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DESCHUTES COUNTY OFFICIAL RECORDS  
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2004-37133



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Lane D. Lyons, LL.M  
BRYANT LOVLIE & JARVIS, P.C.  
591 SW Mill View Way  
Bend, Oregon 97702

**COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
ASPEN WINDS**

**THIS DECLARATION OF BUILDING AND USE RESTRICTIONS AND ARCHITECTURAL CONTROL**, made this 11<sup>th</sup> day of June, 2004, by KIMBERLY MOUNTAIN DEVELOPMENT, LLC, hereinafter referred to as "Declarant" and/or "Grantor."

**WHEREAS**, Grantor is the Seller and/or owner of the real property in Deschutes County, Oregon, known as Aspen Winds subdivision, the same appears in the Plat recorded in Book 2003 Page 84422 & 84423 of Plat records of Deschutes County, the "property," which is comprised of 24 individual multiple family residence lots, the "lot(s)."

**WHEREAS**, Grantor desires to revoke the Declaration of Covenants, Codes, and Restrictions for Aspen Winds Homeowners Association, Inc., as the same are recorded at Book 2003 Page 84422 & 84423 of real property records of Deschutes County, and to declare of public record their intention to create certain protective Covenants, Conditions and Restrictions (CC&R's) in order to effectuate a general scheme of development creating benefits and obligations for the owners of said property and any lot therein.

**NOW, THEREFORE**, Grantor hereby declares that all of the properties described shall be held, sold and conveyed subject to the following easements, restrictions, Covenants and Conditions which are for the purpose of protecting the value and desirability of the real property which shall run with the land and shall inure to the benefit of each owner thereof. These easements and (CC&R's) shall be binding on all parties having any right, title or interest in the described properties or any parts thereof, their heirs, successors and assigns.

**ARTICLE I**  
**RESIDENTIAL COVENANTS**

**1. LAND USE AND BUILDING TYPE**

No dwelling unit constructed on a lot shall be used except for single family residential purposes. No building shall be erected, altered or permitted to remain on any lot other than one multi-family site built duplex dwelling not to exceed thirty (30) feet in height and an attached private garage for not less than two (2) cars for each dwelling unit. The foregoing provisions shall not exclude construction of a private greenhouse or storage unit, provided the location of such structures is in conformity with the applicable municipal regulations and is compatible in design and decoration with the dwelling unit(s) constructed on such lot and has been approved by the Architectural Control Committee, as designated by Grantor. Garages shall be used only for the purpose of storage and parking of automobiles and other

vehicles and equipment, and storing Owner's household goods; provided however, that all such uses shall be accomplished so that garage doors can be closed and opened.

A. No alteration shall be made in the exterior design or color of any structure, including but not limited to roofing, landscaping, siding, painting (including color selection), paving/concrete work, or otherwise, unless the Architectural Control Committee shall have first approved such alteration, including any addition, in writing. The exterior finish of all construction on any lot shall be designed, built and maintained in such a manner as to blend in with the existing structures and landscaping within this subdivision. Exterior paint and roofing material colors must be approved by the Architectural Control Committee in accordance with Article II. Exterior trim, fences, doors, railings, decks, eaves, gutters and exterior finish on garages and other accessory buildings shall be designed, built and maintained to be compatible with the exterior of the structures they adjoin.

B. Exterior lighting shall not glare onto neighboring properties. Declarant may use additional lighting to light any model home or signs solely for the purpose of marketing the subdivision.

C. Patio covers are allowed; however, they must be positioned out of the view from the public street in front of the residence, and shall be constructed according to the standards for "outbuildings".

D. No residence shall be constructed utilizing wood as a primary heat source. Fireplaces and wood stoves are permitted, however, they must be secondary to gas, oil, electric, or active/passive solar. Heat pumps, if used, must have their condenser unit located no further than five (5) feet from the dwelling and shall be screened from public view.

The provisions of this section shall not be deemed to prohibit the right of any licensed builder to construct a residence on any lot, to store construction materials and equipment on said lots in the normal course of construction and to use any single family residence as a home.

## **2. DWELLING SIZE**

The minimum square footage of any home within this subdivision shall be 1,100 square feet for a single level and 1,350 square feet for a multi-level. These minimums are exclusive of garages and open porches.

## **3. OFFENSIVE ACTIVITIES**

No noxious, offensive or illegal activity shall be carried out upon any lot, nor shall anything be done, grown or placed upon any lot which interferes with or jeopardizes the enjoyment of other lot owners within the property.

## **4. ANIMALS**

No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that a reasonable number (not to exceed two (2) dogs, cats or other household pets) may be kept provided that they are not kept, bred or maintained for commercial purposes and are reasonably controlled so as not to be a nuisance.

