

APN # 1219-15-002-051

WHEN RECORDED, MAIL TO:  
MIKIM DEVELOPMENT COMPANY, LLC  
440 Foothill Road  
Gardnerville, Nevada 89410

**DECLARATION  
OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
WHISPERING PINES, A RESIDENTIAL DEVELOPMENT**

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**DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
WHISPERING PINES**

THIS DECLARATION is made this 13 day of August, 2008, by MIKIM DEVELOPMENT COMPANY, LLC, A Nevada Limited Liability Company, Owner, ("Declarant").

**RECITALS**

A. Declarant is the owner of certain real property located in Douglas County, Nevada, described in Exhibit A (the "Property").

B. Declarant is subjecting the Property to a series of parcel maps resulting in 11 single-family lots.

**DECLARATION**

NOW, THEREFORE, Declarant hereby declares that the real property described in Exhibit A is and shall be held, conveyed, encumbered, leased, used, occupied, improved, and otherwise affected in any manner subject to the provisions of this Declaration, all of which are hereby declared to be in furtherance of a general plan for the development, improvement, and sale of such property, and to be for the purpose of enhancing, maintaining, and protecting the value and attractiveness of such property. All provisions hereof shall be deemed to run with the land as covenants running with the land or as equitable servitudes, as the case may be, and shall constitute benefits and burdens to the Declarant and its assigns and to all persons hereafter acquiring or owning any interest in such property; however such interest may be obtained.

**Article 1 - Definitions**

Unless the context otherwise specifies or requires, the following words and phrases when used herein shall have the meanings set forth in this Section.

**County.** The "County" means Douglas County, Nevada.

**Declarant.** The "Declarant" means MIKIM DEVELOPMENT COMPANY, LLC, who have made and executed this Declaration, or their successors.

**Declaration.** The "Declaration" means this instrument and amendments thereto.

**Deed of Trust.** A "deed of trust" means a deed of trust or a mortgage encumbering any Parcel.

**Drainage Improvements.** "Drainage Improvements" means the following: All features, appurtenances, and facilities (including drainage improvements, conveyance

structures, and detention/retention basins) for detention of storm water in the Project, except:

**First Deed of Trust.** A "first deed of trust" means a deed of trust or a mortgage having priority over all other deeds of trust encumbering the same portion of the Project.

**FIVE CREEK.** Means Five Creek, LLC, a Nevada Limited Liability Company, who is the developer of the adjoining Jobs Peak Development that is a third party beneficiary to these declarations.

**Foreclosure.** A "foreclosure" means a foreclosure of a mortgage or exercise of power of sale pursuant to a deed of trust.

**Institutional Holder.** An "institutional holder" means a mortgagee that is a bank, savings and loan association, established mortgage company, or other entity chartered under federal or state laws, or any corporation or insurance company, or federal or state agency.

**Lot.** A "Lot" means any lot created by the Plat.

**Owner.** An "Owner" means any person, persons, or entity, including Declarant, owning a Parcel.

**Parcel.** A "Parcel" means any Lot or portion thereof, or any other Project of the Project.

**Plat.** The "Plat" means the official parcel map(s) of MIKIM DEVELOPMENT COMPANY, LLC, created in accordance with NRS Chapter 278 and filed in the Office of the County Recorder of Douglas County, Nevada, on 8.13.02, 2001, as Document Nos. 549321, 549322, 549323 and 549324.

**Project.** The "Project" means the real property described in Exhibit A, including the land, buildings, and other improvements now or hereafter thereon, together with all easements, rights, and appurtenances belonging thereto.

## **Article 2 - Architectural Committee**

### **2.1 Architectural Committee Purpose.**

In order to provide for the orderly development of the Project and to aid in establishing a compatible architectural format, there is hereby created an Architectural Committee.

### **2.2 Architectural Committee Membership.**

At all times, there shall be at least two members of the Architectural Committee.

### **2.3 Original Architectural Committee.**

The original Architectural Committee shall consist of Michael Hickey and Kim Posnien, or their assigns.

