that said work may be completed and said property be established as a fully occupied residential community as rapidly as possible, nothing in these Restrictions shall be understood or construed to:

(a) Prevent Declarant, its contractors, or subcontractors, from obtaining reasonable access over and across the common area of the property or from doing on any lot or any portion of the property whatever is reasonably necessary or advisable in connection with the completion of said work;

(b) Prevent Declarant or its representatives from erecting, constructing and maintaining on any part or parts of the property such structures as may be reasonably necessary for the conduct of its business of completing said work and establishing said property as a residential community and disposing of the same in parcels by sale, lease, or otherwise;

(c) Prevent Declarant from conducting on any part of the property its business of completing said work and of establishing said property as a residential community and of disposing of said property in parcels or lots by sale, lease or otherwise, including the right to maintain model units and sales offices; or

(d) Prevent Declarant from maintaining such signs within the property as may be necessary for the sale, lease or disposition of the lots therein, including the right to maintain a sales and resale office in or on some portion of the property owned by Declarant.

6.4 DECLARANT'S DEVELOPMENT RIGHTS. Notwithstanding any other provision herein contained, Declarant expressly retains unalterable rights to develop the property in the manner deemed desirable by Declarant in Declarant's sole discretion; provided, however, that Declarant has or shall obtain governmental consents where required by law. The property shall consist of up to forty-nine (49) lots and such other development as Declarant shall determine as provided herein. This Declaration or Bylaws shall not in any manner constitute a limitation on Declarant's fee title rights to other real property prior to development hereunder. The Declarant does not agree to build any improvements or does not choose to limit Declarant's rights to add improvements not described in the Declarations.

It is anticipated that development of the Real Property will extend over a period of months or years, and for that reason the Declarant shall retain the flexibility to develop the Property in the manner deemed best by Declarant in Declarant's sole discretion. Declarant's reserved rights shall include the power to restrict access to portions of the common area as reasonably necessary during the course of construction, and thereafter, for health, safety, privacy and security purposes, as deemed appropriate by Declarant. There shall be no limitation, other than that imposed by appropriate governmental agencies having jurisdiction, upon Declarant's rights to develop and sell the Property in any manner deemed appropriate by Declarant.

Declarant may use any of the lots within the property owned by him for model home sites, sales offices, and parking therefor, and for any other purpose for which Declarant may use the common area as provided herein. Declarant shall have the right and easement to enter upon, use and enjoy and designate and permit others including without limitation, Declarant's agents, employees, representatives, contractors and prospective purchasers and lenders, to enter upon, use and enjoy the common area, for drainage and encroachment purposed and for ingress to and egress from the common area for the purpose of completing improvements thereon or for the performance of necessary repair work; provided, however, that the exercise of such right and easement shall not unreasonably interfere with the reasonable use and enjoyment of the common area by the Members.

Declarant reserves the right to alter its construction and development plans and designs as he deems appropriate, subject to applicable governmental approvals. The rights of Declarant under this Declaration or Bylaws may be assigned to any successor or successors to all or part of said entity's respective interests in the property, by an express assignment incorporated in a recorded deed, option or lease as the case may be, transferring such interest to such successor.

This Declaration or Bylaws shall not limit the right of Declarant at any time prior to acquisition of title by a purchaser from Declarant to establish on any lot additional licenses, reservations and rights-of-way to itself, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of the property.

6.5 CONSENT OF DECLARANT TO AMENDMENTS. Until Declarant shall sell all of the lots in the property, no amendment to this Declaration or Bylaws shall be effective to curtail or eliminate Declarant's development rights set forth herein without Declarant's consent.

## **ARTICLE 7 ARCHITECTURAL CONTROL**

7.1 ARCHITECTURAL CONTROL: No building shall be erected, placed or altered on any lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the Architectural Control Committee as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation. No fence or wall shall be erected, placed or altered on any lot near to any street than the minimum building setback line unless similarly approved. Approval shall be as provided in this section. No fence shall exceed 6 feet high on any portion of the lot.

7.2 MEMBERSHIP: The initial Architectural Control Committee of three to five members is composed of persons designated by Skies the Limit, Inc., by a recorded document. A majority of the committee may designate a representative to act for it. In the event of death or resignation of any member of the committee, the remaining members shall have full authority to designate a successor. Neither the members of the committee nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. At any time, the then record owners of a majority of the lots shall have the power through a duly recorded written instrument to change the membership of the committee or to withdraw from the committee or restore to it any of its powers and duties.

