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**Klamath County, Oregon**



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**SECOND AMENDED AND RESTATED DECLARATION OF COVENTANTS,  
CONDITIONS AND RESTRICTIONS FOR THE DIAMOND SUMMIT AT LEISURE  
WOODS II HOMEOWNERS ASSOCIATION, INC.**

Dated: October 2, 2007

Declarant: The Diamond Summit at Leisure Woods II Homeowners Association, Inc.

**SECOND AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
THE DIAMOND SUMMIT AT LEISURE WOODS II  
HOMEOWNERS ASSOCIATION, INC.  
Klamath County, Oregon**

THIS DECLARATION is made this 2<sup>nd</sup> day of October, 2007.

**RECITALS**

Pursuant to the affirmative vote of more than 75% of the Association's Owners, amendment is hereby made to the Amended and Restated Declarations, Covenants and Conditions for The Diamond Summit at Leisure Woods II Homeowners Association, Inc., rerecorded at Volume M02, Pages 21922-32 on April 15, 2002, and previously recorded at Volume M02, Pages 8503-8513 on February 12, 2002, in the Real Property Records of Klamath County, Oregon, which documents had amended and restated the original Declarations, Covenants, Conditions and Restrictions recorded at Volume M99, Pages 46338-46339 on November 22, 1999, also in the Real Property Records of Klamath County, Oregon. This Restated Declaration supersedes and replaces in full all of the previous declarations and amendments to such previous declarations as they apply to the Property.

Now, therefore, the Property shall be held, transferred, sold, conveyed, and occupied subject to the Oregon Planned Community Act, ORS 94.550-94.783, as may be amended from time to time and subject to the following covenants, conditions, restrictions, easements, charges, and liens, which shall run with the land, and which are binding on all parties having or acquiring any right, title, or interest in the Property or any part thereof, and which inure to the benefit of the Association and of each Owner.

**ARTICLE 1  
DEFINITIONS**

1.1 *Architectural Review Committee* or "ARC" shall refer to that committee constituted and acting pursuant to Article 6 of this Declaration.

1.2 *Articles* shall mean the Articles of Incorporation for the nonprofit corporation, The Diamond Summit at Leisure Woods II Homeowners Association, Inc., as filed with the Oregon Secretary of State.

1.3 *Association* shall mean and refer to The Diamond Summit at Leisure Woods II Homeowners Association, Inc., its successors and assigns.

1.4 *Board* shall mean the Board of Directors of the Association.

1.5 *Bylaws* shall mean and refer to the Bylaws of the Association, which shall be recorded in the Klamath County, Oregon, deed records.

1.6 *Commonly Maintained Property* shall mean the Roadways, water lines to each Lot's back flow valve, well head pump, relay pump (mid-mountain), two reservoir pressure pumps, two pressure tanks and all associated valving and hardware, reservoir located on Lot 6, Block 5, plus pump hose and security fence located on Lot 6, Block 5, telemetry, fire hydrant system, street signs located adjacent to the Roadways, a portion of the Diamond Peaks entry sign located off Highway 58, and a portion of the rocked entry area on either side of the Diamond Peaks road connection to Highway 58. The Roadways have been deeded to Klamath County, but the Association must maintain the Roadways, including providing snow removal. All Commonly Maintained Property has already been deeded from Declarant to the Association except for the Roadways, which have been deeded to Klamath County, and the water system, which shall be deeded by Declarant to the Association as soon as reasonably possible.

1.7 *Declaration* shall mean the covenants, conditions and restrictions, and all other provisions set forth in this Declaration.

1.8 *Declarant* shall mean and refer to American Cash Equities, Inc., or its successor-in-interest.

1.9 *Home* shall mean and refer to any portion of a structure situated on a Lot and designed and intended for use and occupancy as a residence by a single family or household.

1.10 *Lot* shall mean and refer to each and any of Lots 8 through 24 (inclusive), Block 2; Lots 23 through 37 (inclusive), Block 3; Lots 1 through 30 (inclusive), Block 5; and Lots 15 through 25 (inclusive), Block 6; all in TRACT 1119, LEISURE WOODS UNIT #2, in the County of Klamath, State of Oregon.

1.11 *Members* shall mean and refer to the Owners of a Lot.

1.12 *Occupant* shall mean and refer to the occupant of a Home, whether such person is an Owner, a lessee, or any other person authorized by the Owner to occupy the Home.

1.13 *Owner* shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot or a purchaser in possession of a Lot

under a land sale contract. The foregoing does not include persons or entities who hold an interest in any Lot merely as security for the performance of an obligation.

1.14 *Plat* shall mean and refer to the official Plat of "Tract No. 1119, Leisure Woods – Unit 2" on file in the office of the County Clerk of Klamath County, Oregon.

1.15 *Property* shall mean Lots 8 through 24 (inclusive), Block 2; Lots 23 through 37 (inclusive), Block 3; Lots 1 through 30 (inclusive), Block 5; and Lots 15 through 25 (inclusive), Block 6; all in TRACT 1119, LEISURE WOODS UNIT #2, in the County of Klamath, State of Oregon, plus the Commonly Maintained Property.

1.16 *Reserve Account(s)* shall mean and refer to an account set up by the Board to hold funds for construction, improvements or maintenance of the Commonly Maintained Property.

1.17 *Roadway* shall mean any street created primarily for vehicular traffic shown on the Plat as being within the Association's property.

1.18 *Rules and Regulations* shall mean and refer to the documents containing rules and regulations and policies adopted by the Board or the Architectural Review Committee, as may be from time to time adopted and amended.

## **ARTICLE 2**

### **PROPERTY SUBJECT TO THIS DECLARATION**

2.1 **Development.** The development subject to this Declaration consists of the Property, including the Commonly Maintained Property, which shall be held, transferred, sold, conveyed, and occupied subject to this Declaration.

2.2 **Annexation.** Additional lands may be annexed to and made a part of the Property, or may become incorporated into the Association, only if all of the following conditions are met:

2.2.1 All record legal owners of the proposed annexation land must approve of and be bound by this Declaration to the same degree and extent as all current Owners.

2.2.2 All legal owners of the proposed annexation lands must sign and agree to abide by the Articles and Bylaws of the Association.