## **5. SIGNS**

No signs shall be erected or maintained on any lot (excluding Aspen Winds entry signs) except that not more than one "FOR SALE" or "FOR RENT" sign placed by the owners, Grantors or by a licensed real estate agent, not exceeding twenty-four inches high and thirty-six inches long, may be

temporarily displayed on any lot. This restriction shall not prohibit the temporary placement of "political" signs on any lot by Owner or appointees provided the same shall not be a violation of the controlling governmental sign ordinances.

**6. PARKING**

Parking of boats, trailers, motor homes, motorcycles, trucks, truck-campers and like equipment shall not be allowed on any part of the property nor on public street adjacent thereto excepting only within the confines of an enclosed garage or screened from view from all Public Right of Ways by a sight obscuring fence of approved design. Overnight parking is permitted for the purpose off loading and unloading. Each dwelling must have off street parking spaces for at least four vehicles, including garage bay space, except "Aspen" and "Juniper" model dwellings, which shall have room for two vehicles including garage bay space. Visitor RV parking is permitted for not more than 5 calendar days in any one month period.

**7. VEHICLES IN DISREPAIR**

No lot shall permit any vehicle which is in an inoperable state of disrepair to be abandoned or to remain parked upon any lot or on any street for a period in excess of forty-eight (48) hours. A vehicle shall be deemed to be in an "inoperable state of disrepair" when due to its continued inoperability or significant damage it offends the occupants of the neighborhood. No owner may engage in any vehicle restoration or maintenance work beyond any continuous period of forty-eight hours, unless such work is performed within an enclosed garage. The foregoing shall not be deemed to prevent the washing or polishing of motor vehicles together with those activities normally incident to such activities.

**8. RUBBISH AND TRASH**

No lot shall be used as a dumping ground for trash or rubbish of any kind. All garbage and other waste shall be kept in appropriate sanitary containers for proper disposal and out of public view. Yard rakings and dirt resulting from landscaping work shall not be dumped onto streets or on any lots.

**9. TEMPORARY STRUCTURES**

No structure of a temporary character, trailer, motor home, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence. Freestanding basketball hoops may be left on the parking strip at curbside or on the residence driveway, but they are not permitted in the street.

**10. UTILITIES**

No outdoor overhead wire or service drop for the distribution of electric energy or telecommunication purposes, nor any pole, tower or other structure supporting said overhead wire shall be erected, placed or maintained within this subdivision. All owners of lots within this subdivision, their heirs, successors and assigns shall use underground wires to connect their premises and the structures built thereon to the underground electric T.V. cable, or telephone utility facilities provided.

**11. COMPLETION OF CONSTRUCTION**

The construction of any building on any lot, including private lot drainage, painting and all exterior finish, shall be completed within six (6) months from the beginning of construction so as to present a finished appearance when viewed from any angle. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon written approval from the Architectural Control Committee.

**12. LANDSCAPE COMPLETION AND MAINTENANCE**

All front, rear and side yard landscaping and tree removal must be completed pursuant to a landscaping plan approved by the Architectural Control Committee. Front yard and side yard

landscaping on corner lots must be installed upon substantial completion of the residence. All remaining landscaping must be completed within six (6) months of occupancy of the dwelling. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable time, but only after a written application is made to the Architectural control Committee and the Committee's approval is obtained. Hedges shall not be allowed to exceed 8-feet in height on portions of a Lot that lie behind the forward most part of the residence thereon, and 4-feet in height on portions that lie forward (in front) of the residence. Hedges must be pruned and groomed at least annually. Acceptable yard ornamentation will be determined by the Architectural Committee on a case by case basis. This shall not apply to seasonal holiday decorations which are promptly removed within thirty (30) days after the holiday.

### **13. FENCES AND HEDGES**

**A.** General. No fence greater than three (3) feet six (6) inches in height shall be permitted in the front yard on any residential unit. The maximum height of a site obscuring fence or hedge on any lot shall be six (6) feet. The location of any fences or hedges erected shall be along the rear lot line and/or along the side lot lines or along easement lines if applicable, but said fence or hedge may not be placed forward of the front setback line for the residence. All fences shall be of wood construction. No fence, hedge or wall shall be erected without prior written approval of the Architectural Control Committee. All fencing added or replaced by an Owner shall be similar in appearance to any fencing provided by the Grantor. This provision is not meant to prohibit or restrict the developer of Aspen Winds from erecting an entrance monument and fence, whose architecture and composition shall be determined at the developer's sole discretion.

**B.** Shared Fencing. Owners of Lots with a shared fence shall assume the burdens and be entitled to the benefits of this Declaration, and to the extent not inconsistent with this Article, the general rules regarding shared fencing and liability for property damage due to negligence or willful acts or omissions shall be applied thereto.

- (1) In the event any such fence is damaged or destroyed through the act of one adjoining Owner or any of his agents, guests, invitees, tenants, or members of his family so as deprive any person of the full use and enjoyment of such fence, then such Owner shall forthwith proceed to rebuild and repair the same to as good condition as formerly existed, without cost to the other adjoining Owner.
- (2) The cost reasonable maintenance of a shared fence shall be shared equally by the Owners who make use of the fence.

