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2011-010749

Klamath County, Oregon



BYLAWS OF

09/26/2011 10:07:20 AM

Fee: \$122.00

Emerald Meadows HOA

THE DIAMOND PEAKS TRACT #1355 HOMEOWNERS ASSOCIATION, INC.

## ARTICLE 1

### PLANNED COMMUNITY PLAN OF LOT OWNERSHIP; DEFINITIONS

- 1.1 **Lot Ownership.** The Lots described on Exhibit "A" (comprising 53 lots), together with any Lots annexed hereafter and the common property of Leisure Woods, in the County of Klamath, State of Oregon (the "Property" or "Project") are submitted to the provisions of Oregon Revised Statutes, Section 94.550, et se., the Oregon Planned Community Act.
- 1.2 **Bylaws Applicability.** The provisions of these bylaws are applicable to the Property, The Diamond Peaks Tract #1355 Homeowners Association, Inc. ("Association") and the entire management structure thereof.
- 1.3 **Personal Application.** All present or future Owners, tenants, occupants, future tenants or their employees, or any other person that might use the facilities of the Project in any manner, are subject to the regulations set forth in these Bylaws.
- 1.4 **Definitions.** The terms herein shall have the same meaning as set forth in the Declaration of Covenants and Restrictions, as amended, applicable to the Property.

The acquisition, occupancy or rental of any of the Lots of the Project or the mere act of occupancy of any said Lots will constitute acceptance and ratification of these Bylaws and agreement to comply with all the provisions hereof.

## ARTICLE 2

### ASSOCIATION MEMBERSHIP, VOTING,

### MAJORITY OF OWNERS, QUORUM, PROXIES

- 2.1. **Membership in the Association.** Upon recordation of a conveyance or contract to convey a Lot, the grantee or purchaser named in such conveyance or contract shall automatically be a member of the Association, and shall remain a member of said Association until such time as such person's ownership ceases for any reason. For all purposes of the Declaration and the administration of the property, Lot ownership shall be determined from the records maintained by the Association. The record shall be established by the Owner filing with the Association a copy of the deed to or land sale contract for his or her Lot, to which shall be the Association a copy of the deed to or land sale contract for his or her Lot, to which shall be affixed the certificate of the recording officer of the County of Klamath, Oregon, showing

the date and place of recording of such deed or contract. No person shall be recognized as an Owner unless a copy of the deed or contract has been filed with the Association as provided above showing him or her to be the current Owner or contract purchaser of a Lot. Notwithstanding the foregoing, the Declarant shall be the Owner of all previously unsold Lots, although no deed or land sale contract, with respect to such Lots, has been filed with the Association.

**2.2. Voting Rights.** The Association shall have one class of voting members. Each member shall be entitled to one (1) vote for each Lot owned with respect to all matters upon which Owners are entitled to vote. When more than one (1) person or entity owns a Lot, the vote for such Lot may be cast as they shall determine, but in no event will fractional voting be allowed. Fractionalized or split votes shall be disregarded, except for purposes of determining a quorum. The total number of votes shall be equal to the total number of Lots within the Property and subjected to these Bylaws as of the date of the initial adoption of these Bylaws plus any lots annexed thereafter.

**2.3. Majority of Owners.** As used in these Bylaws, the term "Majority" shall mean those Owners holding over fifty percent (50%) of the voting rights allocated to the Owners in accordance with the Declaration and Section 2.2 above. "Majority of Owners present" shall mean Owners.

**2.4. Quorum.** Except as otherwise provided in the Bylaws, or the Declaration, the presence in person or by proxy of Owners holding twenty percent (20%) or more of the outstanding votes in the Association, as defined in Section 2.2, shall constitute a quorum of Owners present at any legal meeting. A legal meeting is one duly called pursuant to these Bylaws where a quorum is present in person or by proxy at a formal gathering, or if a vote is taken by written ballots, when ballots are returned representing more than twenty percent (20%) of the vote.