2.2.3 Owners of the proposed annexation lands must record in the Klamath County, Oregon land records an appropriately amended copy of the Declaration

and the Association's Bylaws, showing that the annexation land has been annexed into the Property and that all of the annexation land and its Owners are bound by the Declaration and Bylaws.

2.2.4 The annexation must be approved by no less than 80% of all Members. The vote to occur at a meeting called for that purpose of which adequate prior written notice is provided to all Members.

2.2.5 Owners of the proposed annexation lands must pay all utility reimbursements and systems development charges due Declarant herein, plus an annexation and reserve fee to the Association, to be set by the Board at the time of the annexation in the Board's sole discretion.

### **ARTICLE 3 OWNERSHIP AND EASEMENTS**

3.1 **Nonseverability.** The interest of each Owner in the use and benefit of the Commonly Maintained Property shall be appurtenant to the Lot owned by the Owner. No Lot shall be conveyed by the Owner separately from the interest in the Commonly Maintained Property. Any conveyance of any Lot shall automatically transfer the right to use the Commonly Maintained Property without the necessity of express reference in the instrument of conveyance. There shall be no judicial partition of the Commonly Maintained Property. Ownership interests in the Commonly Maintained Property and Lots are subject to the easements granted and reserved in this Declaration. Each of the easements granted or reserved herein shall be deemed to be established upon the recordation of this Declaration and shall thenceforth be deemed to be covenants running with the land for the use and benefit of the Owners and their Lots.

3.2 **Ownership of Lots.** Title to each Lot shall be conveyed in fee to an Owner. If more than one person and/or entity owns an undivided interest in the same Lot, such persons and/or entities shall constitute one Owner.

3.3 **Ownership of Commonly Maintained Property.** Title to all Commonly Maintained Property is held by the Association, except that (1) Klamath County owns the Roadways, and (2) the water system, title to which is held by Declarant and will be conveyed to the Association as soon as reasonably possible.

3.4 **Easements.** Individual deeds to Lots may, but shall not be required to, set forth the easements specified herein.

3.4.1 **Easements on Plat.** The Commonly Maintained Property and Lots are subject to the easements and rights-of-way shown on the Plat.

3.4.2 **Additional Utility and Drainage Easements.** Notwithstanding anything expressed or implied to the contrary, this Declaration shall be subject to all easements granted by Declarant for the installation and maintenance of utilities and drainage facilities necessary for development of the Property. No structure, planting, or other material that may damage or interfere with the installation or maintenance of utilities, that may change the direction of flow of drainage channels in the easements, or that may obstruct or retard the flow of water through drainage channels in the easement areas shall be placed or permitted to remain within any easement area.

3.4.3 **Association's Easements.** Declarant and the Owners grant to the Association and its duly authorized agents and representatives such easements over the Lots and Commonly Maintained Property as are necessary to perform the duties and obligations of the Association, as set forth in this Declaration, the Bylaws, and the Articles, as the same may be amended.

## **ARTICLE 4 LOTS AND HOMES**

4.1 **Residential Use.** Lots shall only be used for residential purposes. Except with the Board's consent no trade, craft, business, profession, commercial, or similar activity of any kind shall be conducted on any Lot. Nothing in this Section shall be deemed to prohibit: (a) activities relating to the sale of residences; (b) the right of Declarant or any contractor or homebuilder to construct residences on any Lot and to store construction materials and equipment on such Lots in the normal course of construction; and (c) the right of the Owner of a Lot to maintain such Owner's personal business or professional library, keep such Owner's personal business or professional records or accounts, handle such Owner's personal business or professional telephone calls, or confer with business or professional associates, clients, or customers in such Owner's residence. The Board shall not approve commercial activities otherwise prohibited by this Section unless the Board determines that only normal residential activities would be observable outside of the residence and that the activities would not be in violation of applicable local government ordinances.

4.2 **Dwelling.** Each Lot shall contain no more than one (1) structure created for or generally considered a single family dwelling.

4.3 **Size.** Each single family dwelling must contain at least 1,000 square feet of useable interior floor space exclusive of garages and any accessory building. The maximum height of any structure is 35 feet measured from the highest peak of the roof down to the average natural dirt grade level (i.e., the level where the dirt was before being disturbed by construction or other alteration).

**4.4 Garage and Accessory Buildings.** Each Lot may have a garage that is built underneath and as part of the main dwelling. In addition, or in the alternative, each Lot may have one garage that cannot exceed a 1,500 square foot footprint with a maximum of three (3) bays built to a standard size matching the following: (1) one bay and its door may be of a size to accommodate a Recreational Vehicle; and (2) all other bays and their doors may be of a size as is standard to accommodate passenger vehicles. Owners may apply to the ARC for approval of an exception to these requirements on Lots where the garage is hidden from view of the Roadways and does not negatively impact neighboring Lots, or where other mitigating factors apply.

**4.5 Lot Size.** No Lot may be subdivided. A Lot may be joined or utilized with a neighboring Lot, but: (1) the resulting double-Lot is subject to all building restrictions contained in this Declaration and any Rules and Regulations as if it was one Lot; and (2) the double-Lot and its Owners are subject to all assessments and other similar obligations for two Lots.

**4.6 Temporary Structures.** No structure of a temporary character or any trailer, tent, shack, or other accessory shall be used on any Lot as a residence or place to sleep, either temporarily or permanently.

**4.7 Landscaping.** All landscaping must blend with the surrounding terrain and vegetation. All vegetation used in landscaping must be comprised of grasses, shrubs, plants, and/or trees that are native to the immediately surrounding area. Any terrain disturbed in construction or while making other property improvements must be either landscaped or otherwise restored to its natural state as soon as reasonably possible upon completion of the construction or improvement. All landscaping materials that are visible on a Lot after being installed must be materials appearing to be natural that blend with the surrounding terrain and vegetation, such as rocks, boulders, logs, or manmade materials mimicking those items.

**4.8 Tree Cutting.** No living tree the diameter of which is 6 inches or more may be removed from any Lot without the prior written approval of the ARC, unless the tree is diseased, poses an immediate danger to persons or property, is within 10 feet of an existing or approved but not yet constructed building, is within 5 feet of an existing or approved but not yet paved surface or driveway, removal is reasonably necessary to decrease fire dangers, removal is reasonably necessary to provide space for the healthy growth of closely adjacent trees, or removal is needed to provide the primary dwelling structure with the predominant view or views to which the structure is oriented. Provided, however, that each Owner has the affirmative obligation to remove all dead trees and timber on that Owner's Lot as soon as reasonably possible so as to not allow for a heightened fire danger. Further, each Owner has the obligation to promptly remove any

trees or other vegetation that poses a risk of significant damage or harm to the Roadway, Commonly Maintained Property, or to persons using the Roadway.

