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After recording return to:

Ashton Homes Corp  
P.O. Box 386  
Hillsboro, OR 97123

**DECLARATION AND ESTABLISHMENT OF PROTECTIVE  
COVENANTS AND RESTRICTIONS**

**PROSPECT PINES**

THIS DECLARATION AND ESTABLISHMENT OF PROTECTIVE COVENANTS,  
RESTRICTION AND RESERVATIONS; MADE THIS 30<sup>th</sup> DAY OF October, 2005  
✓ BY ASHTON HOMES CORP, P.O. BOX 386, HILLSBORO, OREGON 97123  
HEREINAFTER REFERRED TO AS "DECLARANT".

**WITNESSETH:**

**WHEREAS**, Declarant is the owner of that certain real property situated in the County  
of Deschutes, State of Oregon, described in Article I of this Declaration and represented in  
Subdivision Plat recorded on 9/22/05 in Plat Book 2005, Pages 63991,  
Plat Records of Deschutes County, Oregon, hereinafter referred to as "the property"  
and/or "the land"; and ✓

**WHEREAS**, Declarant intends hereby to make a covenant running with the land; and

**WHEREAS**, it is the desire and intention of Declarant to sell the property described in  
Article I hereof and to impose on it mutual, beneficial restrictions under a general plan or  
scheme of improvement for the benefit of all the property described in Article I, and the  
future owners of said property;

**NOW, THEREFORE**, Declarant hereby declares that all of the property described in  
Article I hereof is held and shall be held, conveyed, hypothecated or encumbered, leased,  
rented, used, occupied, and improved subject to the following limitations, restrictions,  
covenants and reservations, all of which are declared and agreed to be in furtherance of a  
plan for the subdivision, improvement, and sale of said property, and are established and  
agreed upon for the purpose of enhancing and protecting the value, desirability and  
attractiveness of said property and every part thereof. All of the limitations, restrictions  
and covenants shall run with the land and shall be binding on all parties having or  
acquiring any right, title, or interest in the property described in Article I hereof or any  
part thereof, and the future owners of said property.

**Page 1 -- PROSPECT PINES CONDITIONS, COVENANTS AND RESTRICTIONS**

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15 OREGON AVENUE, BEND  
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**ARTICLE I**

**PROPERTY SUBJECT TO THIS DECLARATION**

The property subject to this Declaration is known as Prospect Pines described as:

Lots One (1) through Twenty-two (22) PROSPECT PINES, Deschutes County,  
Oregon.

## **ARTICLE II**

### **BASIC RESTRICTIONS**

A. **USE OF PROPERTY.** No building shall be erected, constructed, altered, or maintained on any of said lots other than a residence for a single family (including guests and household servants) with customary and suitable outbuildings.

B. **RESUBDIVISION OF LOTS.** None of the above described lots shall be resubdivided or split into lots of a lesser size than the size of the original lot without the written consent of Declarant, or if Declarant is no longer an owner of any of the lots described in Article I, then without the written consent of all the owners of the lots described in Article I, first had and obtained.

C. **CHANGING GRADES, SLOPES AND DRAINAGE.** No change in the established grade or elevations of said lots, and no change in the established slope of said lots, which alter established drainage patterns shall be permitted.

D. **NUISANCE AND NON-CONFORMITY.** No noxious or offensive trade or activity shall be carried on upon said property, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the owners or occupants of said property, including, but not limited to, the storage of any materials which might create an insect pest control problem, or the ill-maintenance of any plant or landscape materials, or any hazardous substances or toxic waste materials as may be defined and determined by the United States Environmental Protection Agency and/or the State of Oregon, Department of Environmental Quality.

E. **ANIMALS.** No animals, livestock or poultry of any kind shall be raised, bred, kept or permitted within any Lot other than a reasonable number of household pets which are not kept, bred or raised for commercial purposes and which are reasonably controlled so as not to be a nuisance. Any inconvenience, damage or unpleasantness caused by such pets shall be the responsibility of the respective Owners thereof. No dogs shall be permitted to roam the Property unattended, and all dogs shall be kept on a leash while outside a Lot.

F. **TEMPORARY STRUCTURES.** No tents, shacks, trailer, basement, garage or outbuildings shall at any time be used on any lot as a residence, either temporarily or permanently or shall any residence of a temporary character be constructed, placed or erected on any lot.