**2.5. Place of Meetings.** Formal meetings of the Association shall be held at the principal office of the Association or such other suitable place convenient to the Owners as may be designated by the Board of Directors. Any vote taken by written ballot shall be determined by the Board of Directors within forty-eight (48) hours of the deadline for return of ballots. Each Owner shall be notified by mail or other delivery of written notice of the results of the ballot meeting or that a quorum of ballots was not returned, within ten (10) days after the ballots have been counted.

**2.6. Annual Meetings.** The annual meeting of the Association shall be held in late spring or early summer and shall be set by action of the Board of Directors. The date for this meeting, at the discretion of the Board of Directors, may be changed from time to time, but must be held annually under the rules and regulations as set out in the Bylaws. At such meetings, new members of the Board of Directors shall be elected by the Owners in accordance with the requirements of Section 3.8 of these Bylaws, to those directors whose terms have expired. The Owners may also transact such other business of the Association as may properly come before them.

**2.7. Special Meetings.** It shall be the duty of the president to call a special meeting of the Owners as directed by resolution of the Board of Directors or upon a petition signed by twenty-five (25%) or more

of the Owners having been presented to the Secretary. All meetings called because of petition of Owners shall be held at a formal gathering and not by ballot, and shall be held within sixty (60) days after receipt of the petition. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted a special meeting except as stated in the notice unless by consent of all the Owners of the lots or as otherwise set out in these Bylaws.

**2.8. Notice of Meetings.** It shall be the duty of the Secretary to mail a notice of each annual, special or meeting by ballot, stating the purpose thereof and the time and place where it is to be held, to each Owner of record at least ten (10) but not more than fifty (50) days prior to meeting or the date when ballots for a ballot meeting are required to be returned. The mailing shall be to the Owner's address last given the Secretary in writing by the Owner or Owner's vendee. If Lot ownership is split or the Lot has been sold on a contract, notice shall be sent to a single address which the Secretary has been notified in writing by such parties. If no address has been given the Secretary in writing, then mailing to the Project Lot address shall be sufficient. The mailing of a notice in the manner provided in this Section shall be considered notice legally served.

**2.9. Adjourned Meetings.** If any gathering of Owners is not a legal meeting because a quorum has not attended, the Owners who are present, either in person or by proxy may adjourn the meeting to a time not less than forty-eight (48) hours nor more then ten days from the time the original meeting was called. The adjournment provisions of this Section do not apply to meetings by ballot.

**2.10. Order of Business.** The order of business at all meetings shall be as follows:

- (a) Roll call.
- (b) Proof of Notice of meeting or waiver of notice.
- (c) Reading of minutes of the preceding meeting.
- (d) Reports of officers.
- (e) Reports of committees.
- (f) Election of inspectors of election.
- (g) Election of directors.
- (h) Unfinished business.
- (i) New business.

## ARTICLE 3

### BOARD OF DIRECTORS

**3.1. Number and Qualification.** The affairs of the Association shall be governed by a Board of Directors composed of up to seven (7) persons but at least three persons and always consisting of an odd number to ensure no tie votes, all of whom must be an Owner of the co owner of a Lot. An officer or employee of a corporation, or the trustee of a trust, or personal representative of an estate, or an employee of the trust or estate may serve on the Board of Directors, if the corporation, thrust or estate owns a Lot. All HOA Officers must be members of the Board of Directors.

**3.2. Powers and Duties.** The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law or by these Bylaws directed to be exercised and done by the Owners.

**3.3. Other Duties.** In addition to duties imposed by these Bylaws or by resolutions of the association, the Board of Directors shall have authority to carry out and be responsible for the following matters:

3.3.1 Care, upkeep and supervision of the Common Property, and/or any roads.

3.3.2 Establishment and maintenance of replacement reserve accounts and other reserves which are required to be maintained by the Oregon Planned Community Act, the Declaration or these Bylaws and such other reserve accounts as are permitted by these Bylaws.

3.3.3 Designation and collection of annual assessments from the Owners, in accordance with these Bylaws, the Declaration and the Oregon Planned Community Act.