### **14. ANTENNAS AND SERVICE FACILITIES**

No exterior antennas or satellite dishes of any kind shall be permitted, except "**Digital Satellite Systems**" are permitted. The dish may not exceed 25 inches in diameter. Clotheslines and other service equipment shall be screened so as not to be viewed from any street.

### **15. EXTERIOR MATERIALS**

Exterior materials must be approved for use by the Architectural Control Committee, and in accordance with the provisions appearing in the Real Estate Contract for purchase of lots in this subdivision. Roofing materials must be cedar shingle, cedar shake, and tile or composition shingle (G.A.F.) Timberline Ultra 25 year limited warranty or like quality. The exterior siding material shall be cedar, stone, bricks, stucco or composite lap siding. Windows and exterior doors shall be wood or approved vinyl. Garage doors can be either of wood or metal construction. In appropriate circumstances the Architectural Control Committee can approve other materials, if necessary, to facilitate design,

provided they are in keeping with the character of Aspen Winds.

**16. WINDOW COVERINGS**

Window coverings, other than commercially produced curtains, shutters, drapes or blinds, shall not be permitted to be visible from any street at any time after occupancy of dwelling.

**17. STREET TREES AND PARK STRIP LANDSCAPING WITHIN THE CITY RIGHT OF WAY**

After planting, street trees and the parking strip landscaping must be maintained by the homeowner whose property is contiguous. If street trees and landscaping die, for any reason, they must be replaced by the individual lot owners with similar vegetation.

**18. BUSINESS OR COMMERCIAL ACTIVITY**

No commercial business, including day care services, shall be permitted or conducted on any lots. Owners may, however, without external evidence, (i) maintain their personal professional library, (ii) keep personal business or professional records, (iii) handle his or her professional and personal business calls or correspondence from said premises, (iv) provide music, educational or professional services to students, clients or customers, so long as the students, clients, or customers do not, at any one time, exceed two persons dwelling and the business is conducted wholly within the home in a manner that is not disruptive to the neighborhood. The foregoing notwithstanding, Declarant may use any of the lots owned or leased by Declarant as model homes and sales offices during the period of time commencing when the Residential lots in the Projects are first sold or offered for sale to the public, and ending when all such lots are sold and conveyed by Declarant to separate owners thereof.

**19. FIREWOOD**

Any firewood stored on a lot shall be for the use at the residence on that lot and shall not exceed a reasonable quantity. All firewood shall be neatly stacked and kept in a location which is not visible from the public street in front of residence. If the firewood is covered or protected from the elements, said covering shall be a structure conforming to the same standards as an outbuilding as described herein. No firewood shall be cut on site except during clearing of the lot. Splitting of wood is allowed.

**20. OUTDOOR PLAY EQUIPMENT**

Outdoor play equipment such as pools, spas, hot tubs, jungle gyms and swing sets must be placed behind the residence as such unit is viewed from the nearest public street.

**21. ENVIRONMENTAL POLLUTION**

No activities producing noxious odors or substances or other environmental pollution are permitted in the subdivision. This includes but is not limited to multiple kennels, burning of trash, garbage or yard debris which is expressly prohibited. Routine gardening or landscape maintenance activities, customary and legal use of yard care pesticides and fertilizers, and outdoor cooking of food are permitted.

**22. MAILBOXES**

Individual mailboxes are not allowed in the subdivision in front of residences. Mailboxes will be provided by the US Postal Service. In those locations that the postal services place their pedestals, the effected homeowners shall be aware that the sidewalks may have a short diversion into their landscaped areas as 9' from the street curb to allow continuous pedestrian traffic on the sidewalk.

**23. LEASES**

Each Owner shall have the right to lease his lot or any dwelling unit thereon. Any said lease shall be in writing and shall provide that its terms shall be subject in all respects to the provisions of the

Declaration and that any failure by the lessee to comply with the provisions of the Declaration shall constitute default under the said lease. Any such lessee shall be entitled to the use and enjoyment of the common property, if any.

**24. DECLARANT'S RIGHTS AND EASEMENTS**

Declarant shall have the following special rights and easements until all lots owned by Declarant in all phases have been sold and conveyed.

A. Sales Office and Models. Declarant shall have the right to maintain a sales office and model unit in one or more of the lots which the Declarant owns. The Declarant and prospective purchasers and their agents shall have the right to use and occupy the sales offices and models during reasonable hours any day of the week. Declarant may assign these rights to other developers of lots on the property.

B. "For Sale" Signs. The Declarant may maintain a reasonable number of "For Sale" signs which do not conform in style or size with the requirements of this Declaration at a reasonable locations on the property. Declarant may assign this right to other developers lots owned by Declarant.

C. Declarant's Easement. The Declarant hereby reserves an easement over the property for all reasonable purposes related to the improvement or maintenance of any common areas and the construction of Residences on any and all lots owned by Declarant.