**2.4 Original Architectural Committee Address.**

The address of the Architectural Committee shall be 440 Foothill Road, Gardnerville, Nevada 89410.

**2.5 Architectural Committee Vacancy.**

In the event of resignation, incapacity, failure, or death of any member or members of the Architectural Committee, the remaining member or members shall fill any vacancy or vacancies. Any vacancy can be filled by the owner of a Lot within the Project.

**2.6 Architectural Committee Member Compensation.**

None of the members of the Architectural Committee shall be entitled to any compensation for services rendered under this Declaration.

**2.7 Architectural Committee Rules, Regulations and Procedures.**

The Architectural Committee shall have the power to establish its own internal rules and regulations and procedural details.

**2.8 Conformity of Design.**

The Architectural Committee shall exercise its best judgment to see that all improvements, construction methods and materials, landscaping, fencing and alterations on each lot in the Project are in conformance with the committee's quality standards and are harmonious with the exterior design, materials, color, siting, height, topography, grade, landscaping and fencing of existing structures located on other lots in the Project.

**2.9 Commencement of Construction.**

No dwelling unit, garage, fence, wall, retaining wall or any type of construction activity, including grading and/or removal of natural or other ground cover, shall be commenced or placed upon any lot until two complete sets of architectural plans and specifications thereof, which plans and specifications shall include a plot plan indicating and establishing the exact location of all structures, a foundation plan, a floor plans for each floor and, where applicable, a basement, front, side and rear elevations, sections, exterior color samples, and landscape and fence plans and details, shall have first been submitted to the Architectural Committee for approval, and said approval shall have been obtained in writing from the Architectural Committee.

**2.10 Preliminary Plans.**

The Architectural Committee recommends, but does not require, that preliminary drawings be presented before final plans and specifications are completed.

**2.11 Major Remodeling.**

If any redecorating or alteration involving the exterior of any existing structure is proposed which involves remodeling, a structural change, or a change in existing exterior finish materials, it shall be necessary for the applicant to submit architectural plans and specifications, and exterior color samples showing such changes in order to receive written approval of the Architectural Committee prior to commencing said work.

### **2.12 Minor Remodeling.**

If any redecorating or alteration involving the exterior of any existing structure is proposed which does not involve remodeling a structural change, or a change in existing exterior finish materials, it shall be necessary for the applicant to submit exterior color samples showing such changes in order to receive written approval of the Architectural Committee prior to commencing said work.

### **2.13 Architectural Committee Approval.**

The Architectural Committee shall examine and approve or stipulate to any changes or alterations in the architectural plans and specifications for any structure, dwelling unit, swimming pool, hedge, fence or wall proposed to be constructed on any lot. Any such changes or alterations in the architectural plans and specification duly submitted to the Committee shall be made only in the best and continuing interest of maintaining a superior tone and quality of architecture through the Project.

### **2.14 Architectural Committee Approval Method.**

The Architectural Committee's approval will be evidenced by the endorsement of the Committee on both sets of plans and specifications. The Committee will retain one set of the plans, and specifications and one set will be returned to the applicant.

### **2.15 Architectural Committee Procedures.**

The Architectural Committee's approval or disapproval as required in this Declaration shall be in writing. Immediately upon receipt of the plans from the applicant, the Committee shall submit one set of the drawings to FIVE CREEK for its review, comments and suggestions. FIVE CREEK shall, within 10 calendar days of receipt of the plans provide its comments to the Committee for its consideration. In the event the Committee or its designated representative(s) fails to approve or disapprove plans and specifications within thirty (30) days after such plans and specifications have been submitted to it, or if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related Declaration shall be deemed to have been fully complied with.

### **2.16 Waiver of Damages.**

Any person, association or other entity acquiring the title to any lot or lots in the Project, or any person, association or other entity submitting plans to the Architectural Committee for approval, by so doing does agree and covenant that he or it will not bring any action or suit to recover damages against the Architectural Committee, its members, consultants, advisors, employees or agents.