3.3.4 Establishment of a budget and payment of all common expenses of the Association and institution and maintenance of a voucher system for such payment, which shall require a sufficient number of signatories thereon as may be reasonably necessary to prevent any misuse of Association funds.

3.3.5 Obtaining and maintaining insurance policies and payment of premiums therefor out of the common expense funds in respect to the Common Property as more specifically provided in Article 6 of these Bylaws.

3.3.6 Designation and dismissal of the personnel necessary for the maintenance and operation of the Project.

3.3.7 Causing the preparation and distribution of annual financial statements of the Association to each of the Owners as more specifically provided in Section 3.6.

3.3.8 Adoption and amendment of administrative rules and regulations governing the details of operation and use of the Common Property. Provided, however, any such rules or regulations shall always be subject to rescission or amendment by the Association upon majority vote of Owners present at any properly called meeting.

3.3.9 Causing the Association to comply with the Oregon Planned Community Act relating to maintenance of documents delivered to the Association by the Declarant and maintenance and distribution of financial statements. Also to maintain copies suitable for duplication of the following: Declaration, Bylaws, Association rules and regulations and any amendments thereto, the most recent annual financial statement and the current operating budget of the Association.

**3.4. Limited Authority.** The Board of Directors shall be prohibited from taking any of the following actions, except with the vote or written assent of a majority of the voting power of the owners other than the Declarant:

3.4.1 Entering into a contract with a third party wherein the third person will furnish goods or services for the common area or the Association for a term longer than one year with the

(a) Management contract, the terms of which have been approved by the Federal Housing Administration or Veterans Administration.

(b) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate.

(c) Prepaid casualty and/or liability insurance policies of not to exceed three years duration provided that the policy permits short rate cancellation by the insured.

(d) Agreements for cable television services and equipment or satellite television services and equipment of not to exceed five years duration provided that the supplier is not an entity in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more.

(e) Agreements for sale or lease or burglar alarm and fire alarm equipment, installation and services of not to exceed five years duration provided that the supplier or suppliers are not entities in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more.

3.4.2 Incurring aggregate expenditures for capital improvements to the common area of any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

3.4.3 Selling during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

3.4.4 Paying compensation to members of the Board of Directors or to officers of the Association for services performed in the conduct of the Association's business provided, however, that the Board of Directors may cause a member or officer to be reimbursed for expenses incurred in carrying on the business of the Association.

**3.5. Income Tax Returns; Determination of Fiscal Year.**

3.5.1 The fiscal year of the Association shall be the calendar year unless otherwise determined by the Board of Directors.

3.5.2 The Board of Directors, in its sole discretion, shall determine the manner in which all necessary income tax returns are filed and of selecting any and all persons to prepare such tax returns.

**3.6. Budgets and Financial Statements.** The Board of Directors shall prepare an annual budget for the Association and prepare such financial statements and other reports for review of the members as may be required by law.

**3.7. Management Agent.** The Board of Directors may employ a management agent, to be compensated in an amount established by the Board, to perform, such duties and services as the Board shall authorize, including, but not limited to, the duties listed in Section 3.3.

**3.8 Election and Term of Office.** The number of members the Board of Directors shall be three (3). Each director shall serve a three (3) year term. At the expiration of the initial term of office of each respective Director, his or her successor shall be elected to serve a term of three (3) years. The Directors shall hold office until their successors have been elected and hold their first meeting. The Association may increase or decrease the number of Directors and length of terms for which each is elected upon amendment of this section 3.8. Consistent with the authority vested in these Bylaws, the membership voted to increase the maximum number of Directors to seven (7) beginning in February 2006. All HOA Officers must be members of the Board of Directors.

**3.9. Vacancies.** Vacancies on the Board of Directors caused by any reason other than the removal of a Director by a vote of the Association shall be filled for the balance of the term of each directorship by vote of a majority of the remaining Directors, even though they may

constitute less than a quorum; and each person so elected shall be a Director until a successor is elected upon expiration of the term for which such person was elected by the other Directors to serve.