D. Easements and Encroachments. If an encroachment results from construction, reconstruction, repair, shifting, settlement or movement of any portion of the community, an easement for the encroachment exists to the extent that any lot or Common Area encroaches on any other lot or Common Area. An easement continues for maintaining the encroachment so long as the encroachment exists. Nothing in this Section relieves an Owner of liability in case of the Owner's willful misconduct or relieves Declarant or any other person of liability for failure to adhere to the plats of the Community.

**ARTICLE II**  
**ARCHITECTURAL CONTROL COMMITTEE**

**1. ARCHITECTURAL REVIEW**

No construction or alteration of any structure, including storage shelters, patios, or decks facing the public streets, shall be commenced, erected, placed or altered on any lot until construction plans and specifications and a plat showing the nature, shape, heights, material, colors and proposed location of the structure or change have been submitted to and approved in writing by the Architectural Control Committee ("ARC"). It is the intention and purpose of this Architectural Control Committee to assure quality of workmanship and materials, harmony of external design with the existing structures as to location, topography and finished grade elevations to avoid plan repetition. In all cases, the Architectural Control Committee's consent is required.

**(a) MAJOR CONSTRUCTION**

In the case of initial or substantial additional construction of a dwelling, the owner shall prepare and submit to the Architectural Control Committee such plans and specifications for the proposed work as the Committee may require. Materials required by the Committee may include, but not necessarily be limited to the following:

(A-I) A Plan indicating location of all improvements, including private drainage.

(A-2) Drawings showing elevations, exterior materials and exterior color scheme of all improvements including fencing.

(A-3) Drawings showing yard landscape design and location including a description of plant materials. The parking strip shall be included in the landscaping plan.

The Architectural Control Committee shall render its decision with respect to the proposal within fourteen (14) days after it has received all required materials. Failure by the ARC to respond to any owner within the allotted time period after all materials have been submitted by the owner shall entitle the owner to proceed with its project as set forth in the materials submitted.

(b) **MINOR WORK**

In the case of minor additions or remodeling, change of existing exterior color scheme or exterior materials, greenhouse, swimming pools construction or any other work not referred to in (a) above, the owner shall submit to the Architectural Control Committee such plans and specifications for the proposed work as the Committee determines to be necessary to enable it to evaluate the proposal. The Architectural Control Committee shall render its decision with respect to the proposal within fourteen (14) days after it has received all material required by it with respect thereto. Failure by the ARC to respond to any owner within the allotted time period after all materials have been submitted by the owner shall entitle the owner to proceed with its project as set forth in the materials submitted.

2. **ARCHITECTURAL CONTROL COMMITTEE:**

(a) There shall be An Architectural Control Committee, consisting of three (3) persons, for the purpose of exercising the power and functions conferred upon said Committee by this section. The initial Committee shall be appointed by Grantor, each of said persons so appointed being subject to removal at Grantor's sole and absolute discretion. All vacancies on said Committee shall be filled by appointment by Grantor. Upon the sale by Grantor of all lots in the property or, at the Grantor's discretion, after the period of one (1) year, a new Committee of three (3) members shall be appointed by Grantor, and such appointee's shall be owners of lots within the property.

(b) Said Committee shall have the right and power to interpret and enforce all restrictions in its sole discretion, exercised in good faith and independently of the Owners. Decisions by the Architectural Control Committee are final and legally binding pertaining to judgments rendered regarding claims of covenant breach.

(c) The appointed Committee shall serve until such time as there may be an election of a new Committee by a majority of fifty-one percent (51%) of the lot owners, each lot being entitled to one (1) vote. Upon such election, the powers of the Committee first appointed shall cease and the newly elected Committee shall exercise those powers in its stead. In the event of the death, resignation or incapacity to serve of a member of the Committee, a successor or successors shall be elected by a majority of fifty-one percent (51%) of the lot owners. In the event that there is no election of a successor or successors within thirty (30) days of such death, resignation or incapacity to serve, the remaining member or members of the Committee shall appoint a successor or successors by a majority vote of the remaining Committee membership.

(d) Any decision of the Committee shall be in writing and signed by at least two (2) members. The Committee shall adopt rules and regulations for the conduct of these proceedings and may fix the time and place for its regular meetings and for such extraordinary meetings as may be necessary.

(e) Unless otherwise specified, enforcement of the restrictions set forth herein shall be by proceedings at law or equity brought by any member of the Committee, pursuant to the authorization of the Committee, against any person or persons violating or attempting to violate any provision or covenant, either to restrain violation or to recover damages. Neither Grantor nor the Architectural Control Committee, nor any member or successor member thereof, shall ever be liable because of any action they take, or fail to take, or for any defect in any building erected pursuant to this section, or at all, as a result of these restrictions, and the Owners of the lots, and each of them, agree jointly and severally to hold Grantor and the members of the Architectural Control Committee (as the membership of that body may be changed from time to time) free and harmless and to indemnify them accordingly from any claims and liabilities whatsoever arising from the operation of this section.