7.3 PROCEDURES: The committee's approval or disapproval as required in these covenants shall be in writing. In the event the committee, or its designated representative, fails to approve or disapprove within 10 days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval shall not be required and the related covenants shall be deemed to have been fully complied with.

## **ARTICLE 8 FUNDS AND ASSESSMENTS:**

8.1 OPERATING FUND. The Association shall establish and maintain an operating fund into which shall be deposited all monies paid to the Association as regular, special and emergency Assessments and miscellaneous fees, and from which fund the Association shall

make disbursements in the performance of its rights and duties as provided for in this Declaration.

8.2 REGULAR ASSESSMENTS. The assessment shall be set at \$150.00 per year for each lot. Within forty-five (45) days prior to the beginning of each fiscal year, the Board shall estimate the costs and expenses to be incurred by the Association during such fiscal year in performing its rights and duties under this Declaration, including a reasonable provision for unanticipated expenses and replacements and less any anticipated surplus from the prior year's fund. Based upon such estimated amount, the Board may, but shall not be required to, increase or decrease the set assessment provide for above. The amount per lot so assessed to each owner is called "the Regular Assessment."

8.3 SPECIAL OR EMERGENCY ASSESSMENTS. In addition to the Regular Assessments, the Board may levy during any fiscal year a special or emergency assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of: Any construction or reconstruction (including reconstruction costs in excess of insurance proceeds); eliminating any deficit in the Operating Fund; or any extraordinary expense not contemplated by this Declaration of whatever nature. Provided that, in any fiscal year, the Board may not, without the vote or written assent of a majority of the lots, levy special or emergency assessments to defray the costs of any action or undertaking on behalf of the Association which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. Except as otherwise provided herein, special and emergency assessments shall be assessed to the owners equally and shall be paid as the Board shall determine.

8.4 NON-WAIVER OF ASSESSMENT. If, before the expiration of any fiscal year, the Association fails to determine the amount of any or all assessments set forth in this Declaration for the next fiscal year, the amount of annual assessments established for the preceding year shall remain in effect until the Association determines a new amount for any or all assessments.

8.5 PAYMENT OF ASSESSMENT. Each owner covenants and agrees to pay Regular, Special and Emergency Assessments, if any, made pursuant to this paragraph 32 to the Association in equal monthly installments on or before the first day of each month in advance, or in such other manner as the Board shall designate. The Board shall provide each owner with a statement of the Annual Assessment within ten (10) days prior to the beginning of each fiscal year, but shall not be obligated to provide monthly statements to any owner thereafter. Special or Emergency Assessments shall be payable in such manner as the Board shall designate.

8.6 COMMENCEMENT OF ASSESSMENTS. The Declarant shall pay the common expenses for said property until lots are assessed for common expenses. The Declarant shall not pay any assessment to the Association for lots owned by the Declarant until the lot is sold or built upon by Declarant. Assessment of each particular lot shall commence on the 1<sup>st</sup> day of the month following the close of escrow for the purchase of that lot. The first Regular Assessment for each lot shall be adjusted according to the number of months remaining in the fiscal year.

The Association shall, within ten (10) days after demand and upon payment of a reasonable fee as determined by Resolution of the Board, furnish to an Owner a certificate signed by an officer of the Association stating whether assessments on his or her lot have been paid.

8.7 REIMBURSEMENT FEE. The Board shall levy an assessment against any owner who has failed to comply with, or has breached this Declaration or Bylaws, for whom monies or expenses were expended or incurred by the Association from the operating fund in performing its functions or enforcing the provisions of this Declaration and/or Bylaws. The Board may likewise levy an assessment exclusively against any owner if any common expense is clearly the fault of that owner. Such assessments shall be for the purpose of reimbursing the Association and shall be limited to the amount so expended or incurred and shall be due and payable to the Association when levied.

8.8 FUNDS HELD IN TRUST. The assessments collected by the Association pursuant to the provisions of this Declaration shall be held by the Association for and on behalf of each owner and shall be used solely for the operation, care, and maintenance of said property including the common area as provided in this Declaration and/or Bylaws. Upon the sale or transfer of any lot, the owner's interest in the funds shall be deemed automatically transferred to the successor in interest of such owner.

8.9 OFFSETS. No offset against any assessment shall be permitted for any reason, including, without limitation, an offset based on any claim that the Association is not properly discharging its duties.

8.10 PROFITS. In the event that the Assessments levied in a fiscal year exceed expenses of the Association for that year, the owners shall not be entitled to recover such profits from the Association. Rather, the Board shall take said profits into account when budgeting for the upcoming fiscal year as provided in this Declaration.