4.9 **Manufactured Homes.** Unless otherwise allowed under Section 6.12, manufactured homes are strictly prohibited.

4.10 **Trailers, Mobile Homes and Recreational Vehicles.** House trailers, camping trailers, and mobile homes are strictly prohibited throughout the Property, except for use on a Lot during active construction of a dwelling on that Lot or as otherwise provided in this paragraph. Except as otherwise provided in this paragraph, Recreational Vehicles ("RV") are allowed on a Lot only so long as the RV is stored in a garage out of view from the Roadways and neighboring Lots. Notwithstanding the prior sentences, house trailers, camping trailers, mobile homes and RVs are allowed on a Lot for a maximum of 14 consecutive days if being used by a guest of the Lot Owner(s).

4.11 **Driveways.** All driveways must be composed of cinders, gravel, concrete, or asphalt.

4.12 **Maintenance, Fire Hazard and Water Drainage.** All buildings and improvements must be constructed in a workmanlike manner and kept in a condition of good repair. Each Lot, its improvements, and its landscaping shall be maintained in a clean and attractive condition in good repair and in such fashion as to not create an elevated fire hazard, or a problem with water runoff.

4.13 **Parking.** Parking must be planned for and provided on each Lot upon which any improvement is constructed. Parking and/or storage of all motor vehicles and recreational vehicles, including boats and snowmobiles must be done on each Lot in such a manner that they do not distract from the appearance of any particular property, including the Lot on which such items are parked or stored. Parking of vehicles of any kind on the side of the road is prohibited. Each Lot may have no more than one (1) boat parked or stored outside of a garage for more than fourteen (14) consecutive days at a time.

4.14 **Vehicles in Disrepair.** No Owner shall permit any vehicle that is in a state of disrepair, not currently functional, or that is not currently licensed, to be on a Lot (other than if enclosed in a garage) for a period in excess of 48 hours. A vehicle may be deemed in a "state of disrepair" when the Board reasonably determines that its presence offends the occupants of the neighborhood. If an Owner fails to remove such vehicle within ten (10) days following the date on which the Association mails or delivers to such Owner a notice directing such removal, the Association may have the vehicle removed from the Property and charge the expense of such removal to the Owner as a



reimbursement assessment, which may be collected and enforced as any other assessment imposed pursuant to the Declaration and Bylaws.

4.15 **Setbacks.** The setback line is 20 feet back from all Lot lines to the closest edge of any structure built upon the Lot. No structures or driveways may be placed within the setback area.

4.16 **Fences.** No fences may be installed around a Lot or otherwise on a Lot for any purpose, other than to secure the Commonly Maintained Property as the Board may determine appropriate. A decorative or security gate may be installed at the end of a driveway if the gate is approved before installation by the ARC.

4.17 **Animals.** No animals, livestock, or poultry of any kind, other than a reasonable number of household pets that are not kept, bred, or raised for commercial purposes and that are reasonably controlled so as not to be a nuisance, shall be raised, bred, kept, or permitted within any Lot. Owners whose pets cause any inconvenience or unpleasantness to other Owners shall take all steps reasonably necessary to prevent reoccurrence thereof. Owners whose pets damage other Owner's Lots or personal property shall reimburse such other Owners for reasonable costs actually incurred by such other Owners in repairing such damage. An Owner must have that Owner's dog leashed when on the Property and outside of such Owner's Lot so that all residents wishing to use the roadways for recreational walks, jogging, etc. feel safe to do so. An Owner will be required to permanently remove a pet from the Property on the receipt of the third notice in writing from the Board of a violation of any rule, regulation, or restriction governing pets within the Property.

4.18 **Firearms.** No hunting or discharging of firearms is permitted on the Property.

4.19 **Signs.** No sign shall be erected or maintained on any Lot, except that (a) one (1) "for sale" or similar sign 18" x 24" or smaller may temporarily be placed by the Owner, developer, or by a licensed real estate agent on any Lot; and (b) not more than one (1) sign of 18" x 24" or smaller may be temporarily placed on a Lot for each contractor or construction-related supplier providing service to that Lot. All signs shall be removed within a reasonable time after closing of a sale or completion of construction, whichever is applicable. The Board may consider and approve exceptions to this rule in the Board's discretion.

4.20 **Rubbish, Trash, and Screening.** No Lot or part of the Commonly Maintained Property shall be used as a dumping ground for trash or rubbish of any kind. All garbage and other waste shall be kept in appropriate containers for proper disposal and out of public view. Yard debris, dirt, and other material resulting from landscaping

work shall not be dumped onto the Roadway, the Commonly Maintained Property, or any other Lots. If an Owner fails to remove any trash, rubbish, garbage, yard debris or other materials from a Lot, Roadway or the Commonly Maintained Property where deposited by such Owner or the occupants of such Owner's Lot after written notice has been given by the Board to the Owner, the Association may have such materials removed and charge the expense of such removal to the Owner. Such charge shall constitute a reimbursement assessment, which may be collected and enforced as any other assessments imposed pursuant to the Declaration and Bylaws.

**4.21 Service Facilities.** Service facilities, including but not limited to garbage containers, fuel tanks, and clothes lines shall be screened so that such facilities are not visible at any time from the Roadway or neighboring properties.

**4.22 Exterior Lighting.** Exterior lighting shall be used primarily for safety purposes rather than illumination or decoration of any building or landscaping. The purpose of this restriction is to eliminate glare and annoyance, as well as to preserve the natural setting. Exterior lighting shall not cast a light on adjoining properties and shall be shielded so that light rays are directed to the ground.

**4.23 Sewage.** Sewage disposal systems shall meet all county health department standards and requirements.

**4.24 Damage and Destruction to Home and/or Lot.** If all or any portion of a Lot or Home is damaged by fire or other casualty, the Owner shall either: (a) restore the damaged improvements; or (b) remove all damaged improvements, including foundations, and leave the Lot in a clean and safe condition. Any restoration proceeding under option (a) above must be performed so that the improvements are in at least substantially the same condition in which they existed before the damage. All restoration must be approved by the ARC just the same as new improvements. The Owner must commence work under either option (a) or (b) within sixty (60) days after the damage occurs or as soon as reasonably possible if there is a substantial accumulation of snow on the ground that prevents taking action at an earlier time. All such work must be completed within ten (10) months after the damage occurs.