(f) If a violation of these restrictions occurs and if the Architectural Control Committee fails to act pursuant to its powers as set forth in this Declaration of Conditions, Covenants and Restrictions to enforce said provision, and after making unsuccessful demand in writing upon said Committee to carry out said enforcement by any Residential Unit Owner within this Project, said Owner shall have the right to act as plaintiff in any action against the violating party at said Owner's sole cost and expense, and to recover said cost and expense from the violating party in any legal action said Owner may bring.

(g) Should legal action be instituted as a result of any claim of breach of any obligation of the owners of Lots pursuant to these CCR's, the prevailing party shall be reimbursed for all costs and attorneys' fees actually incurred, regardless of whether the action proceeds to judgment.

**3. NONWAIVER**

Consent by the Architectural Control Committee to any matter proposed to it within its jurisdiction under this Article II shall not be deemed to constitute a precedent or waiver impairing its rights to withhold approval as to any similar matter thereafter proposed or submitted to it for consent.

**4. EFFECTIVE PERIOD OF CONSENT**

The Committee's consent to any proposed work shall automatically be revoked one year after issuance unless construction of the work has commenced or the owner has applied for and received an extension of time from the Committee.

**ARTICLE III**  
**ASPEN WINDS HOMEOWNERS ASSOCIATION**

**SECTION I. DEFINITIONS**

Subsection 1. "Bylaws" shall refer to the Bylaws of ASPEN WINDS HOMEOWNERS ASSOCIATION, INC, an Oregon non-profit corporation to be created and organized upon the recording of the Declaration.

Subsection 2. "Common Area" shall, for purposes of the duties of the Association and the use of all dues collected, mean all landscaping of Lots within the Subdivision and any landscaping other landscaping within the Subdivision.

Subsection 3. "Common Expenses" shall mean and include the actual and estimated expenses of the Association incurred to continuously maintain the Common Area, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to the Declaration, the Bylaws, and the Articles of Incorporation of the Association.



Subsection 4. "Eligible Mortgage Holder" shall mean a holder, insurer, or guarantor of a first mortgage on a Lot who has requested notice of certain matters from the Association as hereinafter and in the Association's By-laws provided.

Subsection 5. "Eligible Votes" shall mean those votes available to be cast on the issue at hand. A vote which is for any reason suspended is not available to be cast.

Subsection 6. "Lot" shall mean a portion of the property intended for any type of independent ownership and use as may be set out in the Declaration to which this is attached and as shall be shown on the plats of survey filed with this Declaration or amendments thereto. Where the context indicates or requires, the term Lot includes any structure on the Lot.

Subsection 7. "Majority" means those eligible votes, Owners, or other groups as the context may indicate totaling more than fifty (50%) percent of the total eligible number.

Subsection 8. "Member" shall mean and refer to a person or entity entitled to membership in the Association, as provided herein.

Subsection 9. "Mortgage" means any mortgage, deed to secure debt, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

Subsection 10. "Mortgagee" shall include a beneficiary or holder of a deed of trust, as well as a mortgagee.

Subsection 11. "Mortgagor" shall include the trustor of a deed of trust, as well as a mortgagor.

Subsection 12. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of any Lot which is part of the Properties, but excluding any party holding the fee simple title merely as security for the performance of an obligation.

Subsection 13. "Property or Properties" shall mean and refer to Lots 1-11 of the Forrest Commons Subdivision.

Subsection 14. "Declaration" shall mean the Covenants, Conditions, and Restrictions for Forrest Commons.

## **SECTION II: MEMBERSHIP AND VOTING RIGHTS**

Subsection 1. MEMBERSHIP. Every Owner shall be deemed to have a membership in the Association. Membership shall be appurtenant to and may not be separated from such ownership. The foregoing is not intended to include persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more persons, shall have more than one (1) membership per Lot owned. In the event the Owner of a Lot is more than one person or entity, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership, including the right to vote, may be exercised by a Member or the Member's spouse, but in no event shall more than one (1) vote be cast for each Lot.

Subsection 2. VOTING RIGHTS. Voting rights within the Association shall be allocated as follows: one vote per Lot.

Subsection 3. POWERS AND OBLIGATIONS. The Association shall have, exercise and perform all of the following limited powers, duties and obligations:

(a) Article III. The sole purpose and powers of the Association shall be to retain an independent suitable contractor to maintain all of the Common Area on a continuous and year round basis, and to supervise the performance by such contractor of their duties, and to collect from Owners of Lots within the Property an annual or periodic assessment sufficient to pay all bills of the Association incurred in fulfilling its duties and purposes hereunder.

(b) Statutory Powers. The powers, duties and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Oregon and of a homeowners association of a planned community pursuant to the Oregon Planned Community Act, as either or both may be amended from time to time, which shall be exercised to fulfill the duties and purpose set forth above.