### **2.17 Architectural Committee Liability.**

No member of the Architectural Committee shall be liable for damages to any person, association, or other entity submitting any architectural plans for approval, or to any owner or proposed owner of a lot or lots within the Project, by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove architectural plans and specifications.

**2.18 Waiver of Right to File an Action Against Douglas County.**

Each Project lot owner, by purchase of a lot or lots in the Project, agrees that no action will be brought against Douglas County arising out of Douglas County's not issuing or not having issued a building permit because of nonapproval of the Architectural Committee, or arising out of Douglas County's issuing or having issued a building permit without prior approval of the Architectural Committee.

**2.19 Minor Deviations.**

The Architectural Committee may approve minor deviations in the provisions hereof at the Committee's discretion.

**2.20 Architectural Committee Disapproval.**

Approval by the Architectural Committee of any given plan(s) and specifications, alterations or changes may be withheld due to noncompliance with any of the specific requirements of this Declaration, or due to the Committee's reasonable disapproval of the location of the building site upon any lot, or the appearance of the structure, or the construction materials proposed therein or thereon, or the proposed lot grading, or the harmony of a proposed structure may have upon the view of outlook of adjacent and/or neighboring homes.

**Article 3 - Architectural Standards**

**3.1 Building Locations.**

Building setback lines required by County Ordinances. No building shall be located on any lot in the Project nearer to the front property line, nearer to any side property line, or nearer to any rear property line, than the minimum building setback lines set forth by Douglas County Ordinance in effect at the time construction is commenced. For the purposes of this Declaration, eaves, steps and open porches shall not be considered as being a part of a building.

**3.2 Single Family Residential Use Only.**

**3.2.1 Single Family Use Only.**

Each lot in the Project may be used for one single-family residence and for conforming outbuildings and related facilities only and for no other purpose. Conforming outbuildings shall include, but shall not necessarily be limited to, guesthouses, caretakers' quarters, workshop, well houses and equipment storage facilities. No such outbuilding shall be used for rental purposes.

**3.2.2 Nuisances Prohibited.**

No activity which constitutes or which could constitute an annoyance or a nuisance to the neighborhood will be permitted on any lot in the Project or in any structure on any such lot.

**3.2.3 Conforming Outbuildings.**

The architectural style and finish materials of all outbuildings shall conform to the architectural style of and the finish materials used in the primary residence.



### **3.2.4 Business Use Prohibited.**

No business or profession shall be carried on or conducted within any lot in the Project or within any improvements on any lot in the Project with the exception of home office usage permitted by Douglas County.

### **3.2.5 Commercial Use Prohibited.**

No store or other place of commercial or professional business of any kind nor any hospital, sanitarium or other facility for the care or treatment of the sick or disabled, physically or mentally, not any public theater, bar, restaurant or other public place of entertainment shall be permitted on any lot in the Project.

### **3.2.6 Occupancy Prohibitions.**

No garage, shed, tent, trailer, barn, stable or other building or structure on any lot in the Project shall be used for permanent or temporary residential purposes at any time.

### **3.2.7 Temporary Structures Prohibited.**

No temporary structure of any kind shall be created, constructed, permitted or maintained on any lot in the Project prior to the commencement of the erection of a residence.

### **3.2.8 Wrecked Automobiles or Appliances.**

Storage of wrecked or junked automobiles, appliances or similar machinery shall not be permitted on any lot in the Project except in a covered and enclosed structure.

## **3.3 Residential Size.**

### **3.3.1 Single Story Residences.**

Only one single story, private residence, together with garage, private recreation facilities, retaining walls and other appurtenances approved by the ARC shall be permitted on lots A,B,C,D,& E. A detached guest or servant's facility may be permissive providing:

- a. Total gross floor area is not more than 700 square feet.
- b. There is no kitchen or other facilities capable of separate cooking.
- c. The premises are used solely for the support and convenience of the primary dwelling without charge.
- d. Residences and any accessory buildings will have a height limit of 26 feet from the finished grade of the street to the top of the roof. Split level designs will be acceptable.
- e. Garages and accessory buildings shall have the same design characteristics of residence.

### **3.3.2**

A residence having a floor area of less than two thousand square feet (2,500), exclusive of porches, patios, terraces and garages, shall not be permitted. Approval by the Architectural Committee of any given plan and specifications, alterations or changes may be withheld due to non-compliance with any of the specific requirements

of the Declaration, or due to the Committee's reasonable disapproval of the location of the building site upon any lot, for a structures' appearance, of the construction materials proposed therein or thereon, of the proposed lot grading, of the harmony of a proposed structure with the surrounding area and homes, or of the influence or impact any structure may have upon the view or outlook of adjacent and/or neighboring homes.

### **3.3.2 Two Story Residences.**

Two-story residences are allowed on lots G, H, I, J, & K. Lot F will be at the discretion of the ARC. The ground floor must contain not less than one thousand eight hundred (1,500) square feet, exclusive of porches, patios, terraces and attached garages.

### **3.3.3 Covered and Enclosed Garages.**

Every residence constructed on any lot in the Project shall have on the same lot covered and enclosed automobile storage spaces (garage) for at least three automobiles. The garage shall not be located within the stipulated front, rear or side yard setback areas.

### **3.4 Livestock.**

No livestock shall be permitted on said lots; however, a release from the Architectural Committee may be applied for in regards to the 4-H Youth Program.

### **3.5 Household Pets.**

Dogs, cats or other household pets may be kept provided they are not kept, bred or maintained for any commercial purpose. A maximum of three (3) dogs and/or cats may be kept on any one lot in the Project. Reasonable exceptions to this provision will be allowed following births of litters pending distribution of puppies and/or kittens.

### **3.6 Antennas.**

Except for any which may, at Declarant's option, be erected by Declarant or Declarant's designated representative, no exterior radio or television antenna, aerial or satellite dish shall be erected or maintained in the Project so as to be visible from neighboring property or public or private thoroughfares without the prior written approval of the Architectural Committee.

### **3.7 Maintenance of Structures.**

All structures erected on any lot in the Project shall be constructed in a workmanship like manner and shall be maintained in good condition.

### **3.8 Relocation of Buildings.**

No building shall be relocated from any other locations onto any lot in the Project.

### **3.9 Modular or Manufactured Homes & Recreational Vehicles.**

No modular and manufactured homes are allowed to be put on any lot in the Project. Recreational vehicles shall not be stored on a lot or parcel unless fully screened from view by a solid fenced enclosure located within the rear yard area of the lot or parcel and configured so the vehicle is not visible from the adjoining street.

**3.10 Restriction of View.**

In no event shall either the location of any structure or its height affect adjoining properties so as to unreasonably diminish or restrict views.

**3.11 Landscaping and Groundcover.**

All brush or other combustible materials within thirty-five (35) feet of the perimeter of each structure shall be cleared and the area shall be suitably and professionally landscaped. Areas disturbed during the course of construction shall be permanently landscaped or revegetated in accordance with an approved plan utilizing, where appropriate, native drought tolerant seed mixes. All landscaping and revegetation activities shall be completed within 6 months of occupying the residence

**3.12 Fences.**

No front yard fence within thirty (30) feet of a road shall exceed four (4) feet in height.

No side yard or rear yard property line fence shall exceed six (6) feet in height.

No opaque fence or wall shall be erected, placed or altered on any lot in the Project, except where such wall or fence constitutes an integral part of the residence or encloses a swimming pool or similar recreational facility, or constitutes a trash enclosure, unless approved by the Architectural Committee.

Barbed wire and chain link fences are prohibited.

**3.13 Driveway Encroachments.**

All private driveway encroachments connecting to the public streets or roads shall, where necessary, include culverts of a suitable size or other approval means an accommodating run-off and drainage. Any such culvert or other approved means shall be subject to the approval of the Architectural Committee and Douglas County's Department of Public Works.

**3.14 Utilities.**

All utility connections and service lines installed to each individual lot in the Project and to each other structure to be built on any such lot shall be installed underground, including electric service, telephone and cable, in accordance with accepted construction and utility standards.

**3.15 Water.**

Each owner of a lot in the Project shall be responsible for the connection to domestic water service, including the installation of a water meter pit complete with meter, located at or near the front property line. Each Owner is similarly obligated to pay monthly consumption and water use charges imposed and adopted by the Jobs Peak Community Water System operator.

**3.16 Sewer.**

Each owner of a lot in the Project shall be responsible for the operation and

maintenance and installation of a denitrifying septic system and leach field which shall be designed in accordance with and approved by Nevada Department of Health and located on the said lot.

#### **Article 4 - Amendment**

##### **4.1 Owner Approval.**

Except as otherwise provided herein, the Declaration may be amended only by a simple majority vote of Owners of Parcels within Whispering Pines.

##### **4.2 Governmental Approval.**

No amendment to the Declaration modifying the rights and benefits extended to any governmental entity shall be made without the written consent of such entity.

##### **4.3 Restrictions on Amendments.**

Except to the extent expressly permitted or required by the Declaration, no amendment may change the allocated interests of a Parcel in the absence of unanimous consent of the Owners affected and the consent of a majority of the Owners of the remaining Parcels.

##### **4.4 Form.**

Amendments to the Declaration shall be prepared, executed, and certified on behalf of the Committee by any member of the Committee designated for that purpose or, in the absence of designation, by the president of the Committee.

##### **4.5 Effective upon Recordation.**

Every amendment to the Declaration shall be recorded with the County recorder and shall be effective only upon such recordation.

#### **Article 5 - Miscellaneous**

##### **5.1 Term of Declaration.**

The provisions of this Declaration shall continue and be effective for a minimum period of 30 years from the date of recordation and shall be automatically extended for successive 10-year periods until at least a two-thirds vote of the Owners of all of the Parcels within the Project determine by vote that they shall terminate and, all the institutional holders of first deeds of trust encumbering the Parcels shall have given their prior written approval, and notice thereof is recorded in the office of the County Recorder.

##### **5.2 Enforcement and Waiver.**

###### **5.2.1 General Right of Enforcement.**

Except as otherwise provided herein, Declarant, the Committee, and any Owner shall have the right (but not the duty) to enforce, by an action for damages or injunctive relief or both, any or all of the covenants, conditions, and restrictions now or hereafter imposed by this Declaration upon the Owners or upon any of the Project; provided, however, the County and FIVE CREEK are third party beneficiaries of this

Declaration. Except as otherwise provided, nothing herein shall be construed as creating a third party beneficiary contract in favor of any other parties, other than the County and Five Creek, who are not Owners of property subject hereto.

**5.2.2 Violations and Nuisance.**

Every act or omission whereby a covenant, condition, or restriction of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by Declarant, the Committee, or any Owner. Any other provision to the contrary notwithstanding, only Declarant, the Board, and their duly authorized agents may enforce by self-help any covenant, condition, or restriction herein set forth.

**5.2.3 Violation of Law.**

Any violation of any state, regional, municipal, or local law, ordinance, or regulation pertaining to the ownership, occupation, or use of any portion of the Project is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures herein set forth.

**5.2.4 Remedies Cumulative.**

Each remedy provided by the Declaration is cumulative and not exclusive.

**5.2.5 Nonwaiver.**

The failure to enforce the provisions of any covenant, condition, or restriction contained in the Declaration shall not constitute a waiver of any right to enforce any such provisions or any other provisions of this Declaration.

**5.3 Notices.**

All notices hereunder to an Owner shall be sent by registered or certified mail to the Owner at his Parcel or to such other address as the Owner may give from time to time in writing to the Board. All notices shall be deemed to have been given when mailed except notices of change of address, which shall be deemed to have been given when received, and except as otherwise provided herein.

**5.4 Construction of the Declaration.**

**5.4.1 Restrictions Construed Together.**

All of the covenants, conditions, and restrictions of the Declaration shall be liberally construed together to promote and effectuate the fundamental concepts set forth in the "Declaration" at the beginning of this Declaration.

**5.4.2 Restrictions Severable.**

Notwithstanding the provisions of Section 11.4.1, the covenants, conditions, and restrictions of the Declaration shall be deemed independent and severable. The invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

**5.4.3 Singular Includes Plural.**

The singular shall include the plural and the plural the singular unless the context requires the contrary. The masculine, feminine, or neuter shall each include the masculine, feminine, and neuter, as the context requires.

**5.4.4 Captions.**

All captions or titles used in the Declaration are intended solely for convenience of reference and shall not affect that which is set forth in any of the provisions of any Section.

IN WITNESS WHEREOF, Declarant has executed this Declaration on the day and year first above written.

MIKIM DEVELOPMENT COMPANY, LLC, A Nevada Limited Liability Company

By: *James M. Hickey*  
James M. Hickey, Manager/Member  
MIKE HICKEY CONSTRUCTION, INC.

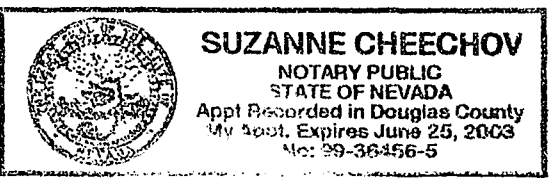
By: *Kim Posnien*  
Kim Posnien, Manager/Member  
KIM POSNIEN CONSTRUCTION AND DEVELOPMENT

STATE OF NEVADA        )  
                                  )        ss.  
COUNTY OF DOUGLAS    )

On this 13th day of AUGUST, 2002, before me, the undersigned, a Notary Public in and for the County of Douglas, State of Nevada, duly commissioned and sworn, personally appeared, Kim Posnien and James M. Hickey, known to me to be the persons whose names are subscribed to the within instrument, and who acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

*Suzanne Cheechov*  
Notary Public



**EXHIBIT A**

(Legal description of property)

COPY

**LEGAL DESCRIPTION**

The land referred to herein is situated in the State of Nevada, County of Douglas, described as follows:

Parcels 4A, 4B and 4C as set forth on Parcel Map #1 LDA 01-013 for MIKIM DEVELOPMENT, filed in the office of the County Recorder of Douglas County, State of Nevada, on August 13, 2002 in Book 0802, at Page 3354, as Document No. 549321.

A portion of Assessors Parcel No. 1219-15-002-051

Parcels 4D, 4E and 4F as set forth on Parcel Map #2 LDA 01-014 for MIKIM DEVELOPMENT, filed in the office of the County Recorder of Douglas County, State of Nevada, on August 13, 2002 in Book 0802, at Page 3355, as Document No. 549322.

A portion of Assessors Parcel No. 1219-15-002-051

Parcels 4G, 4H and 4I as set forth on Parcel Map #3 LDA 01-015 for MIKIM DEVELOPMENT, filed in the office of the County Recorder of Douglas County, State of Nevada, on August 13, 2002 in Book 0802, at Page 3356, as Document No. 549323.

A portion of Assessors Parcel No. 1219-15-002-051

Parcels 4J and 4K as set forth on Parcel Map #4 LDA 01-016 for MIKIM DEVELOPMENT, filed in the office of the County Recorder of Douglas County, State of Nevada, on August 13, 2002 in Book 0802, at Page 3357, as Document No. 549324.

A portion of Assessors Parcel No. 1219-15-002-051

REQUESTED BY  
**Stewart Title of Douglas County**

IN OFFICIAL RECORDS OF  
DOUGLAS CO., NEVADA

2002 AUG 13 PM 3:42

LINDA SLATER  
RECORDER

\$29<sup>08</sup> PAID *KJ* DEPUTY

**STEWART TITLE**  
Guaranty Company

**0549383**

**BK 0802 PG 03638**