**4.25 Siding, Color, and 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 all trim and roofing materials) of all homes and other structures (whether paint, stain or otherwise) shall be in earth tones that blend with the immediate surroundings and are approved by the ARC in its discretion. Exterior reflective metals must be painted to blend with surrounding earth tones. Roof pitch on all homes shall be 6-12 or steeper. Any garage or accessory building must be constructed so that it blends

with and is complementary to the dwelling on that Lot and must be approved by the ARC prior to construction the same as a dwelling.

**4.26 Compliance with Law, Ordinances and Regulations.** The standards and restrictions set forth in this Article 4 shall be the minimum required. To the extent that government ordinances and regulations are more restrictive or provide for a higher or different standard, such governmental ordinances and regulations shall prevail. All 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.

**4.27 Progress of Construction.** No more than twelve (12) months of construction time shall lapse between the initial groundbreaking for and receipt of an occupancy permit for a dwelling unit. An exterior latrine shall be allowed only during this construction period of the permanent dwelling unit. No more than twelve (12) months of construction time shall lapse between the initial groundbreaking for and completion of any other improvement upon a Lot. Any construction not completed, as described in this paragraph, within the allowed 12 month period will result in a special assessment being made against the relevant Lot and Owner in the sum of \$100 per month for each month after the 12<sup>th</sup> month until construction is completed.

**4.28 Right of Maintenance and Entry by Association.** If an Owner fails to perform maintenance and/or repair that such Owner is obligated to perform pursuant to this Declaration, and if the Board determines, after notice, that such maintenance and/or repair is necessary to preserve the attractiveness, quality, nature, and/or value of the Property, the Board may cause such maintenance and/or repair to be performed and may enter any such Lot whenever entry is necessary in connection with the performance thereof. An Owner may request, and if requested, the Board shall conduct, a hearing on the matter. The Owner's request shall be in writing delivered within ten (10) days after receipt of the notice, and the hearing shall be conducted within not less than five (5) nor more than 20 days after the request for a hearing is received. Entry shall be made with as little inconvenience to an Owner as practicable and only after advance written notice of not less than 48 hours, except in emergency situations. The costs of such maintenance and/or repair shall be chargeable to the Owner of the Lot as a reimbursement assessment, which may be collected and enforced as any other assessments authorized hereunder.

**4.29 Association Rules and Regulations.** The Board from time to time may adopt, modify, or revoke such Rules and Regulations governing the conduct of persons and the operation and use of Lots and the Common Area as it may deem necessary or appropriate to assure the peaceful and orderly use and enjoyment of the Property and the administration and operation of the Association. A copy of the Rules and Regulations, upon adoption, and a copy of each amendment, modification, or revocation thereof, shall

be delivered by the Board promptly to each Owner and shall be binding upon all Owners and occupants of all Lots on the date of delivery or actual notice thereof. The method of adoption of such Rules and Regulations shall be provided in the Bylaws of the Association. Subject to the Board's approval or consent, the ARC may adopt rules and regulations pertinent to its functions.

## **ARTICLE 5 COMMONLY MAINTAINED PROPERTY**

5.1 **Generally.** The Commonly Maintained Property is subject to the provisions of the Declaration, Bylaws, Articles, and the Rules and Regulations adopted by the Board. No alterations or additions to the Commonly Maintained Property shall be permitted without the prior written consent of the Board.

5.2 **Maintenance of Commonly Maintained Property.** The Association shall be responsible for maintenance, repair, replacement, and upkeep of the Commonly Maintained Property. This includes regular snow removal and plowing of the Roadways. The Association shall keep the Commonly Maintained Property in good condition and repair, provide for all necessary services, and cause all acts to be done that may be necessary or proper to assure the maintenance of the Commonly Maintained Property.

5.3 **Alterations to Commonly Maintained Property.** Only the Association shall construct, reconstruct, or alter any Commonly Maintained Property. A proposal for any construction of or alteration, maintenance, or repair to any Commonly Maintained Property may be made at any Board meeting. The Board may adopt a proposal, subject to the limitations contained in the Bylaws and this Declaration.

5.4 **Funding.** Expenditures for alterations, maintenance, or repairs to an existing improvement for which a reserve has been collected shall be made from the Reserve Account. As provided in Section 8.8, the Board may levy a special assessment to fund any construction, alteration, repair, or maintenance of an improvement (or any other part of the Commonly Maintained Property) for which no reserve has been collected or for which the Reserve Account is insufficient to cover the cost of the proposed improvement.

5.5 **Damage or Destruction of Commonly Maintained Property.** If all or any portion of the Commonly Maintained Property is damaged or destroyed by an Owner or any of Owner's guests, Occupants, tenants, licensees, agents, or members of Owner's family in a manner that would subject such Owner to liability for such damage under Oregon law, such Owner hereby authorizes the Association to repair such damage. The Association shall repair the damage and restore the area in workmanlike manner as originally constructed or as may be modified or altered subsequently by the Association

in the discretion of the Board. Reasonable costs incurred in connection with effecting such repairs shall become a special assessment on the Lot of and against the Owner who caused or is responsible for such damage.

5.6 **Power of Association to Sell, Dedicate, or Transfer Common Area.** As provided in ORS 94.665, the Association may sell, dedicate, transfer, grant a security interest in, or grant an easement for installation and maintenance of utilities or for similar purposes in or over any Commonly Maintained Property. Except for grants of easements for utility-related purposes, no such sale, dedication, transfer, or grant of a security interest shall be effective unless approved by 80% of all Member votes.

## **ARTICLE 6 ARCHITECTURAL REVIEW COMMITTEE**

6.1 **Architectural Review.** No improvement shall be commenced, erected, placed, or altered in any manner visible from the exterior on any Lot until the construction plans and specifications showing the nature, shape, heights, materials, colors, and proposed location of the improvement have been submitted to and approved in writing by the ARC. This Article's purpose is to assure harmony between the proposed improvement's exterior design and the already existing improvements and landscaping on the Property, the natural surroundings, and the restrictions and guidelines established by this Declaration and the ARC. The ARC shall not be responsible for determining compliance with structural and building codes, zoning codes, or other governmental regulations, all of which are the applicant's responsibility. In addition to what is required by this Declaration, further procedure and specific requirements for review and approval of construction may be set forth in design guidelines and standards adopted from time to time by the ARC, which are available upon request made to the ARC by any Lot Owner or interested person. The provisions of this Article shall apply to all instances in which this Declaration requires the ARC's consent.