The powers and obligations of the Association may from time to time be amended, repealed, enlarged or restricted by changes in this Declaration made in accordance with the provisions herein, accompanied by changes in the Articles of Incorporation or Bylaws of the Association made in accordance with such instruments and with the nonprofit corporation laws of the State of Oregon.

Subsection 4. TRANSITORY CONTROL. Declarant or the Owners shall form a transitional advisory committee (the "Transitional Advisory Committee") to provide for the transition from administrative responsibility by Declarant for the property and the Association to administrative responsibility by the Association. Not later than the sixtieth (60th) day after Declarant has conveyed to Owners other than Declarant a number Lots representing seventy five percent (75%) percent or more of the Lots in the Property (which shall exclude any property annexed to the Property for purposes of the foregoing calculation), Declarant shall call a meeting of Owners for the purpose of selecting the Transitional Advisory Committee. The Transitional Advisory Committee shall consist of three (3) or more members. The Owners, other than Declarant, shall select two (2) or more members. Declarant may select no more than one (1) member. The Transitional Advisory Committee shall have reasonable access to all information and documents that Declarant is required to turn over to the Association under ORS 94.616(3).

Subsection 5. INTERIM BOARD. Declarant shall have the right to appoint an interim board of three (3) directors, who shall serve as the Board until replaced by Declarant or until their successors have been elected by the Owners at the Turnover Meeting, discussed below.

Subsection 6. TURNOVER MEETING. The Declarant shall call a Turnover Meeting within one hundred twenty (120) days following the date on which Declarant has sold Lots constituting 75% or more of the Lots in the property for the purposes of turning over control of the Association to the members. The Declarant shall give notice of the Turnover Meeting to each Owner as provided in the Bylaws. The Turnover Meeting shall be conducted in accordance with the Bylaws of the Association. At the Turnover Meeting, the Declarant shall turn over to the Association the responsibility for the planned community of Aspen Winds and of the Association and the Association shall accept such administrative responsibility. At the Turnover Meeting, the Owners shall elect a Board in accordance with the Bylaws. At the Turnover Meeting, the Declarant shall deliver to the Association those items and documents required by ORS 94.616 or applicable successor provisions. In order to facilitate an orderly transition, during the three-month period following the Turnover Meeting, the Declarant or an informed representative shall be available to meet with the Board on at least three mutually acceptable dates to review the documents delivered pursuant to this subsection.

Subsection 7. **LIABILITY.** Neither the Association nor any officer or member of its Board of Directors shall be liable to any Owner for any damage, loss or prejudice suffered or claimed on account of any action or failure to act by the Association, any of its officers or any member of its Board of Directors, provided only that the officer or Board member has acted in good faith in accordance with the actual knowledge possessed by him.

### **SECTION III. MAINTENANCE**

Subsection 1. **ASSOCIATION'S RESPONSIBILITY:** The Association shall maintain and keep in good repair the Common Area through independent contractors of its choosing; such maintenance to be funded as hereinafter provided. This maintenance shall include, but not be limited to, mowing, pruning, trimming and fertilizing all plants, trees, and grass in the common area, replacement of dead plants and trees, weeding flower beds, period adding to and replacement of bark dust, etc..

Subsection 2. **OWNER'S RESPONSIBILITY:** Except as provided in Subsection 1 of this Section, all other maintenance of any Lot and all or any part of the residence thereon shall be the sole responsibility of the Owner.

Subsection 3. **IMPLIED RIGHTS.** The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-laws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege

### **SECTION IV. INSURANCE**

The Board may obtain a public liability policy, or other insurance, covering the Association, and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents, with policy limits the Board deems reasonable. Premiums for all insurance shall be common expenses of the Association. The policy may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

### **SECTION V. ASSESSMENTS**

Subsection 1. **PURPOSE OF ASSESSMENT.** The assessments provided for herein shall be used only for the purposes of maintenance, repair, and replacement of the Common Area as described above, all as may be more specifically authorized from time to time by the Board of Directors.

Subsection 2. **CREATION OF ASSESSMENTS.** Each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association; (a) annual assessments or charges; (b) special assessments, such assessments to be established and collected as hereinafter provided; and (c) specific assessments against any particular Lot which are established pursuant to the terms of this Declaration, including, but not limited to, reasonable fines as may be imposed in accordance with the terms of this Declaration. All such assessments, together with late charges, interest, not to exceed the maximum legal rate, costs, and reasonable attorney's fees actually incurred, shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made.