G. SIGNS. No signs of any kind, or other advertising device of any character, for any purpose or use whatsoever, shall be erected, posted, pasted, painted, displayed or maintained on said property, except that (a) on any one lot one sign, not larger than eighteen (18) by twenty-four (24) inches, advertising the property for sale or lease, may be erected and maintained; (b) however, Declarant or his agents may erect and maintain on said property such signs and other advertising devices of such dimensions as he may deem necessary or proper in connection with the conduct of its operations for the development, improvement, subdivision or sale of said property.

H. POLES, MASTS, ANTENNAS AND SATELLITE DISHES. No poles, masts or antennas of any type, size or height shall be constructed on any lot, or on or above the roof of any dwelling or structure. Satellite dishes and receivers are allowed if they are screened from view of other lots in a reasonable manner

I. UPKEEP OF REAL PROPERTY. Each lot owner shall keep, maintain, water, plant and replant all areas, slopes, banks, rights of way, and set-back areas located on his lot so as to prevent erosion and to present an attractive, clean, sightly and wholesome appearance at all times.

J. STORAGE OF MATERIALS, JUNK AND TRASH. The storage of or accumulation of junk, trash, or other offensive or noxious materials is specifically prohibited.

K. STORAGE OF CARS, TRAILERS, CAMPERS, BOATS, ETC. No house trailer, living trailer, self-propelled vehicle, boat or boat trailer of any type shall be parked on any street, nor shall they be parked at any residence permanently, if visible from the street, or adjoining side lots. For purpose of these CC&R's, "permanently" shall mean in excess of 14 days in any 30 day period. No vehicle painting, repairing or mechanical work, other than customary maintenance work or minor emergency repairs, shall be done on any building site except in enclosed areas, which areas shall be sufficiently screened from the street and adjacent lots to eliminate any possibility of a nuisance being created by storage of such items or activities involving such items.

L. MOTORCYCLES. No motorcycles, all terrain vehicle, or any other motorized recreational vehicle shall be operated on any lot.

M. USE OF GARAGES. No dwelling shall be constructed or maintained on a building site without a garage large enough to containing at least one standard size automobile, which garage shall be used to park the automobile and for other purposes not incompatible with such use. The use of carports in place of garages is specifically prohibited.

N. DILIGENCE IN CONSTRUCTION. The work of constructing and erecting any building or structure shall be pursued diligently and continuously from the commencement thereof until the same is completed. If any outbuilding is constructed before the residence, the construction of the outbuilding must be pursued with due diligence and completed within one year from the start of construction. Construction of the residence must also be pursued with due diligence and be completed within one year of completion of the outbuilding. Such temporary buildings must be removed as soon as the dwelling is completed. All structures shall be suitably painted, colored or stained immediately upon construction.

O. EXTERIOR LIGHTS. No exterior flood lighting shall be allowed to significantly encroach on neighboring properties. This includes permanent security lights, porch lights and landscape lighting. Temporary seasonal lighting is allowable if it remains in harmony with the surrounding neighborhood.

### **ARTICLE III**

#### **BUILDING STANDARDS**

A. DESIGN AND STYLE. Buildings and structures shall be constructed and maintained utilizing high quality materials and workmanship and be of such character, style and design as to be in harmony with the urban atmosphere of Prospect Pines the surrounding houses, structures and the general area.

B. MINIMUM AREA OF HOUSE. The total square footage of any house excluding open porches, decks and garages, shall be not less than 1,200 square feet for multiple level houses and 1,200 square feet for single level houses.

C. HEIGHT RESTRICTIONS. No building shall have a height in excess of 35 feet, when measured from the highest point of the buildings foundation. No building appurtenances and projections such as spires, belfries, cupolas and chimneys extending above roof level may exceed 35 feet in height.

D. ROOF DESIGN AND MATERIALS. No flat roofs or rock roofs shall be permitted. The roofing materials to be used shall be mission tile, clay fired flat tile, concrete flat tile products, and/or 30 year "architectural" laminated composition shingles.

E. EXTERIOR SIDING MATERIALS. The principal siding materials for all structures shall be wood lap siding, brick, stone, stucco or equivalents. In no event shall bare plywood siding without batting be allowed.

F. WINDOWS. The frame materials used for windows shall be compatible and in harmony with the house.

G. FIREPLACE CHASES. Fireplace chases shall consist of masonry, stone, or stucco type material. Wood chases shall be sided in same character as siding on the home.

H. DRIVEWAYS. All driveways located from the street to houses or other buildings shall be asphalt paving, concrete, or paving stones.

I. FENCES. No fences or boundary hedges shall be installed without the prior written approval of the Architectural Review Committee.

J. LANDSCAPING. All landscaping on a Lot must be completed within one hundred twenty (120) days from the date of substantial completion of the Residence constructed thereon, as determined by the Architectural Control Committee. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon written approval of the Architectural Control Committee. All landscaping on any lot shall be maintained and cared for in a manner consistent with the standards of design and quality as originally established by Declarant or Architectural Review Committee.

## **ARTICLE IV**

### **ARCHITECTURAL REVIEW COMMITTEE**

A. ARCHITECTURAL REVIEW. No improvement shall be commenced, erected, placed or altered on any Lot until the construction plans and specifications showing the nature, shape, heights, materials, colors, and proposed location of the improvement have been submitted to and approved in writing by the ARC. It is the intent and purpose of this Declaration to assure quality of workmanship and materials, to assure harmony of exterior design with the existing improvements and landscaping and as to location with respect to topography and finished grade elevations. The ARC is not responsible for determining compliance with structural and building codes, solar ordinances, zoning codes or other governmental regulations, all of which are the responsibility of the applicant. The procedure and specific requirements for review and approval of construction shall be set forth in design guidelines and standards adopted from time to time by the ARC. In all cases which the ARC consent is required by this Declaration, the provisions of this Article shall apply.



**B. ARCHITECTURAL REVIEW COMMITTEE, APPOINTMENT AND REMOVAL.** The ARC shall consist of no fewer than three (3) members and no more than five (5) members, as the Declarant may appoint from time to time. Declarant reserves the right to appoint all members of the ARC and all replacements thereto until Prospect Pines is one hundred percent (100%) built out. After build out, Declarant shall delegate the right to appoint and remove members of the ARC to the homeowners of Prospect Pines. The terms of office for each member of the ARC shall be for one (1) year unless lengthened or shortened by the committee at the time of appointment. The committee may appoint any or all of its members for the ARC and there shall be no requirement for non-committee members on the ARC. The Committee may appoint one or more members to the ARC who are not Owners, but who have special expertise regarding the matters which come before the ARC. In the sole discretion of the Committee such non-Owner members of the ARC may be paid.

**C. MAJORITY ACTION.** Except as otherwise provided in this Declaration, a majority of the members of the ARC shall have the power to act on behalf of the ARC, without the necessity of a meeting and without the necessity of consulting the remaining member of the ARC. The ARC may render its decision only by written instrument setting forth the action taken by the members consenting thereto.

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

**E. ARC DECISION.** The ARC shall render its approval or denial decision with respect to the construction proposal within fifteen (15) days after it has received all material required by it with respect to the application. All decisions shall be in writing. In the event the ARC fails to render its decision of approval or denial in writing within thirty (30) days of receiving all material required by it with respect to the proposal, the application shall be deemed approved.

**F. ARC DISCRETION.** The ARC may, at its sole discretion, withhold consent to any proposed work if the ARC finds the proposed work would be inappropriate for the particular Lot or incompatible with the design standards that the ARC intends for Prospect Pines. Consideration such as siting, shape, size, color, design, height, solar access, or other effect on the enjoyment of other Lots and any other factors which the ARC reasonably believe to be relevant, may be taken into consideration by the ARC in determining whether or not to consent to any proposed work.

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

H. APPEAL. At any time after Declarant has delegated appointment of the members of the ARC to the Homeowners of Prospect Pines pursuant to Section B, any owner adversely impacted by action of the ARC may appeal such action to the Committee. Appeals shall be made in writing within ten (10) days of the ARC's action and shall contain specific objections or mitigating circumstances justifying the appeal. A final, conclusive decision shall be made by the Committee within twenty (20) days after receipt of such notification. The determination of the Committee shall be final.

