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File No. 34144

State of Montana }  
County of Carbon } ss. This instrument file # 32235 was filed in my  
office this 13th day of April, 2006  
at 12:05 o'clock P. m.  
Linda M. Ladvala  
County Clerk-Recorder  
by Murray Hargrave, Apt  
Rec'd 84 p. 1

322351

### COVENANTS AND RESTRICTIONS FOR THE ASPENS ON ROCK CREEK

WHEREAS, KIELY CONSTRUCTION, L.L.C., aka Kiely Construction Company LLC, is the sole owner of all of the following described real property and all portions thereof, located in Carbon County, Montana:

All townhome units in The Aspens on Rock Creek, a townhome project located on Lot 1 of Island at Rock Creek Subdivision, Phase 1, according to the official plat thereof on file and of record in the office of the Clerk and Recorder of Carbon County, Montana, as Plat No. 1552 AM.

Together with the common elements appurtenant to each unit, as the common elements are described in the Declaration of Unit Ownership for The Aspens On Rock Creek.

WHEREAS, the undersigned owner intends that said units and common elements be developed, sold and improved pursuant to a common plan of development, and desires to place covenants and restrictions upon said units for the benefit of the owners of all of said units.

NOW, THEREFORE, the undersigned hereby declares that all of the above-described property shall be held, sold and conveyed subject to the following restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of the above-described real property.

Developer, or its assigns, has the right, but is not obligated, to expand The Aspens on Rock Creek project in the future, to include all or part of the following real property, hereinafter referred to as the expansion property:

Tracts A and B of Certificate of Survey 1552 lying in the City of Red Lodge and located in the NE1/4 and the SE1/4 of Section 27, Township 7 South, Range 20 East, P.M.M., Carbon County, Montana.

EXCEPTING therefrom Lots 1, 2 and 3 of Island at Rock Creek Subdivision, Phase 1, according to the official plat thereof on file and of record in the office of the Clerk and Recorder of Carbon County,

Montana.

In the event an amendment to the Declaration of Unit Ownership for The Aspens on Rock Creek which includes all or any part of the expansion property in The Aspens on Rock Creek project is placed of record in the office of the Carbon County Clerk and Recorder, the provisions of these Covenants and Restrictions shall thereafter be applicable to all of the property included in The Aspens on Rock Creek project and to all persons who use the facilities of the project:

The covenants, restrictions and conditions herein contained shall run with the land and shall be binding on the present owner and on all parties and persons claiming under it.

The Grantees of any unit, by acceptance of a conveyance, covenant and agree faithfully to observe and abide by all of said conditions, covenants and restrictions.

#### DEFINITIONS

Unless otherwise expressly provided, the following words and phrases, when used in this Declaration of Restrictions, shall have the following meanings:

1. **Assessment.** A fee payable by an Owner to the Association as determined by the Board of Directors.
- 3 **Association.** The Aspens on Rock Creek Owners Association, a Montana non-profit corporation.
2. **Board or Board of Directors.** The Board of Directors of the Association, as it shall be constituted from time to time.
3. **Bylaws.** The Bylaws of the Association as restated or amended from time to time.
4. **Common Areas.** The streets, recreational areas, and other facilities within The Aspens on Rock Creek which serve more than one unit; the common areas are more fully described in the Declaration.
5. **Declaration.** The Declaration of Unit Ownership for The Aspens on Rock Creek as amended from time to time.
6. **Developer.** KIELY CONSTRUCTION, L.L.C., aka Kiely Construction Company LLC, and its successors and assigns; provided, however that no successor or assignee of the Developer shall have any rights or obligations of the Developer hereunder, unless specifically set forth in an instrument of succession or

assignment or unless such rights and obligations pass by operation of law.

7. **Owner.** The record holder or holders of title to a unit in The Aspens on Rock Creek. If any unit is sold under a recorded contract for sale to a purchaser, the purchaser, rather than the fee owner, shall be considered the "Owner".

8. **Person.** Any natural person, corporation, partnership, association, trustee, personal representative of a decedent's estate, or other legal entity.

9. **Unit.** A parcel of land, together with the townhomes constructed upon that parcel, as more fully described in the Declaration.

### USE

1. The following restrictions apply to use of all units and common areas:

(a) Types of Uses Allowed. The units and common areas shall be used only for residential purposes except that an owner may use a portion of a unit for an office so long as the activities therein shall not interfere with the quiet enjoyment or comfort of any other owner or occupant and provided the use complies with the applicable zoning ordinances of the City of Red Lodge. In addition, Developer shall have the right to maintain a construction office and a sales office on the property until all units are sold.