**3.10. Removal of Directors.** At any legal annual or special meeting, other than a meeting by ballot, any one or more of the Directors may be removed with or without cause, by a majority vote of the total voting power of the Owners and a successor may be then and there elected to fill the vacancy thus created. Provided however, the notice of meeting shall specifically indicate that the removal of one or more named directors is an agenda item for such meeting: Any Director whose removal has been proposed by the Owners shall be given an opportunity to be heard at the meeting. Any Director or Directors who fail(s) to attend three (3) successive meetings of the Board of Directors which have been properly called, or who has failed to attend more than one third (1/3) of the Board of Directors meetings during a twelve (12) month period which have been properly called, may be removed by a majority of the remaining Directors.

**3.11. Organizational Meeting.** The first meeting of a newly elected Board of Directors shall be held within ten (10) days of election at such place as shall be fixed by the Directors at the meeting at which such Directors were elected, and no notice shall be necessary to the newly elected Directors in order to legally hold such meeting, providing a majority of the newly elected Directors are present.

**3.12. Regular Meetings.** Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors. Notice of regular meetings of the Board of Directors may be called by the President on three (3) days' notice to each Director, given personally or by mail, telephone or telegraph, which notice shall state the time, place (as herein above provided) and purpose of the meeting.

**3.13. Special Meetings.** Special meetings of the Board of Directors may be called by the President or Secretary or on the written request of at least three (3) Directors. Special meetings of the Board of Directors may be called on three (3) days' notice to each Director, given personally or by mail, telephone or telegraph, which notice shall state the time, place (as herein above provided) and purpose of the meeting.

**3.14. Waiver of Notice to Directors.** Before, at or after any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by him or her of the time and place thereof. If all the Directors are present at any meeting of the Board, no notice to Directors shall be required and any business may be transacted at such meeting.

**3.15. Board of Directors' Quorum.** At all meetings of the Board of Directors, a majority of the existing Directors shall constitute a quorum for the transaction of business, and the acts of the

majority of the Directors shall be the acts of the Board of Directors. If at any meeting of the Board of Directors there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

**3.16. Board of Directors Meetings Open to All Association Members.** Except as otherwise provided by law for meetings in Executive Session, all meetings of the Board of Directors shall be open to any and all members of the Association. Provided, however, no Association member shall have a right to participate in the Board of Directors meetings unless such member is also a member of the Board of Directors. The President shall have authority to exclude any Association member who disrupts the proceedings at a meeting of the Board of Directors.

**3.17. Notice to Association Members of Board of Directors Meetings.** For other than emergency meetings, notice of Board of Directors meetings shall be posted at a place on the Common Property at least three (3) days prior to the meeting or notice shall otherwise be provided to each member of the Association reasonably calculated to inform each member of such meetings. The posting of such notices shall be at a reasonable location which has been generally publicized to Owners.

**3.18. Telephonic Meetings.** In the event of an emergency, telephonic meetings may be held by the Board of Directors. Such telephonic meetings shall be carried on by means of a "conference call" in which each Director may speak with any of the other Directors. The Directors shall keep telephone numbers on file with the President to be used for telephonic meetings. No notice to either Directors or Association members shall be required for a telephonic meeting of the Board of Directors to be held for any emergency action. Provided, however, no such telephonic meeting shall occur unless at least a quorum of the Board of Directors participate in the same and after an attempt has been made to call each Director at the telephone number maintained on file with the Board of Directors for such purpose.

**3.19. Compensation of Directors.** No Director shall be compensated in any manner, except for out-of-pocket expenses, unless such compensation is approved by vote of the Owners.

#### ARTICLE 4

##### OFFICERS

**4.1. Designation.** The principal officers of the Association shall be a President, a Secretary and a Treasurer, all of whom shall be elected by the Directors and are members of the Board of



Directors. The Directors may appoint an assistant treasurer and an assistant secretary, and any such other officers as in their judgment may be necessary.

**4.2. Election of Officers.** The officers of the association may be elected by the Board of Directors at the organizational meeting of each new board or any board meeting or thereafter, and shall hold office at the pleasure of the board.