Subsection 3. **COMPUTATION OF ASSESSMENT.** It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year, which shall include a capital contribution or reserve in accordance with a capital budget separately prepared. The

Board shall cause the budget and the assessments to be levied against each Lot for the following year to be delivered to each member at least thirty (30) days prior to the end of the current fiscal year. The budget and the assessment shall become effective unless disapproved at a meeting by a Majority of the Owners. Notwithstanding the foregoing, however, in the event the membership disapproved the proposed budget or the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

Subsection 4. SPECIAL ASSESSMENTS. In addition to the other assessments authorized herein, the Association may levy special assessments in any year. So long as the total amount of special assessments allocable to each Lot does not exceed Five Hundred Dollars (\$500) in any one fiscal year, the Board may impose the special assessment. Any special assessment which would cause the amount of special assessments allocable to any Lot to exceed this limitation shall be effective only if approved by a Majority of the members. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

Subsection 5. LIEN FOR ASSESSMENTS. All sums assessed against any Lot pursuant to this Declaration, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, as provided herein, shall be secured by a lien on such Lot in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Lot, except for (a) liens for ad valorem taxes; or (b) liens for all sums unpaid on a first Mortgage or on any Mortgage to Declarant duly recorded in the land records of Deschutes County, Oregon, and all amounts advanced pursuant to such Mortgage and secured thereby in accordance with the terms of such instrument.

All other persons acquiring liens or encumbrances on any Lot after this Declaration shall have been recorded in such records shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

Subsection 6. EFFECT OF NONPAYMENT OF ASSESSMENTS; REMEDIES OF THE ASSOCIATION. Any assessments which are not paid when due shall be delinquent. Any assessment delinquent for a period of more than ten (10) days shall incur a late charge in an amount as the Board may from time to time determine. The Association shall cause a notice of delinquency to be given to any member who has not paid within ten (10) days following the due date. If the assessment is not paid within thirty (30) days, a lien, as herein provided, shall attach and, in addition, the lien shall include the late charge, interest at the rate of 12% per annum with monthly compounding on the principal amount due, and all late charges from the date first due and payable, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. In the event that the assessment remains unpaid after sixty (60) days, the Association may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association or its agents the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Section shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the Lot. No Owner may waive or otherwise except liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot.

All payments shall be applied first to costs and attorneys' fees, then to late charges, then to interest, then to delinquent assessments, then to any unpaid installments of the annual assessment or special assessments which are not the subject matter of suit in the order of their coming due, and then to any unpaid installments of the annual assessment or special assessments which are the subject matter of suit in the order of their coming due.

Subsection 7. CAPITAL BUDGET AND CONTRIBUTION. The Board of Directors shall annually prepare a capital budget, which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget, with respect to both amount and timing by annual assessments over the period of the budget. The capital contribution required shall be fixed by the Board and included within the budget and assessments, as provided in Subsection 3 of this Section. A copy of the capital budget shall be distributed to each member in the same manner as the operating budget.

Subsection 8. SUBORDINATION OF THE LIEN TO FIRST DEEDS OF TRUST AND FIRST MORTGAGES. The lien of the assessments, including interest, late charges, costs (including attorneys' fees) provided for herein, shall be subordinate to the lien of any first Mortgage upon any Lot. The sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from lien rights for any assessments thereafter becoming due. Where the Mortgagee of a first Mortgage of record or other purchaser of a Lot obtains title, his or her successors and assigns shall not be liable for the share of the common expenses or assessments by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all the Lots, including such acquirer, his or her successors and assigns.

Subsection 9. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS. The annual assessments provided for herein shall commence as to all Lots then existing and subject to assessment under the Declaration on the first day of the month following the conveyance of the first Lot by the Declarant to a third party purchaser for value and shall be due and payable in a manner and on a schedule as the Board of Directors may provide. The first annual assessment shall be adjusted according to the number of months then remaining in that fiscal year. The date any Lot becomes subject to assessment hereunder shall be the date on which the Lot becomes subject to the Declaration.

## **SECTION VI. AMENDMENT**

Notwithstanding Article IV, of this Declaration, the provisions of this Article III to the Declaration may be amended from time to time unilaterally by the Board (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on Lots subject to this Declaration, provided, however, any such amendment shall not adversely affect the title to any Owner's Lot.

**ARTICLE IV**  
**GENERAL PROVISIONS**

**1. TERM AND AMENDMENT**

These Covenants and Restrictions shall run with and bind all the property for a term of twenty (20) years from the date this declaration is recorded, after which time they shall be automatically extended for successive periods often (10) years. The Grantor has the sole and exclusive authority to terminate, revoke, or amend these Covenants and restrictions until the last lot has been sold and built upon. Thereafter, this declaration or parts hereof can be terminated, revoked or amended only by duly recording an instrument which contains the amendment or the order of revocation or termination and which is signed by the owners of seventy-five (75) percent of the owners of the lots in Aspen Winds.

**2. ENFORCEMENT**

In the event of any violation of any of the provisions of this declaration, the Grantor or any other person or persons owning a lot within the property may, at their option, exercise the right to enforce these Covenants by bringing action in a court of law. Failure by any party to enforce any architectural or other restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The prevailing party in any action brought to enforce the provisions of the declarations shall be entitled to recover all costs, including reasonable attorney fees, incurred.