I. EFFECTIVE PERIOD OF CONSENT. The ARC's consent to any proposed work shall automatically be revoked three (3) months after issuance unless construction of the work has been commenced or the Owner has applied for and received an extension of time from the ARC.

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

K. NONCOMPLIANCE. If the ARC determines that an Owner has not constructed an improvement consistent with the specifications of an ARC approval, and if the Owner fails to diligently commence to remedy such noncompliance in accordance with the provisions of the notice of noncompliance, then at the expiration of the third (3<sup>rd</sup>) day from the date of such notification, the hearing shall be set not more than thirty (30) days from the date of notice of noncompliance. At the hearing, if the ARC finds that there is no valid reason for the continuing noncompliance, the ARC shall determine the estimated costs of correcting it and may fine the Owner for such noncompliance. The ARC shall then require the Owner to remedy or remove the same within a period of not more than ten (10) days from the date of the ARC's determination. If the Owner does not comply with the ARC's ruling within such period or within any extension of such period as the ARC, at its discretion, may grant, the ARC may either remove the noncomplying improvement, remedy the noncompliance, and/or record a notice of noncompliance in the county deed records. The costs of any such action shall be assessed against the Owner as a Reimbursement Assessment either before or after any remedied action is taken.

L. LIABILITY. Neither the ARC nor any member thereof shall be liable to any Owner, Occupant, or builder for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the ARC or a member thereof, provided only that the member has, in accordance with the actual knowledge possessed by him/her, acted in good faith.



M. ESTOPPEL CERTIFICATE. Within fifteen (15) working days after written request is delivered to the ARC by an Owner, and upon payment to the ARC of a reasonable fee fixed by the ATC to cover costs, the ARC shall provide such Owner with a certificate executed by the Chairman or other authorized member of the ARC certifying with respect to any Lot owned by the Owner, that as of the date thereof either: (a) all improvements made or done upon or within such Lot by the Owner comply with this Declaration, or (b) such improvements do not so comply, in which event the certificate shall also identify the noncomplying improvements and set forth with particularity the nature of such noncompliance. The Owner, Owners' heirs, devisees, successors and assigns shall be entitled to rely on the certificate with respect to the matters set forth. The Certificate shall be conclusive as between the Declarant, the ARC, the Association and all Owners, and such persons deriving any interest through any of them.

N. FEES. The ARC may charge a reasonable application fee and charge applicants additional costs incurred or expected to be incurred by the ARC to retain architects, attorneys, engineers and other consultants to advise the ARC concerning any aspect of the applications and/or compliance with any appropriate architectural criteria or standards, including, without limitation, those pertinent to house siting and height. Such fees shall be collectible as assessments.

## **ARTICLE V**

### **SCOPE AND DURATION**

All the foregoing covenants and restrictions are imposed upon said property for the direct benefit thereof and of the owners thereof and the remainder of the property described in Article I, and the owners thereof, as a part of a general plan of improvements, development, building and occupation; and shall run with the land and shall be binding upon all of the owners of said property and all persons claiming under them, and continue to be in full force and effect for a period of 25 years from the date this Declaration is recorded. After said 25-year period, the covenants and restrictions shall be automatically extended for successive periods of 10 years each, unless an instrument, signed by the then owners of record, has been recorded, agreeing to amend this Declaration in whole or in part or to terminate said Declaration.

## **ARTICLE VI**

### **AMENDMENTS**

Declarant reserves the right to amend these CC&R's at any time by an instrument in writing signed and recorded by Declarant so long as Declarant is an owner of an original lot of record in the subdivision. When Declarant no longer owns any of the property, and only after that time, these CC&R's may be amended by an instrument executed by fifteen of the twenty two owners of record of said property, which said written instrument shall become effective upon its recording in the Office of the County Recorder of Deschutes, State of Oregon.

## **ARTICLE VII**

### **BREACH**

A. The covenants hereby established shall operate as covenants running with the land; and further Declarant and/or the owner of any of the property described in Article I, including any bona fide purchaser under contract, in the event of a breach of any said restrictions and covenants or a continuance of any such breach, may by appropriate legal proceedings take steps to enjoin, abate or remedy the same, subject to the restriction in Article IX. It is hereby agreed that damages are not an adequate remedy for such breach.

B. Every act or omission whereby any of the covenants contained in this Declaration are violated in whole or in part is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable and may be exercised by Declarant, or the owner of any real property described in Article I.

C. The remedies herein provided for breach of the covenants contained in this Declaration shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

D. A breach of the covenants contained in this Declaration shall not affect or impair the lien or charge of any bona fide mortgage or deed of trust made in good faith and for value on any lot; provided, however, that any subsequent owner of such property shall be bound by said covenants, whether such owner's title was acquired by foreclosure or in a trustee's sale or otherwise. A lender who acquired title by foreclosure or deed in lieu of foreclosure or trustee's sale shall not be obligated to cure any breach of the covenants which occurred prior to such acquisition of title but shall be bound by said covenants.

## **ARTICLE VIII**

### **RIGHT TO ENFORCE**

The provisions contained in this Declaration shall inure to the benefit of and be enforceable solely by Declarant, so long as Declarant is the owner of any of the property described in Article I. As such time as Declarant is no longer the owner of any of the property described in Article I, then in that event, the provisions contained in this Declaration shall inure to the benefit of and be enforceable by the owners of any of the property described in Article I, and each of their legal representatives, heirs, successors or assigns, and the failure to enforce any such covenant or restriction herein contained shall in no event be deemed to be a waiver of the right to do so thereafter. In any legal proceeding commenced by anyone entitled to enforce or restrain a violation of this Declaration, or any provision thereof, the losing party or parties shall pay the attorney's fees of the winning party or parties in such amount as may be fixed by the Court in such proceeding.

Declarant's right to enforce any of the provisions contained herein shall terminate at such time as Declarant is no longer an owner of any of the property described in Article I. Neither Declarant nor any of his agents or representatives shall be liable to any owner for failure to enforce any provision of this declaration.

#### **ARTICLE IX**

##### **SEVERABILITY**

In the event that any of the provisions of this Declaration are held to be invalid or unlawful by a final judgment of a Court of competent jurisdiction, such invalidity or illegality shall not affect the validity of any of the other provisions hereof.

#### **ARTICLE X**

##### **PROTECTION FOR MORTGAGEES AND TITLE INSURANCE COMPANIES**

The owner of any encumbrance for value on any lot and any corporation insuring the lien of such encumbrance may conclusively presume that no breach exists under these CC&R's, provided such encumbrance is recorded in the Office of the County Recorder of Deschutes County prior to the commencement of any action to establish any such breach.

#### **ARTICLE XI**

##### **DECLARANT'S SPECIAL RIGHTS**

A. GENERAL. Declarant has purchased the developed Lots and other improvements within Prospect Pines. The completion of the development work and the marketing and sale of the Lots is essential to the establishment and welfare of the property as a residential community. Until the Homes on all Lots on the Property have been constructed, full completed and sold, with respect to each Lot on the Property, the Declarant shall have the special rights set forth in this Article 11.

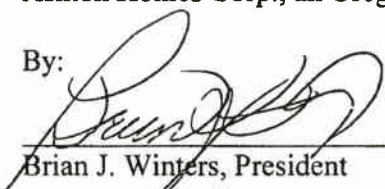
B. MARKETING RIGHTS. Declarant shall have the right to maintain sales office and model on one or more of the Lots which the Declarant owns. The Declarant and prospective purchasers and their agents shall have the right to use and occupy the sales office and models during reasonable hours any day of the week. The Declarant may maintain a reasonable number of "For Sale" signs at reasonable locations on the Property.

C. SIZE AND APPEARANCE OF PROSPECT PINES. Declarant shall not be prevented from increasing or decreasing the number of Lots that may be annexed to Prospect Pines including landscaping or any other matter directly or indirectly connected with Prospect Pines in any manner deemed desirable by Declarant, provided that the Declarant obtains governmental consents required by law.

IN WITNESS WHEREOF, the undersigned being Declarant herein, has  
executed this document this 20 day of October, 2005.

Ashton Homes Corp., an Oregon Corporation

By:

  
Brian J. Winters, President

STATE OF OREGON )

) ss.  
County or Deschutes

On the 20 day of October, 2005, personally appeared the above named,  
Brian J. Winters, President of Ashton Homes Corp. and acknowledged the foregoing  
instrument to be his voluntary act and deed.

Before Me:

B. Christine Fissori

Notary Public for Oregon

My commission expires: 7/18/08