(b) Pets. A maximum of two (2) pets shall be permitted in each unit only if kept under the owner's control at all times. No pets shall be allowed to run loose on the common area. Owners shall be responsible for promptly cleaning up after their pets, and for payment for any damage caused by their pets. Owners shall pay a fine, imposed by the Board, of \$50.00 for a second violation of any of these pet restrictions and a fine of \$100.00 for each violation thereafter. Such fines shall be a common expense, payable only by the offending unit owner. In addition, the Board may require an owner to either keep a pet inside or permanently remove it from The Aspens on Rock Creek project if the Board receives two bona fide complaints that the animal is a nuisance from one or more other owners within a six (6) month period. No wolf hybrids or vicious breeds of dog, including, but not limited to, pitbulls, rottweiler, staffordshire or mastiffs shall be permitted in the project.

(c) Nuisances. No nuisances or unlawful activities shall be allowed on or within any unit or the common areas, nor shall any use or practice be allowed which interferes with the peaceful possession of the property.

(d) Alterations to Buildings and Common Elements. Nothing shall be done in, on, or to any unit or in, on or to the limited or general common elements which will impair the structural integrity of any building. Except as otherwise provided herein, no unit owner or occupant shall erect or place any building or structure, including fences, walls, patios and decks, on any common area, add or remove landscaping, nor make any other additions or alterations to any

common areas, or to the exterior of his unit, except in accordance with plans and specifications approved by the Board of Directors. If plans and specifications have not been approved in writing, by the Board within forty-five (45) days after submission, they shall be deemed disapproved. This restriction does not apply to Developer during construction and landscaping of units and common areas.

- (e) Satellite Dishes and Antennas. No antennas or satellite dishes exceeding one meter in diameter or diagonal measurement, and no air-conditioning units, wiring or any other device shall be installed on the exterior of any building, in a yard, or on common elements without prior written approval of the Board. Owners may install a small satellite dish or antenna, not exceeding 1 meter in diameter or diagonal measurement, in their yard at the back or side of their townhome, or on the exterior surface of their townhome, without prior approval of The Aspens on Rock Creek Board of Directors.
- (f) Hot Tubs. No outdoor hot tubs shall be permitted without the prior written approval of the Board of Directors. All outdoor hot tubs must be installed in a manner that minimizes noise and vibration.
- (g) Garbage. All garbage and trash must be placed in the proper receptacles designated for refuse collection and no garbage or trash shall be placed elsewhere on any common element; all trash containers, except dumpsters which belong to or are leased by the Association, if any, must be kept inside the garage except on collection days. This restriction shall not apply to areas under construction nor to construction dumpsters.
- (h) Noise. Residents and their guests shall exercise care about making noise which may disturb other residents. No unit owner shall make or permit noise on common areas between the hours of 11:00 PM. and the following 7:00 am., if such noise shall disturb or annoy occupants of the other unit.
- (i) Parking. Unit owners shall not park vehicles in such a manner as to block sidewalks or driveways nor shall they permit any member of their family, guests or tenants to do so. Junked or non-operational vehicles, boats and trailers and motorhomes, shall not be parked on common areas or in driveways for a period exceeding 5 consecutive days or 30 total days in any one calendar year. No on street parking shall be allowed. Improperly parked vehicles may be removed at the owner's expense.
- (j) Blocking Access. Owners shall not take or permit any occupant or guest to take any action which impairs vehicle or pedestrian access to another unit.
- (k) Fire Prevention. No unit owner shall perform any act or store anything within or immediately adjacent to his unit which might increase the rate of fire insurance for either townhome or increase the probability of fire as a result of such act or the storage of such items.

## RULES AND REGULATIONS.

Administrative rules and regulations concerning the use of the common elements may be promulgated and amended by the Board of Directors with the approval of 75% of the members entitled to vote. However, that no amendment shall take effect without the approval of Developer until such time as all units have been sold by Developer.

A copy of the Association's current rules and regulations shall be provided to each unit owner by the Secretary of the Association, without cost, upon receipt of a request therefor.

## MISCELLANEOUS

1. **Severability.** Invalidation of any one 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.

2. **Alterations to these Restrictions.** Until sale of all units, including expansion units, Developer shall have the right to amend these Covenants and Restrictions without consent of any other townhome unit owner. Any other amendment to these restrictions must be in writing and signed by the owners of no less than 75% of the units. These restrictions may be revoked in whole or in part and additional provisions may be added by written amendment signed by the owners of no less than 90% of the units. No amendment shall be effective until it is recorded in the office of the Carbon County Clerk and Recorder. No addition to or amendment or revocation of these restrictions shall take effect prior to sale of all units by Developer unless signed by Developer.

3. **Enforcement.** The Association, and each and every one of the owners of units in The Aspens on Rock Creek shall have the right to enforce these Covenants and Restrictions and any and all amendments thereto by civil action, including the right to injunctive relief and for damages, it being presumed that some damage would occasioned, by reason of the failure of any unit owner or owners to comply with these restrictions and the covenants herein contained. In addition, the Board may adopt, and amend from time to time, a reasonable schedule of fines for violation of any of the provisions of these Covenants and Restrictions, and charge those fines to unit owners in violation of these Covenants and Restrictions. Before any fine may be imposed, the schedule of fines must be approved by a majority of the unit owners. The Board of Directors is hereby

authorized to adopt a schedule of fines for violation of any of the provisions herein, and for violation of any additional administrative rules and regulations adopted by the Board, and to assess such fines against all owners who violate these provisions. The owner of each unit shall be responsible for fines resulting from the conduct of the occupants of the unit and their guests.

If an owner wishes to dispute the imposition of a fine against that owner, the owner must submit the dispute to the Association Arbitrator within six (6) weeks after receipt of written notice of the fine; failure of an owner to submit the dispute to arbitration within six (6) weeks shall be deemed an admission that the fine was properly imposed by the Board.

Fines imposed on a unit owner shall be deemed an assessment of a common expense, payable only by that unit owner and shall be a lien on the unit of the assessed owner. Imposition of a fine by the Board shall not be deemed an election of remedies or a waiver of any other remedies available to the Association, or any unit owner, for violation of these Covenants and Restrictions.

Failure of the Association, its Board of Directors or any of its members to enforce the provisions of these Covenants and Restrictions shall not be deemed a waiver of the right to do so in the future.

In the event any owner, occupant or guest of any occupant fails to abide by the provisions herein, or the administrative rules and regulations adopted by the Board, the Board shall be entitled to recover from the unit owner all costs and attorney fees incurred by it in compelling compliance, with or without initiating arbitration or filing a lawsuit, including collection of fines imposed for violations. Costs and attorney fees shall be a lien on the unit of the violating owner and may be foreclosed in the same manner as the lien for common expenses.

#### AMENDMENT

(a) Prior to sale and closing of all townhomes, including expansion units, these Covenants and Restrictions may be amended by Developer. Each owner, by acceptance of a deed to any townhome, shall be deemed to have approved any such amendment by Developer and to have granted to Developer the power, pursuant to 70-15-301 MCA, to make such amendments. Each lender, by recordation of a mortgage, trust indenture or contract for sale on any unit shall be deemed to have approved any amendment except those listed in Section 14(c) below, and to have granted to Developer the power, pursuant to 70-15-301 MCA, to make such

amendments.

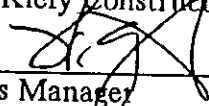
(b) These Covenants and Restrictions may also be amended by the Association in a duly constituted meeting called for such purpose or by written petition, circulated among the owners; provided, however, that no amendment shall take effect without the approval of the Developer, until such time as all units, including those on the expansion property, have been sold by Developer. No amendment shall take effect unless approved by at least 75% of the Class "A" members entitled to vote and until a copy of the amendment, certified by the President and Secretary of the Association is recorded in the office of the Clerk and Recorder of Carbon County, Montana; provided, however, that the Covenants and Restrictions shall always include those particulars required to be included therein by the Montana Unit Ownership Act. This Amendment must also be signed by Developer, so long as Developer owns any units, including expansion units.

#### CONFLICTS

All owners of townhome units in The Aspens on Rock Creek must also abide by the Restrictions, Covenants and Conditions contained in Island of Rock Creek Subdivision Declaration of Restrictions, Covenants and Conditions filed in the office of the Clerk and Recorder of Carbon County, Montana, as instrument File No. 319575, as amended or supplemented from time to time. In the event of a conflict between the Covenants and Restrictions for The Aspens on Rock Creek and those for Island of Rock Creek Subdivision, the more restrictive provision shall be binding upon all owners.

IN WITNESS WHEREOF, the Manager of KIELY CONSTRUCTION, L.L.C., aka Kiely Construction Company LLC, has executed these Covenants and Restrictions this 12<sup>th</sup> day of April, 2006.

KIELY CONSTRUCTION, L.L.C.  
aka Kiely Construction Company LLC

By:  \_\_\_\_\_  
Its Manager

STATE OF MONTANA )  
County of CARBON ) ss.

This instrument was acknowledged before me on April 12th, 2006, by WILLIAM KIELY, as Manager of KIELY CONSTRUCTION, L.L.C., aka Kiely Construction Company LLC.

Patricia M. Wallila  
PATRICIA M. WALLILA  
(print or type name of notary)  
Notary Public for the State of MONTANA  
Residing at ROBERTS MT  
My Commission Expires 7-6, ~~200~~ 2010