**4.3. Removal of Officers.** Upon an affirmative vote of a majority of the members of the Board of Directors, any officer may be removed, either with or without cause, and his or her successor elected at any regular or special meeting of the Board of Directors.

**4.4 President.** The President shall be the chief executive officer of the Association. The President shall preside at all meetings of the Association and of the Board of Directors. The President shall have all of the general powers and duties which are usually vested in the office of president of an association, including, but to limited to, the power to appoint committees from among the Owners from time to time as he or she may in his or her discretion decide is appropriate to assist in the conduct of the affairs of the Association.

**4.5. Secretary.** The Secretary shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the Association; he or she shall have charge of such books and papers as the Board of Directors may direct; and he or she shall, in general, perform all the duties incident of the office of Secretary.

**4.6. Treasurer.** The Treasurer shall have responsibility for Association funds and securities not otherwise held by the managing agent, and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He or she shall be responsible for the deposit of all monies and other valuable effects in the name. And to the credit, of the Association in such depositories as may from time to time be designated by the Board of Directors.

**4.7. Directors as Officers.** Any Director may be an officer of the Association.

## ARTICLE 5

### OBLIGATIONS OF THE OWNERS

**5.1. Assessments.** All Owners are obligated to pay assessments imposed by the Association to meet all the Association's general common expenses as more particularly set forth in the Declaration. Assessments shall be payable on a periodic basis, not more frequently than annually, as determined by the Board of Directors. All initial, general and special assessments shall be allocated equally among the Lots.

**5.2. Investment of Reserve Account Funds.** Each reserve account shall be kept in an account with a safe and responsible depository, shall be accounted for separately and, if invested, the obligation or security shall be fully guaranteed as to principal by the United States of America or one of its agencies. Assessments paid into the reserve accounts are the property of the Association and are not refundable to sellers of Lots. Provided, however, nothing herein shall prevent sellers of Lots from treating their outstanding allocable share of reserve accounts as a separate or reimbursable item in a sales agreement. No Owner shall have any individual rights in any of these reserves, although it is understood that the value of their respective Lots may increase in proportion to each Lot's right to receive repair, maintenance and replacement there from.

**5.3. Initial Assessment.** The initial assessment to Owners shall be based on a budget determined by the Board of Directors. The monthly assessment shall thereafter be subject to review by the Board of Directors. The budget and lot assessments for all Lots shall be payable from the date the Declaration is recorded.

**5.4. Initial Assessment of Lots Subjected in the Future.** The initial assessment for owners of Lots subjected to the Declaration by annexation shall be an amount equal to one-sixth ( $1/6^{\text{th}}$ ) the annual assessment then in effect for similar Lots in Leisure Woods, plus a prorated portion of the assessment for the assessment installment period during which the Lots in such stages are annexed to Leisure Woods. Thereafter, the owners of such lots shall be assessed directly by the Association. The initial assessment equal to one sixth ( $1/6^{\text{th}}$ ) of the current annual assessment shall be a one-time contribution of working capital of Leisure Woods. The total initial assessment of Lots subsequently subjected to the Declaration shall be collected by the Declarant and delivered to the Association within thirty (30) days from the time such Lots are annexed to Leisure Woods. Upon the annexation of additional Lots to Leisure Woods, the Board of Directors shall promptly prepare a new budget reflecting the additional Lots and shall recompute any previous assessment covering any period after the annexation.

**5.5. Special Assessments.** The Board of Directors shall have the power to levy special assessments against an owner of all owners in the following manner for the following purposes:

5.5.1 To correct a deficit in the operating budget by vote of a majority of the Board;

5.5.2 To collect amounts due to the Association from an owner for breach of the owner's obligations under the Declaration these Bylaws, or the Association's rules and regulations, by vote of majority of the Board;

5.5.3 Upon vote of a majority of the Board of Directors, to make repairs or renovations to the common area or those portions of the buildings for which the association has maintenance responsibility if sufficient refunds are not available for the operating budget or replacement reserve accounts; or

5.5.4 To make capital acquisitions, additions or improvements, by vote of at least seventy-five percent (75%) of all votes allocated to Lots in the Planned Community.

**5.6. Payment of Assessments.** The Declarant shall:

5.6.1 Pay assessments due for operating expenses on all unsold Lots; and

5.6.2 Pay assessments due for reserves on all unsold Lots, or, at the Declarant's option, pay or require the Owner to pay all accrued reserve assessments against the Lot at the time of the initial sale to the Owner.

**5.7. Default.** Failure by an Owner to pay any assessment of the Association shall be a default by such Owner of his or her obligations pursuant to these Bylaws and the Oregon Planned Community Act. In addition to the interest which may be charged on delinquent assessments, the Board of Directors, at its option, may impose a late charge penalty in respect to any annual assessment not paid within ten (10) days from the due date. Such penalty may not exceed the sum of ten percent (10%) of the annual assessment. The Association shall be entitled to a lien which may be enforced upon compliance with the provisions of the Oregon Planned Community Act. In any foreclosure suit by the Association with respect to such lien, the Association shall be entitled to collect reasonable rent from the defaulting Owner for the use of Owner's Lot or shall be entitled to the appointment of a receiver. Any default by the Owner in any provisions of these Bylaws or of the Oregon Planned Community Act shall be deemed to be a default by the Owner of any mortgage to which the Owner is a party or to which the Lot is subject.

**5.8. Maintenance and Repair.**

5.8.1 Except as otherwise specifically provided in the Declaration and Bylaws, every Owner must perform promptly all maintenance and repair work within the Owner's own Lot, which if omitted would affect Common Property, and shall be responsible for the damages and liabilities that the Owner's failure to do so may cause.

5.8.2 An Owner shall reimburse the Association for any expenditures incurred in repairing or replacing any Common Property and/or facility damaged through his or her fault, not otherwise covered by insurance policies carried by the Association for the Owner's and Association's benefit.

**5.9. Right of Entry; Encroachments; Easements for Maintenance.**

5.9.1 In case of an emergency originating in or threatening Owner's Lot, an Owner shall grant the right of entry to the management agent or to any other person authorized by the Board of Directors or the Association, whether the Owner is present at the time or not.

5.9.2 An easement is reserved to the Association in and through any Lot and the Common Property providing access at reasonable times and with reasonable notice for purposes of maintenance, repair and replacement of the Common Property. If, in the process of such repair and maintenance by the Association, it is necessary to alter or damage any Lot or Common Property, such alterations or damages will be permitted without compensation, provided the Lot and/or Common Property are promptly restored to substantially their prior condition by the Association.

## ARTICLES 6

### INSURANCE

The Board of Directors shall obtain and maintain at all times insurance of the type and kind and in the amounts hereinafter provided, and including insurance for such other risks of a similar or dissimilar nature as are or shall hereafter customarily be covered with respect to other planned communities similar in construction, design and which insurance shall be governed by the provisions in this numbered section.

**6.1. Types of Insurance Policies.** For the benefit of the Association and the Owners, the Board of Directors shall obtain and maintain at all times, and shall pay for out of the common expense funds, the following insurance to the extent available at reasonable cost:

6.1.1 A policy or policies of property insurance including, but not limited to, fire, extended coverage, vandalism and malicious mischief, for the full insurable replacement value, if available, of all Common Property, and such other fire and casualty insurance as the Board of Directors shall determine to be reasonably necessary.

6.1.2 A policy or policies insuring the Association, its Board of Directors, the owners individually, and the manager against any liability to the public or the owners and their invitees or tenants, incident to the ownership, supervision, control or use of the Project with limits of liability under such insurance shall be as reasonable determined by the Board of Directors. Such limits and coverage shall be reviewed at least annually by the Board of Directors which may increase the limit of and/or coverage, in its discretion. Said Policy or policies shall be issued on a comprehensive liability basis and shall provide cross liability endorsements wherein the rights of the named insured under the policy or policies shall not be prejudiced as respects his, her or their action another named insured.

6.1.3 Worker's compensation insurance to the extent necessary to comply with any applicable laws.

6.2. Review of Insurance Policies. At least annually, the Board of Directors shall review all insurance carried by the Association, which review shall include a consultation with a representative of the insurance carrier writing the master policy.

## ARTICLE 7

### AMENDMENT

Except as otherwise provided in this Article, and the restrictions set forth elsewhere herein, these Bylaws may be amended at any time by an instrument approved by at least a majority of the total votes of each class of members that are eligible to vote. Any amendment must be executed, recorded and certified as provided by law. Provided, however, no amendment of the Bylaws may effect an amendment of the Declaration or the Articles of Incorporation without compliance with the provisions of such documents and the Oregon Nonprofit Corporation Act. Provided further no amendment deleting or affecting any right of the Declarant may be adopted without the prior written consent of the Declarant.

## ARTICLE 8

### RECORDS AND AUDITS

**8.1. General Records.** The Board of Directors and the managing agent or manager, if any, shall preserve and maintain minutes of the meetings of the Association, the Board and any committees. The Board of Directors shall maintain a list of Owners entitled to vote at meetings of the Association and a list of all mortgagees of Lots. The minutes of the Association, the Board and committees, and the Association's financial records shall be reasonably available for review and copying by the Owners. A reasonable charge may be imposed by the Association for providing copies.

**8.2. Records of Receipts and Expenditures.** The Board of Directors or its designee shall keep detailed, accurate records in chronological order of the receipts and expenditures affecting the Common Property, itemizing the maintenance and repair expenses of the Common Property and any other expenses incurred. Such records and the vouchers authorizing the payments shall be available for examination by the Owners and mortgagees at convenient hours of the weekdays.

**8.3. Assessment Roll.** The assessment roll shall be maintained in a set of accounting books in which there shall be an account for each Lot. Such account shall designate the name and address of the Owner or Owners, the amount of each assessment against the Owners, the dates

and amounts in which the assessment comes due. The amounts paid upon the account and the balance due on the assessments.

**8.4. Payment of Vouchers.** The Treasurer shall pay all vouchers up to \$1000 signed by the President, managing agent, manager or other person authorized by the Board of Directors. Any voucher in excess of \$1000 shall require the signature of the President. Provided, however, any withdrawal from reserve accounts shall require the signature of two board members or one board member and an officer of the Association who is not a board member.

**8.5. Reports and Audits.** The Board of Directors shall prepare or cause to be prepared and annual report of the receipts and expenditures of the Association and a balance sheet and income and expense statement setting forth the financial condition of the Association as of the end of each year as required by law. The report shall be distributed to all Owners within ninety (90) days after the end of each fiscal year and to all mortgagees of Lots to the extent required by law.

**8.6 Notice of Sale, Mortgage, Rental or Lease.** Immediately upon the sale of any Lot, the Owner shall promptly inform the Secretary or manager of the name and address of said vendee.

## ARTICLE 9

### COMPLIANCE

These Bylaws are intended to comply with the provisions of the Oregon Planned Community Act, which are incorporated herein and to supplement the provision in the Project Declaration. In case any of the provisions hereof conflict with the provisions of said statutes, the statutory provisions shall apply. In case of any conflict between the provisions hereof and the Declaration, the provisions in the Declaration shall apply.

## ARTICLE 10

### 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 he or she is or was a Director, officer, employee or agent of the Association or is or was serving at the request of the Association as a Director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, 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 he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interest of the Association, and with respect to any criminal

action or proceedings, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or with a pleas of no contest or its equivalent, shall not of itself create a presumption that a person did not act in good faith and in a manner which he or she reasonably believed to be in, or not opposed to, the best interest of the Association, and, with respect to any criminal action or proceedings, had reasonable cause to believe his or her conduct was unlawful. Payment under this clause may be made during the pendency of such claim, action, suit or proceeding as and when incurred, subject only to the right of the Association, should it be proven at a later time that said person had no right to such payments. All persons who are ultimately held liable for their actions on behalf of the Association as a Director, officer, employee or agent shall have a right of contribution over and against all other Directors, officers, employees or agents and members of the Association who participated with or benefitted from the acts which created said liability.

#### ARTICLE 11

##### ASSESSMENT COLLECTION COSTS; SUITS AND ACTIONS

Owners shall be obliged to pay reasonable fees and costs including, but not limited to, attorney fees incurred in connection with efforts to collect any delinquent unpaid assessments. In addition to the monthly assessment for operating expenses and the funding of reserves, such assessments may include fees, late charges, fines and interest imposed pursuant to ORS 94.630(4)(j)-(L). In the event suitor action is commenced by the Directors for the collection of any amount due pursuant to these Bylaws or for the enforcement of any provisions of the Declaration, Bylaws or of the Oregon Planned Community Act, the Owner or Owners jointly and severally, will in addition to all other obligations, pay the costs of such suit or action, including reasonable attorney fees to be fixed by the trial court and, in the event of an appeal, the cost of the appeal, together with reasonable attorney fees in the appellate court to be fixed by such court.

#### ARTICLE 12

##### MISCELLANEOUS

**12.1 Notices.** All notices to the Association or to the Board of Directors shall be sent care of the managing agent, or if there is no managing agent, to the principal office of the Association or to such other address as the Board of Directors may hereafter designate from time to time. All notices to any Owner shall be sent to such address as may have been designated by him or her from time to time, in writing, to the Board of Directors, or if no address has been designated, then to the Owner's Lot.

12.2. **Waiver.** No restriction, condition, obligation or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

12.3. **Invalidity; Number; Captions.** The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability or effect of the balance of these Bylaws. Provided, however, that if any of the provisions of these Bylaws 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, or in the event the rule against perpetuities applies, until twenty-one (21) years after the death of the last survivor of the now living descendants of the Owners of the lots as of the date set forth below. As used herein, the singular shall include the plural, and the plural the singular. The masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of these Bylaws.

It is hereby certified that these Bylaws have been adopted by the Board of Directors of The Diamond Peaks Tract #1355 Homeowners Association, Inc., and may be recorded in the Deed Records of Klamath County



DATED effective: April 10, 2011

THE DIAMOND PEAKS TRACT #1355

HOMEOWNERS ASSOCIATION, INC.

BY Chris Kline

CHRIS KLINE

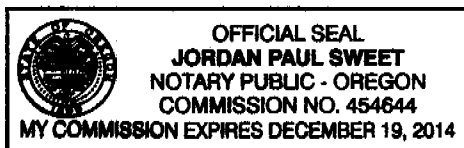
Secretary

STATE OF OREGON     )

) ss.

County of Klamath     )

SUBSCRIBED AND SWORN TO before me by CHRIS KLINE, as Secretary of the THE DIAMOND PEAKS TRACT #1355 HOMEOWNERS ASSOCIATION, INC., this 11<sup>th</sup> day of April, 2011.



Jordan Paul Sweet  
Notary Public for Oregon

**Exhibit "A"**

**LEGAL DESCRIPTION**

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

Lots 1 through 11 (inclusive), Lots 14 & 15 (inclusive), all in Block 1 of Tract #1074, Leisure Woods, in the County of Klamath, State of Oregon.

Lots 1 and 2 (inclusive), all in Block 4 of Tract # 1074, Leisure Woods, in the County of Klamath, State of Oregon

Lot 22, Block 3 of Tract # 1074, Leisure Woods, in the County of Klamath, State of Oregon.

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**BYLAWS CHANGES**

- **Article 2: Association Membership, Voting, Majority of Owners, Quorum, Proxies; 2.6**
- **Article 3: Board of Directors; 3.1**
- **Article 3: Board of Directors; 3.8**

**Vote: Article 7: Amendment: "...these Bylaws may be amended at any time by an instrument approved by at least a majority of the total votes of each class of members that are eligible to vote."**

**Date: February 18, 2006: Changed Article 3: Board of Directors; 3.1 & 3.8**

**Date: June 06, 2009: Changed Article 2: Association Membership, Voting, Majority of Owners, Quorum, Proxies; 2.6**