## **ARTICLE 9 ENFORCEMENT OF ASSESSMENTS.**

9.1 COVENANT TO PAY ASSESSMENT. Declarant covenants for each lot owned, and each owner, other than Declarant, by acceptance of a deed to a lot, shall be deemed to covenant to pay to the Association Regular Assessments, Special Assessments, Emergency Assessments, and Reimbursement Fees, if any, levied in accordance with this Declaration.

9.2 ENFORCEMENT; ASSOCIATION LIEN. Each assessment levied hereunder shall be a separate, distinct and personal debt and obligation of the person who was the owner of such lot at the time such assessment became due and payable. Any assessment required by Board action pursuant to this Declaration not paid within 30 days of the due date is delinquent. In the event of a default in payment of any such assessment, the Association may enforce each such obligation by any and all remedies provided by law. In the event the Association brings an action to enforce each such assessment obligation, any judgment rendered in any such action shall

include a sum for reasonable attorney fees in such amount as the Court may adjudge the defaulting owner, including reasonable attorney fees on appeal.

At any time when an assessment of any type provided for by this Declaration or an installment thereof is delinquent, the Association, by and through its Board or designated agent, may file a notice of lien in the deed records of Jackson County, Oregon, against the owner and lot to which the assessment pertains as provided by ORS 94.709.

9.3 INTEREST; FINES; LATE FEES; PENALTIES. The delinquent assessment bears interest at the rate of 12% per annum. The Board, in its reasonable discretion, may from time to time adopt resolutions to modify the rate of interest and impose late fees, fines, and/or penalties on delinquent assessments or for violations of provisions of this Declaration and/or Bylaws. All owners shall receive written notice from the Board of such adoption of a resolution or rule establishing late fees, fines, and/or penalties not less than thirty (30) days before the effective date of such resolution or rule. The payment of late fees, fines, and penalties is enforceable in the same manner of other assessments as set forth in this Declaration.

## **ARTICLE 10 GENERAL PROVISIONS**

10.1 AMENDMENT: This Declaration, or any portion thereof, may be amended by an affirmative vote of 75% of the lot owners favoring the amendment.

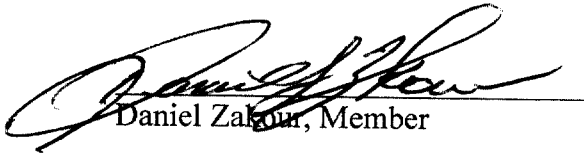
10.2 TERM: These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of 30 years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of 10 years unless an instrument signed by a majority of the then owners of the lot have been recorded, agreeing to change said covenants in whole or in part.

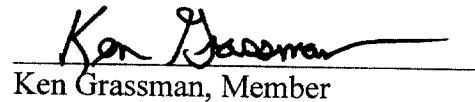
10.3 ENFORCEMENT: Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenants either to restrain violation or to recover damages, if upon the erection of the first improvement upon any of the residential lots which are subject to these restrictions, if is disclosed by survey that a minor violation or infringement may be waived by the written consent and waiver of the owners of the residential lots immediately adjoining on either side of the residential lot upon which the violation or infringement occurs and such waiver shall be binding upon all other owners of residential lots which are subject to these restrictions and shall nullify the provisions of paragraph "b" herein insofar as any right of suit or action occurs by reason of such violation so waived. Nothing herein contained shall prevent the prosecution of a suit for any other violations of these restrictions. For the purpose of defining a "minor" violation as herein contained, such violation shall be not more than two feet beyond the setback lines as herein set forth. This provision shall apply only to the original structure and shall not be applicable to any alterations or repairs to such structure.

10.4 SEVERABILITY: Invalidation of any one of these covenants by judgment or court order shall in no way effect any of the other provisions in which shall remain in full force and effect.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of this 13<sup>th</sup> day of July, 2005.

**SKIES THE LIMIT, INC.**, an Oregon Corporation

  
Daniel Zakour, Member


  
Ken Grassman, Member

STATE OF OREGON )  
 ) ss.  
County of Jackson )

On the 13<sup>th</sup> day of July, 2005, personally appeared the above-named Dan Zakour who being sworn stated that he is a member of SKIES THE LIMIT, INC., an Oregon Corporation, and that he executed this instrument on behalf of said Corporation by authority of its shareholders.



BEFORE ME:


  
Notary Public for Oregon  
My Commission Expires: 8/27/05

STATE OF OREGON )  
 ) ss.  
County of Jackson )

On the 13<sup>th</sup> day of July, 2005, personally appeared the above-named Ken Grassman, who being sworn stated that he is a member of SKIES THE LIMIT, INC., an Oregon Corporation, and that he executed this instrument on behalf of said Corporation by authority of its shareholders.



BEFORE ME:

  
Notary Public for Oregon  
My Commission Expires: 8/27/05



**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

**PARCEL 1:**

A tract of land situated in the N1/2 of Section 14, Township 39 South, Range 9 East, Willamette Meridian, Klamath County, Oregon, being more particularly described as follows:

Beginning at a point on the South line of Block 5 of "Tract 1035 - Gatewood", from which the Southeast corner of said Block 5 bears South 89° 58' 56" East 179.32 feet; thence South 89° 58' 56" East 179.32 feet to the said Southeast corner of Block 5, said point being on the Westerly right of way line of the U.S.B.R. 1-C-7 drain; thence, along the said Westerly right of way line, South 01° 17' 15" East 59.45 feet and South 10° 46' 25" West 634.07 feet; thence, leaving said Westerly right of way line, North 79° 13' 35" West 170.00 feet; thence South 10° 46' 25" West 22.06 feet; thence North 89° 58' 56" West 516.87 feet; thence South 01° 44' 41" East 44.74 feet; thence South 88° 15' 19" West 110.00 feet; thence North 01° 44' 41" West 83.54 feet; thence North 30° 55' 12" West 324.33 feet; thence North 00° 01' 04" East 298.74 feet; thence South 89° 58' 56" East 90.00 feet; thence, along the arc of a curve to the right (radius equals 20.00 feet and central angle equals 90° 00' 00") 31.42 feet; thence South 89° 58' 56" East 60.00 feet; thence South 00° 01' 04" West 95.00 feet; thence, along the arc of a curve to the left (radius equals 20.00 feet and central angle equals 90° 00' 00") 31.42 feet; thence South 00° 19' 25" East 60.00 feet; thence South 89° 58' 56" East 119.43 feet; thence South 00° 01' 04" West 75.95 feet; thence South 30° 55' 12" East 83.21 feet; thence South 89° 58' 56" East 493.47 feet; thence North 10° 46' 25" East 292.13 feet; thence, along the arc of a curve to the left (radius equals 170.00 feet and central angle equals 10° 45' 21") 31.91 feet; thence North 00° 01' 04" East 83.60 feet to the point of beginning with bearings based on the plat of "Tract 1035 - Gatewood" on file at the office of the Klamath County Surveyor.

**PARCEL 2:**

A tract of land situated in the N1/2 of Section 14, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, being more particularly described as follows:

Beginning at a point on the South line of Block 5 of "Tract 1035 Gatewood", from which the Southeast corner of said Block 5 bears South 89° 58' 56" East 179.32 feet; thence South 00° 01' 04" West 83.60 feet; thence, along the arc of a curve to the right (radius equals 170.00 feet and central angle equals 10° 45' 21") 31.91 feet; thence South 10° 46' 25" West 292.13 feet; thence North 89° 58' 56" West 493.47 feet; thence North 30° 55' 12" West 83.21 feet; thence North 00° 01' 04" East 75.95 feet; thence North 89° 58' 56" West 119.43 feet; thence North 00° 19' 25" West 60.00 feet; thence along the arc of a curve to the right (radius point bears North 00° 01' 04" East 20.00 feet and central angle equals 90° 00' 00") 31.42 feet; thence North 00° 01' 04" East 95.00 feet; thence North 89° 58' 56" West 60.00 feet; thence along the arc of a curve to the left (radius point bears North 89° 58' 56" West 20.00 feet and central angle equals 90° 00' 00") 31.42 feet; thence North 89° 58' 56" West 90.00 feet;

(Parcel 2 continued)

thence North 00° 01' 04" East 60.00 feet; thence South 89° 58' 56" East 484.88 feet to the Southwest corner of Block 6 of "Tract 1035-Gatewood"; thence continuing South 89° 58' 56" East along the South line of said Blocks 5 and 6, 418.66 feet to the point of beginning., with bearings based on the Plat of "Tract 1035-Gatewood" on file at the office of the Klamath County Surveyor.

Tax Account No.:	3909-014AB-04200-000	Key No.:	569664
Tax Account No.:	3909-014AC-05500-000	Key No.:	570938
Tax Account No.:	3909-014BA-07500-000	Key No.:	571287
Tax Account No.:	3909-014BD-00100-000	Key No.:	569183