6.2 **Architectural Review Committee, Appointment and Removal.** The ARC shall consist of no fewer than three members and no more than five members. Each ARC member shall serve for two years. The Board appoints all ARC members. The Board may appoint itself as the ARC or any of its members to the ARC. If an ARC has not been appointed, the Board shall serve as the ARC.

6.3 **Majority Action.** Except as otherwise provided in this Declaration, a majority of the members of the ARC shall have the power to act on behalf of the ARC. The ARC may render its decisions only by written instrument setting forth the action taken by the members. All such written instruments must show specifically the Members consenting and/or opposing, and must be maintained and available for inspection by any Member.

6.4 **Duties.** The ARC shall consider and act on the proposals and/or plans submitted pursuant to this Article. The ARC, from time to time and at its sole discretion, may adopt architectural rules, regulations, and guidelines ("Architectural Standards"). The Architectural Standards shall interpret, implement and add to the provisions of this Declaration for architectural review and guidelines for architectural design, placement of buildings, color schemes, exterior finishes and materials, and similar features; provided, however, that the Architectural Standards shall not be in derogation of the minimum standards established by this Declaration.

6.5 **ARC Decision.** All complete applications submitted to the ARC before the 15<sup>th</sup> of each month will be considered with the ARC rendering its written decision approving or denying each application before the end of that same month. If the ARC fails to render such written decision before the end of the month, the applying party shall bring that party's application to the Board and the Board shall then render a decision in place of the ARC or ensure that a decision is promptly issued by the ARC. If no decision is rendered by the 15<sup>th</sup> day of the month following the month the completed application was submitted, the application is deemed approved.

6.6 **ARC Discretion.** The ARC, at its sole discretion, may withhold consent to any proposed work if the ARC finds the proposed work would be inappropriate for the particular Lot or incompatible with the standards established in this Declaration or in the ARC's Architectural Standards. The ARC may consider siting, shape, size, color, design, height, solar access, view access, or other effect on the enjoyment of other Lots, and any other factors that it reasonably believes to be relevant in determining whether or not to consent to any proposed work. Priority for attaining and protecting views will be given to already established dwellings.

6.7 **Nonwaiver.** Consent by the ARC to any matter proposed to it or within its jurisdiction shall not be deemed to constitute precedent or waiver impairing its right to withhold approval as to any similar matter thereafter proposed or submitted to it for consent.

6.8 **Appeal.** Any Owner adversely impacted by ARC action may appeal such action to the Board. Such appealing Owner shall submit to the Board a written notice of appeal, setting forth specific objections or mitigating circumstances justifying the appeal, within 10 days after the ARC's action. The Board shall issue a final, conclusive decision within 45 days after receipt of such notice, and such decision shall be final and binding on the appealing Owner and the ARC. Provided, however, the Board shall make reasonable efforts to reach a decision within 20 days. If the Board is serving as the ARC, then such appeal shall be deemed a request for reconsideration.

6.9 **Effective Period of Consent.** The ARC's consent to any proposed work shall automatically expire three months after issuance unless construction of the project

has been commenced or the Owner has applied for and received an extension of time from the ARC.

**6.10 Determination of Compliance.** The ARC may inspect, from time to time, all work performed and determine whether it is in substantial conformance with the approval granted. If the ARC finds that the work was not performed in substantial conformance with the approval granted, or if the ARC finds that the approval required was not obtained, the ARC shall notify the Owner in writing of the noncompliance. The notice shall specify the particulars of noncompliance and shall require the Owner to remedy the noncompliance.

**6.11 Noncompliance.** If the ARC determines that an Owner has not constructed an improvement consistent with the specifications of an ARC approval or has constructed an improvement without obtaining ARC approval, sends a notice of noncompliance to such Owner, and such Owner fails to commence diligently remedying such noncompliance in accordance with such notice, then, effective at 5:00 p.m. on the seventh day after issuance of such notice, the ARC shall provide notice of a hearing to consider the Owner's continuing noncompliance. The hearing shall be set not more than 30 days from the date on which the notice of noncompliance was issued. At the hearing, if the ARC finds that there is no valid reason for the continuing noncompliance, the ARC shall determine the estimated costs of achieving compliance and may issue a fine against the noncomplying Owner for such amount. The ARC also shall require the Owner to remedy such noncompliance within 10 days after the date of the ARC's determination. If the Owner does not comply with the ARC's ruling within such period or any extension thereof granted by the ARC, at its sole discretion, the ARC may remove the noncomplying improvement, remedy the noncompliance, and/or record the notice of noncompliance in the county deed records. The costs of any such action shall be assessed against the Owner as a Reimbursement Assessment either before or after any remedial action is taken.

**6.12 Grandfathered Noncompliance.** Any improvements already existing on the date this Declaration is adopted, plus improvement plans or drawings already approved by the Board in writing, are considered grandfathered in, accepted, and not subject to the noncompliance provisions of Sections 6.10 and 6.11.

**6.13 Liability.** Neither the ARC nor any member thereof shall be liable to any Owner, Occupant, or builder for any damage, loss, or prejudice suffered or claimed on account of any action or failure to act of the ARC or a member thereof, provided only that the ARC or the member has, in accordance with its or his or her actual knowledge, acted in good faith.

6.14 **Estoppel Certificate.** Within 25 days after the ARC's receipt of a written request from an Owner and the ARC's receipt of payment of a reasonable fee fixed by the ARC to cover costs, the ARC shall provide such Owner with a certificate executed by the Chairperson or other authorized member of the ARC certifying with respect to any Lot owned by the Owner, that, as of the date thereof, either (a) all improvements made or done by such Lot comply with this Declaration, or (b) such improvements do not so comply, in which event, the certificate shall also identify the noncomplying improvements and set forth with particularity the nature of such noncompliance. The Owner and such Owner's heirs, devisees, successors, and assigns shall be entitled to rely on the certificate with respect to the matters set forth therein. The certificate shall be conclusive as among Declarant, the ARC, the Association, all Owners, and all persons deriving any interest through any of them.

## **ARTICLE 7 MEMBERSHIP IN THE ASSOCIATION**

7.1 **Members.** Each Owner shall be a member of the Association. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of any Lot. Transfer of ownership of a Lot shall automatically transfer membership in the Association. Without any other act or acknowledgement, Occupants and Owners shall be governed and controlled by this Declaration, the Articles, Bylaws, and the Rules and Regulations of the Association and any amendments thereof.

7.2 **Proxy.** Each Owner may cast such Owner's vote in person, by written ballot, or pursuant to a proxy executed by such Owner, as further described in the Bylaws.

7.3 **Voting Rights.** Each Owner shall be entitled to one vote for each Lot owned with respect to all matters on which Owners are entitled to vote, and the total number of votes shall be equal to the total number of Lots subject to this Declaration. When more than one person or entity owns a Lot, the vote for such Lot may be cast as they shall determine, but in no event shall fractional voting be allowed. Fractional or split votes shall be disregarded, except for purposes of determining a quorum.

7.4 **Procedure.** All meetings of the Association, the Board, the ARC, and Association committees shall be conducted with such rules of order as may from time to time be adopted by the Board. Notwithstanding which rule of order is adopted, the President shall be entitled to vote on all matters, not merely to break a tie vote. A tie vote does not constitute a majority or approval of any motion or resolution.



## **ARTICLE 8 FUNDS AND ASSESSMENTS**

**8.1 Purpose of Assessments; Expenses.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, aesthetics, and welfare of the Owners and Occupants of the Property, for the improvement, operation, and maintenance of the Commonly Maintained Property, including snow removal on the Roadways, for domestic water service, for the administration and operation of the Association, and for related insurance.

**8.2 Covenants to Pay.** Each Owner covenants and agrees to pay the Declarant and/or Association the systems development charges, assessments, and any additional charges levied pursuant to this Declaration or the Bylaws. All assessments for operating expenses, repairs and replacement, and reserves shall be allocated among the Lots and their Owners as set forth herein.

**8.3 Funds Held in Trust.** The assessments collected by the Association shall be held by the Association for and on behalf of each Owner and shall be used solely as set forth herein. On the sale or transfer of any Lot, the Owner's interest in such funds shall be deemed automatically transferred to the successor-in-interest to such Owner.

**8.4 Offsets.** No offsets against any assessment shall be permitted for any reason, including, without limitation, any claim that the Association is not properly discharging its duties.

**8.5 Right to Profits.** Association profits, if any, shall be the property of the Association and shall be contributed to the Current Operating Account.

**8.6 Lots Subject to Assessments.** All Lots and Owners thereof are subject to all assessments set out in this Declaration in the manner described herein, except that any Lot not hooked up to the community water system shall not be required to pay any portion of an assessment otherwise charged specifically for the purchase of consumable water and for back flow testing.

**8.7 Annual Assessments.** Annual assessments for each fiscal year shall be established by the Board in its discretion when the Board approves the budget for that fiscal year. Annual assessments shall be payable on a periodic basis, not more frequently than monthly, as determined by the Board. The Board, in its discretion, may offer a discount on annual assessments for Owners paying the annual assessments in full by a pre-set date as long as the reduction is offered to all Owners on an equal basis.

8.7.1 Budgeting. Each year the Board shall prepare, approve, and make available to each Member an operating statement (budget) containing: (a) estimated revenue and expenses; (b) the amount of the total cash reserves of the Association currently available for replacement or major repair of the Commonly Maintained Property and for contingencies; (c) an itemization estimate for the remaining life of, and the methods of funding to defray, repair, for replacement, or additions to major components of such improvements; and (d) a general statement setting forth the procedures used by the Board in the calculation and establishment of reserves to defray the cost of repair, replacement, or additions to major components of the Commonly Maintained Property. The Board shall annually prepare and approve the budget and distribute a copy or summary thereof to each Member, together with written notice of the amount of the annual assessments to be levied against the Owner's Lot, within 60 days after adoption of such budget.

8.7.2 Allocation of Assessments. Each Lot (and the Owners thereof) shall be charged an equal annual assessment, except as provided in Section 8.6 for Lots not yet hooked up to the domestic water system.

8.7.3 Nonwaiver of Assessments. If before the expiration of any fiscal year the Association fails to fix annual assessments for the next fiscal year, the annual assessments established for the preceding year shall continue until a new assessment is fixed.

8.8 **Special Assessments Against All Lots/Owners**. The Board shall have the power to levy special assessments equally against all Owners and Lots in the following manner for the following purposes:

8.8.1 Correct Deficit. To correct a deficit in the operating budget, by vote of a majority of the Board;

8.8.2 Repairs. To collect additional amounts necessary to make repairs or renovations to the Commonly Maintained Property if sufficient funds are not available from the operating budget or replacement reserve accounts, by vote of a majority of the Board; or

8.8.3 Capital Improvements. To make capital acquisitions, additions, or improvements, by vote of at least 70% of all votes allocated to the Lots.

8.9 **Special Assessment Against Specific Lots/Owners**. The Board shall have the power to levy special assessments against a Lot and Owner as otherwise provided herein or in the Bylaws, including to collect amounts due to the Association for breach of the Owner's obligations under this Declaration, the Bylaws, or the Rules and

Regulations, determined by unanimous vote of the Board as to both the breach and the amount of the assessment.

**8.10 Reimbursement Assessments.** The Association shall levy a reimbursement assessment against any Owner and such Owner's Lot if a failure to comply with this Declaration, Bylaws, Architectural Standards, or any Rules and Regulations has: (a) necessitated an expenditure of monies by the Association to effect compliance; or (b) resulted in the imposition of a fine or penalty against such Owner or such Owner's Lot (a "Reimbursement Assessment"). A Reimbursement Assessment shall be due and payable to the Association when levied. A Reimbursement Assessment shall not be levied by the Association except on at least 10 days written notice to the Owner being assessed. If, within said 10-day period, the Owner makes a written request to the Board for a hearing, a hearing shall be held. On request for a hearing, the Board shall conduct it not less than 10 nor more than 30 days after the request by the Owner, and shall make its decision by majority vote within not more than 30 days after the hearing is held. If a notice has not been previously given, and the hearing has already been held or waived (in writing or by the Owner's failure to appear) for the violation resulting in the Reimbursement Assessment, no additional notice and hearing is required before levying the Reimbursement Assessment.

**8.11 Water Hookup Fee.** As a condition of getting hooked up to the community's domestic water system, the Owner(s) of each Lot must pay to the Association at the time of hook-up a one time special assessment, which is set annually by the Board in its annual budget.

**8.12 Systems Development Charge.** All Lots not originally subject to these Declarations prior to connection to the domestic water system shall pay Declarant a systems development charge to be connected to such system as reimbursement for contributions in aid of construction. The systems development charge shall be \$9,760 per Lot at the time of connection in addition to the cost of any necessary line extension. All line extensions shall meet standard requirements for Declarant, including provisions for fire flow. For unauthorized connection to the water system, the charge owed to Declarant will be \$14,760 per Lot.

**8.13 Accounts.**

**8.13.1 Types of Accounts.** Assessments collected by the Association shall be deposited into at least two separate accounts with a bank, which accounts shall be clearly designated as (a) the Current Operating Account and (b) the Reserve Account. The Board shall deposit those portions of the assessments collected for current maintenance and operation into the Current Operating Account and shall deposit those portions of the assessments collected as reserves for replacement and deferred

maintenance of capital improvements into the Reserve Account. Withdrawal of funds from the Association's Reserve Account shall require the signatures of two Directors. In its books and records, the Association shall account separately for operating expenses relating to the Commonly Maintained Property and operating expenses relating to all other matters, as well as for necessary reserves relating to the Commonly Maintained Property and necessary reserves relating to all other matters.

8.13.2 Calculation of Reserve Assessment; Reserve Study. The Board of Directors of the Association shall annually conduct a reserve study, or review and update an existing study, of the Commonly Maintained Property to determine the Reserve Account requirements. A Reserve Account shall be established for those items of the Commonly Maintained Property all or part of which will normally require replacement in more than three and less than 30 years from installation or construction, and for the maintenance, repair, or replacement of other items as may be required under the Declaration or Bylaws or that the Board of Directors, in its discretion, may deem appropriate. The Reserve Account need not include items that could reasonably be funded from operating assessments. The reserve study shall include:

- (a) identification of all items for which reserves are required to be established;
- (b) the estimated remaining useful life of each item as of the date of the reserve study;
- (c) the estimated cost of maintenance, repair or replacement of each item at the end of its useful life; and
- (d) a 30-year plan with regular and adequate contributions, adjusted by estimated inflation and interest earned on reserves, to meet the maintenance, repair and replacement schedule.

8.13.3 Loan from Reserve Account. The Board may borrow funds from the Reserve Account to meet high seasonal demands on the Association's regular operating fund or to meet unexpected increases in expenses. Funds borrowed must be repaid later from assessments if the Board has adopted a resolution, which may be an annual continuing resolution, authorizing the borrowing of funds. Not later than the adoption of the budget for the following year, the Board shall adopt by resolution a written payment plan providing for repayment within a reasonable period.

8.13.4 Investment of Reserve Account. The Board may place Reserve Account Funds in an appropriate checking or savings account, money market account, or

certificates of deposit with maturities not exceeding one year. Other investment of Reserve Account Funds are prohibited.

8.13.5 Refunds of Assessments. Assessments paid into the Reserve Account are the property of the Association and are not refundable to sellers or Owners of Lots. Sellers or Owners of Lots may treat their outstanding share of the Reserve Account's balance as a separate item in the sales contract providing for the conveyance of their Lot.

8.13.6 Current Operating Account. All costs payable by the Association or its Board other than those to be paid from the Reserve Account may be paid from the Current Operating Account.

**8.14 Default in Payment of Assessments or Systems Development Charges, Enforcement of Liens.**

8.14.1 Personal Obligation. All assessments and systems development charges properly imposed under this Declaration or the Bylaws shall be the joint and several personal obligation of all Owners of the Lot to which such assessment pertains. In a voluntary conveyance (i.e., one other than through foreclosure or a deed in lieu of foreclosure), the grantees shall be jointly and severally liable with the grantors for all Association assessments and systems development charges imposed through the recording date of the instrument effecting the conveyance. A suit for a money judgment may be initiated by the Association or Declarant, as appropriate, to recover such assessments and system development charges without either waiving or foreclosing the Association's or Declarant's lien.

8.14.2 Lien. The Association or Declarant, as appropriate, shall have a lien against each Lot for any assessment (of any type provided for by this Declaration or the Bylaws) or installation thereof or systems development charge that is delinquent. Such lien shall accumulate and include all future assessments or installations, interest, late fees, penalties, fines, attorney fees (whether or not such suit or action is instituted), actual administrative costs, and other appropriate costs properly chargeable to an Owner by the Association, until such amounts are fully paid. Late payments will incur interest at 1% per month. Both the Association and Declarant are expressly entitled to reasonable attorney fees, costs, and collection fees, even if no lawsuit is filed. Recording of the Declaration constitutes record notice and perfection of the lien. Said lien may be foreclosed at any time pursuant to the Planned Community Act. The Association or Declarant shall record a notice of a claim of lien for assessments and other charges in the deed records of Klamath County, Oregon, before any suit to foreclose may be filed.

8.14.3 Interest; Fines; Late Fees; Penalties. The Board, in its reasonable discretion, may from time to time adopt resolutions to alter the rate of interest and to impose late fees, fines, and penalties on delinquent assessments or for violations of the provisions of this Declaration, the Bylaws, Architectural Standards, and the Rules and Regulations adopted by the Board or the ARC. The adoption of such impositions shall be communicated to all Owners in writing not less than 30 days before the effective date by a notice mailed to the assessment billing address of such Owners. Such impositions shall be considered assessments that are due and collectible in the same manner as any other assessments; provided, however, that fines or penalties for violations of this Declaration, the Bylaws, or any rule and regulation, other than late fees, fines, or interest arising from an Owner's failure to pay regular, special, or reimbursement assessments may not be imposed against an Owner or such Owner's Lot until such Owner is given an opportunity for a hearing as elsewhere provided herein.

8.14.4 Acceleration of Assessments. If an Owner is delinquent in payment of any assessment or installation on any assessment, the Association, on not less than 10 days written notice to the Owner, may accelerate the due date of the full assessment for that fiscal year and all future installments of any special assessments.

8.14.5 Association and Declarant Right to Rents; Receiver. In any foreclosure suit by the Association or the Declarant with respect to such lien, the Association or Declarant shall be entitled to collect reasonable rent from the defaulting Owner for the use of such Owner's Lot or shall be entitled to the appointment of a receiver.

## **ARTICLE 9 GENERAL PROVISIONS**

9.1 **Records.** The Board shall preserve and maintain minutes of the meetings of the Association, the Board, and any committees. The Board shall also keep detailed and accurate financial records, including individual assessment accounts of Owners, the balance sheet, and income and expense statements. Individual assessment accounts shall designate the name and address of the Owner or Owners of the Lot, the amount of each assessment as it becomes due, the amounts paid on the account, and the balance due on the assessments. The minutes of the Association, the Board and Board committees, and the Association's financial records shall be maintained in the State of Oregon and reasonably available for review and copying by the Owners. A reasonable charge may be imposed by the Association for providing copies.

9.2 **Indemnification of Directors, Officers, Employees, and Agents.** The Association shall indemnify any Director, officer, employee, or agent who was or is a party or is threatened to be made a party to any threatened, pending, or completed action,

suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by the Association) by reason of the fact that such person is or was a Director, officer, employee, or agent of the Association, against expenses (including attorney fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by said person in connection with such suit, action, or proceeding if such person acted in good faith and in a manner that such person reasonably believed to be in, or not opposed to, the best interest of the Association, and, with respect to any criminal action or proceedings, that a reasonable person would not have reason to believe was unlawful.

**9.3 Enforcement; Attorney Fees.** The Association, the Owners, the Declarant, and any mortgagee holding an interest on a Lot shall have the right to enforce all of the covenants, conditions, restrictions, reservations, easements, liens, and charges now or hereinafter imposed by any of the provisions of this Declaration as may appertain specifically to such parties or Owners by any proceeding at law or in equity. Failure by either the Association, by any Owner, by the Declarant, or any mortgagee to enforce any covenant, condition, or restriction herein contained shall in no event be deemed a waiver of their right to do so thereafter. In the event suit or action is commenced to enforce the terms and provisions of this Declaration (including without limitations, for the collection of assessments), the prevailing party shall be entitled to its actual administrative costs incurred because of a matter or event that is the subject of the suit or action, attorney fees and costs in such suit or action to be fixed by the trial court, and in the event of an appeal, the cost of the appeal, together with reasonable attorney fees, to be set by the appellate court. In addition thereto, the Association and the Declarant shall be entitled to reasonable attorney fees and costs incurred in an enforcement activity or to collect delinquent assessments or systems development charges, together with the actual administrative costs, whether or not suit or action is filed.

**9.4 Severability.** Invalidation of any one of these covenants, conditions, or restrictions by judgment or court order shall not affect the other provisions hereof and the same shall remain in full force and effect.

**9.5 Duration.** The covenants, conditions and restrictions of this Declaration shall run with and bind the land for a term of 35 years from the date of this Declaration being recorded, after which time they shall be automatically extended for successive periods of 10 years, unless rescinded by a vote of at least 90% of the Owners; provided, however, that amendments that do not constitute rescission of the planned community may be adopted as provided in Section 9.6 and that if any of the provisions of this Declaration would violate the rule against perpetuities or any other limitation on the duration of the provisions herein contained imposed by law, then such provision shall be deemed to remain in effect only for the maximum period permitted by law.

9.6 **Amendment.** Except as otherwise provided in ORS 94.590, and the restrictions set forth elsewhere herein, this Declaration may be amended at any time by an instrument approved by not less than 75% of the total votes of all Owners. Any amendment must be executed, recorded, and certified as provided by law; provided however, that no amendment of this Declaration shall effect an amendment of the Bylaws or Articles without compliance with the provisions of such documents and the Oregon Nonprofit Corporation Act, and that no amendment shall limit the Declarant's right to receive systems development charges as set further herein.

9.7 **Resolution of Document Conflicts.** In the event of a conflict among any of the provisions in the documents governing the Association or the Property, such conflict shall be resolved by looking to the following documents in the order shown below:

1. Declaration;
2. Articles;
3. Bylaws;
4. Rules and Regulations.

The undersigned hereby certifies that this Second Amended and Restated Declaration of Covenants, Conditions and Restrictions has been adopted in accordance with the Amended and Restated Declaration of Covenants, Conditions and Restrictions for the Diamond Summit at Leisure Woods II Homeowners Association, Inc., and with the Oregon Planned Community Act, ORS 94.550-94.783.

DIAMOND SUMMIT AT LEISURE WOODS II  
HOMEOWNERS ASSOCIATION, INC.

By: Allen Belcher  
ALLEN BELCHER, Association President

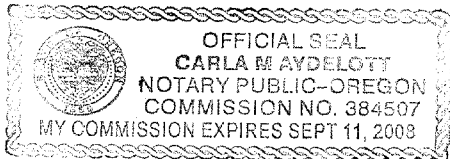
DIAMOND SUMMIT AT LEISURE WOODS II  
HOMEOWNERS ASSOCIATION, INC.

By: GREG AITKEN  
GREG AITKEN, Association Secretary



STATE OF OREGON )  
 ) ss.  
County of LANE )

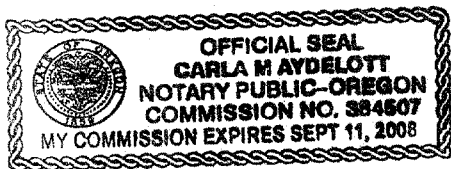
Personally appeared the above-named Allen Belcher, President of Diamond Summit at Leisure Woods II Homeowners Association, Inc., and acknowledged the foregoing instrument to be his voluntary act and deed this 2nd day of OCTOBER, 2007.



Carla M. Aydelott  
NOTARY PUBLIC FOR OREGON

STATE OF OREGON )  
 ) ss.  
County of LANE )

Personally appeared the above-named Greg Aitken, Secretary of Diamond Summit at Leisure Woods II Homeowners Association, Inc., and acknowledged the foregoing instrument to be his voluntary act and deed this 2nd day of OCTOBER, 2007.



Carla M. Aydelott  
NOTARY PUBLIC FOR OREGON