**3. NOTICES**

Any notice permitted or required to be delivered as provided herein may be delivered personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered forty-eight (48) hours after a copy of the same has been deposited in the United States mail, postage prepaid, by certified mail, addressed to each such person at the last known residence or domicile address of such person.

**4. PAINTING, MAINTENANCE AND REPAIRS**

In the event that the Architectural Control Committee, in its sole discretion, determines that painting, maintenance or repair (hereinafter "work") of a dwelling or lot is reasonably necessary to preserve the appearance and value of said dwelling or lot or an adjacent dwelling or lot, the Architectural Control Committee shall give written notice of the necessity of such work to the Owner of such dwelling or lot, in which event said Owner shall be obligated, at his sole cost and expense, to perform said work. All wooden exterior surfaces shall be painted or stained. Pastels and earth-tone colors are required. All exterior colors are subject to review and approval by the Architectural Committee. Color samples should be submitted with plans, prior to construction. Colors will be expected to be in harmony with the neighborhood. Each house shall be repainted or restained every eight (8) years or less unless it can be demonstrated that specific coatings are adequate.

**5. ACCESS TO SLOPES OR DRAINWAYS**

Each Grantee of a lot agrees for himself, his assigns, heirs or successors in interest, that he will permit access by owners of adjacent lots to slopes or drainage ways located on his property which affect said adjacent lots, when such access is essential for the maintenance of the drainage facilities for the protection and use of property other than the lot on which the slope or drainage way is located.

**6. DRAINAGE**

Each Grantee of a Residential Unit agrees for himself and his assigns that he will not, in any way, interfere with the established drainage pattern of his lot from adjacent lots or other lots in the property or that he will make adequate provisions for property drainage in the event it is necessary to change the established drainage over his lot. For purposes hereof, "established" drainage is defined as the drainage which occurred at the time the overall grading of the property, including landscaping of each lot in the property, was completed by the undersigned Grantor.

7. **SEVERABILITY**

Invalidation of anyone of these Covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

8. **LIMITATION OF LIABILITY OF GRANTOR**

Neither Grantor nor any officer or director thereof shall be liable to any owner on account of action or failure to act by Grantors in performing their duties or rights hereunder, provided that Grantors have, in accordance with actual knowledge possessed by them, acted in good faith.

9. **ADDITIONAL PROPERTY**

Grantor reserves the right to record a Memorandum incorporating this Declaration by reference to include all or any part of any property owned by Grantor which is contiguous to the property listed on Exhibit A (contiguous to include property separated by public street) to the effect that this Declaration would apply to the property described in the Memorandum, the same as if it had been described in exhibit "A:" of this declaration.

IN WITNESS WHEREOF, the undersigned, being the Grantor herein, have hereto set their hands this 11<sup>th</sup> day of June, 2004.  
Grantor:

Kimberly Mountain Development, LLC

By: Robert Duncan  
Robert Duncan, Manager

STATE OF OREGON )

COUNTY OF Des )

I, Donna M Robinson, a Notary Public for the State of Oregon, hereby certify that on the day of June, 2004, personally appeared before me Robert Duncan, who being duly sworn did acknowledge the execution of the foregoing instrument to be their free and voluntary act.

Notary Public for Oregon

My Commission expires: 7/7/04

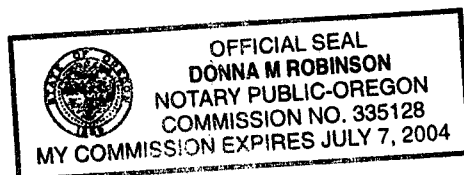


Exhibit A



Property Management

Garron Petrick; Pres.  
2315 NW Cedar Ave.  
Redmond, OR 97756  
Ph541-548-5525

Aspen Winds  
Kimberly Mountain Development LLC

June 18, 2004

Attn: Bob Duncan, Managing Partner

Dear Bob,

Please consider this document our written bid for lawn maintenance at  
Your Aspen Wind Development. Following is our bid:

Maintenance will include weekly lawn mowing, edging, weeding, weed  
eating, fertilizing and blowing grass and debris off of driveways and  
sidewalks. Prices reflected below are good for 1 year from today's date.

**Price per building:****\$76.00 per month  
per building**

Thank You for this bidding opportunity.

  
Smartt Real Estate Inc.

  
Kimberly Mtn. Dev. LLC





PHONE 923-6108

**BID**

ASPEN WINDS  
MAINTANCE PER BUILDING

**COST:**

LAWN MAINTENANCE CONTRACT FOR ASPEN WINDS:

MAINTENANCE WOULD INCLUDE WEEKLY LAWN MOWING, EDGING, WEEDING,  
WEEDEATING, FERTILIZING, BLOWING GRASS OFF DRIVEWAYS & SIDEWALKS.

PRICE PER UNIT: BUILDING

**\$76.00 PER MONTH**

QUESTIONS PLEASE CALL CHRIS KREMA AT 923-6108

CELL 771-7978

SUB TOTAL:

TOTAL: