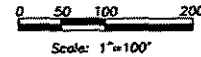


WINDSOR CREEK NO. 1 A PLANNED UNIT DEVELOPMENT

A PART OF THE NW 1/4, SECTION 12, T. 3 N., R. 3 W., B.M.
CALDWELL, CANYON COUNTY, IDAHO
2006

LEGEND

- △ Calculated point
- ⊕ Found aluminum cap monument
- ⊙ Found brass cap monument
- Set 5/8 inch dia. x 30 inch iron pin w/plastic cap PLS 7732
- Found 5/8 inch dia. iron pin PLS 7732 unless otherwise noted
- Set 1/2 inch dia. x 24 inch iron pin w/plastic cap PLS 7732
- ⊙ Found PK nail with Washer
- ① Block Number
- Property boundary line
- - - Lot Line
- - - Utility, drainage and irrigation easement. Unless otherwise noted widths shall be:
10 feet along subdivision boundary
10 feet along street frontage
10 feet on each side of back lot lines
5 feet on each side of interior lot lines



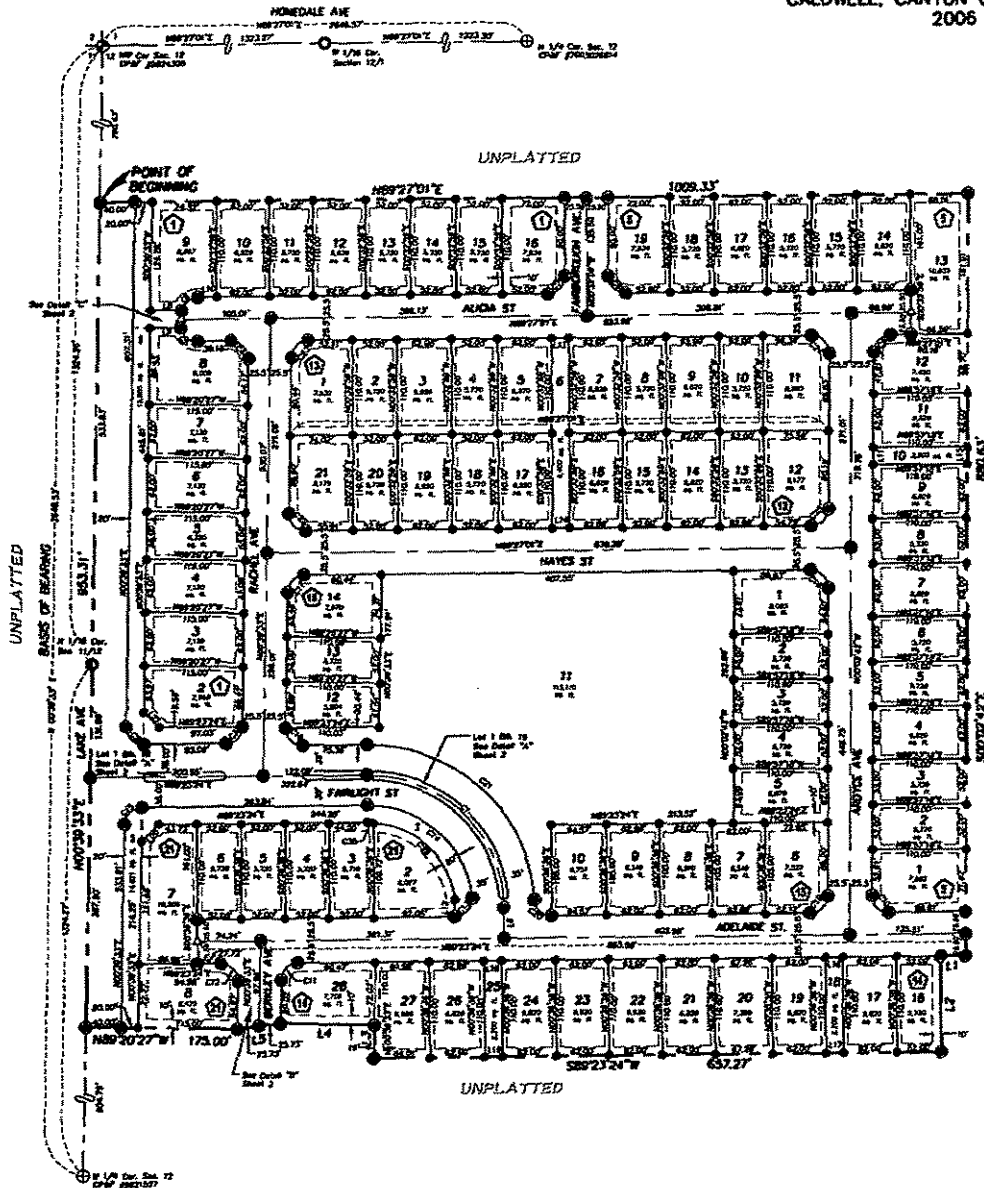
NOTES

1. All street rights-of-way shown hereon are dedicated to the public for public use.
 2. Direct Lot access to Lake Avenue is prohibited unless specifically allowed by the City of Caldwell.
 3. Irrigation water has been provided from Pioneer Irrigation District, in compliance with Idaho Code 31-3805(b). Lots within the subdivision will be entitled to irrigation water rights, and will be obligated for assessments from Pioneer Irrigation District.
 4. Lot 11 Block 15 is a common area lot for the purpose of storm water detention facilities and is subject to blanket public utility, drainage and irrigation easements. This lot is to be owned and maintained by the Windsor Creek No. 1 Homeowners Association.
 5. Lot 1 Block 18 and Lot 1 Block 19 are common area lots for the purpose of landscaping and are subject to public utility, drainage and irrigation easements. These Lots are to be owned and maintained by the Windsor Creek No. 1 Homeowners Association.
 6. Lot 1 Block 1, Lot 10 Block 5, Lot 6 Block 13, Lots 18 and 25 Block 14 and Lot 1 Block 21 are common area lots for the purpose of landscaping and are subject to public utility, drainage and irrigation easements. Lot 1 Block 1 is also subject to a 20 foot wide emergency access easement (see Detail "C" on sheet 2). These Lots are to be owned and maintained by the Windsor Creek No. 1 Homeowners Association.
- RIGHT TO FARM ACKNOWLEDGMENT:**
7. All properties shown on this plot are located in an agricultural zone. This is an area in which agricultural operations are ongoing and may include, but are not limited to, aerial spraying, the production of crops, the operation of feedlots, hog farms, dairies, and/or gravel pits. All of these activities may result in the production of noise and other inconveniences. They may involve lights or the use of machinery in the nighttime hours or other inconveniences. In accordance with Title 22, Chapter 45, Idaho Code, the Right to Farm Act and Idaho Code § 22-4503, all owners of property identified on this plot are prohibited from challenging the aforementioned operations if they are lawfully conducted.
 8. The availability of building permits for this development may be limited pursuant to Caldwell City Code Section 11-02-06(1)(i) which limits the number of building permits that may be issued prior to final completion of the development. Applicant shall disclose to lot purchasers whether the issuance of building permits is in fact restricted by Caldwell City Code Section 11-02-06(1)(i) and lot purchasers are encouraged to contact Caldwell City Building Department prior to closing.

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Professional Engineers, Land Surveyors & Planners

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JMS02002 12/22/05
SHEET 1 of 4

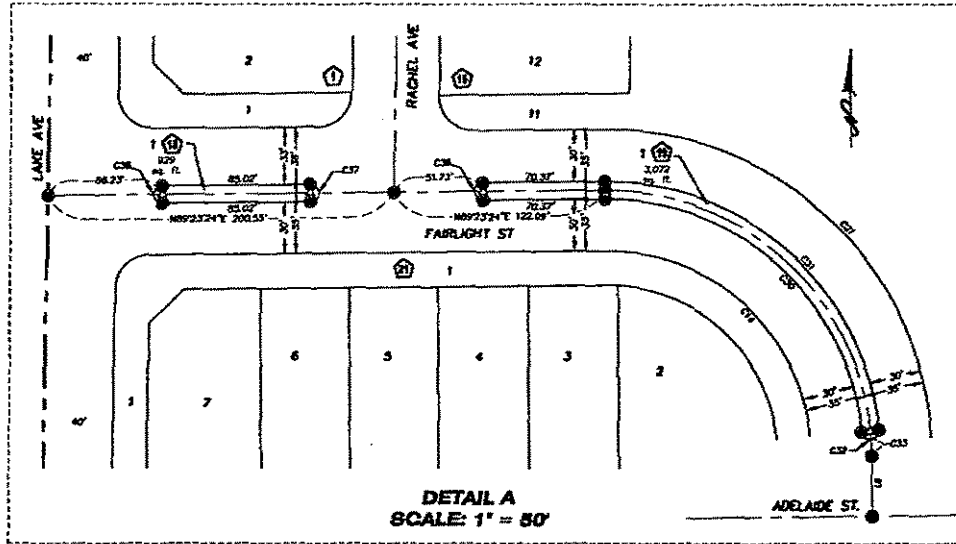
BK. 37 PG 31



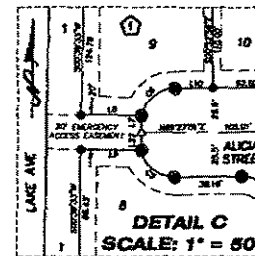
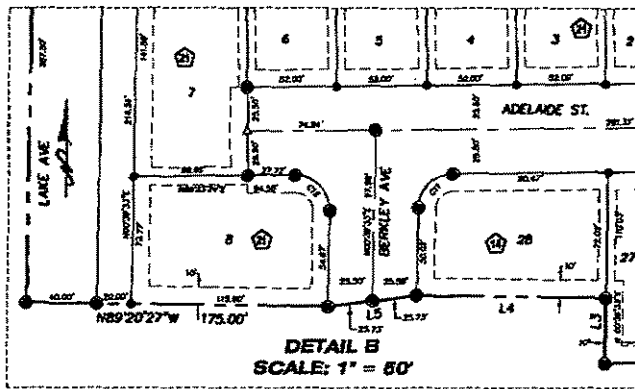
INSTRUMENT NO. 20060591

WINDSOR CREEK NO. 1 A PLANNED UNIT DEVELOPMENT

A PART OF THE NW 1/4, SECTION 12, T. 3 N., R. 3 W. B.M.
CALDWELL, CANYON COUNTY, IDAHO
2006



CURVE	ARC	RADIUS	DELTA	TANGENT	CHORD	ARC	LONG CH.
C1	143.47	155.00	80°00'00"	155.00	143.3536	W	219.20
C2	31.86	20.00	91°18'00"	20.43	34.4507	N	28.59
C3	30.57	20.00	88°53'30"	19.56	34.3117	N	27.97
C4	31.84	20.00	91°18'00"	20.43	34.4507	N	28.58
C5	26.89	20.00	77°17'24"	15.99	33.7113	N	24.08
C6	26.79	20.00	76°44'24"	15.84	33.6911	N	24.03
C7	31.42	20.00	90°00'00"	20.00	34.4221	N	28.18
C8	31.42	20.00	90°00'00"	20.00	34.4221	N	28.18
C9	31.24	20.00	89°28'42"	19.82	34.4200	N	28.15
C10	31.61	20.00	90°33'36"	20.26	34.5197	N	28.47
C11	30.97	20.00	89°43'00"	19.56	34.3117	N	27.97
C12	31.85	20.00	91°18'00"	20.43	34.4507	N	28.59
C13	31.42	20.00	90°34'21"	22.11	34.4111	N	29.55
C14	178.48	120.00	86°21'18"	108.54	148.2747	N	189.00
C15	30.39	20.00	89°43'00"	19.56	34.3117	N	27.97
C16	31.26	20.00	91°18'00"	20.43	34.4507	N	28.58
C17	30.89	20.00	89°47'28"	19.38	34.3117	N	27.99
C18	31.50	20.00	90°30'72"	20.18	34.3174	N	28.41
C19	31.22	20.00	89°48'00"	19.80	34.4221	N	28.14
C20	30.85	20.00	89°28'42"	19.82	34.4200	N	28.15
C21	288.40	180.00	87°28'18"	181.15	245.5821	N	282.22
C22	31.84	20.00	91°18'00"	20.43	34.4507	N	28.58
C23	30.89	20.00	89°47'28"	19.38	34.3117	N	27.98
C24	31.56	20.00	90°28'72"	20.18	34.3174	N	28.41
C25	31.24	20.00	89°28'42"	19.82	34.4200	N	28.15
C26	158.80	120.00	78°28'12"	83.89	148.2035	N	178.54
C27	15.71	5.00	180°00'00"	15.71	300.3636	N	10.00
C28	15.71	5.00	180°00'00"	15.71	300.3636	N	10.00
C29	15.71	5.00	180°00'00"	15.71	300.3636	N	10.00
C30	221.64	150.00	84°28'36"	136.83	148.1548	N	202.02
C31	226.42	150.00	84°28'36"	136.74	148.1548	N	202.02
C32	15.71	5.00	180°00'00"	15.71	300.3636	N	10.00
C33	14.43	100.00	90°00'00"	23.1	100.1648	N	14.44
C34	226.03	150.00	84°28'36"	134.19	148.1548	N	202.75
C35	2.48	100.00	41°24'	3.23	100.2824	N	7.46
C36	15.71	5.00	180°00'00"	15.71	300.3636	N	10.00
C37	15.71	5.00	180°00'00"	15.71	300.3636	N	10.00
C38	15.71	5.00	180°00'00"	15.71	300.3636	N	10.00



LINE	BEARING	LENGTH
L1	S89°21'24"W	59.26
L2	S00°36'36"W	110.00
L3	N00°49'23"E	38.61
L4	S89°00'27"W	110.00
L5	S82°58'36"W	31.46
L6	S00°36'36"W	35.50
L7	N00°49'23"E	10.00
L8	S89°20'27"W	25.51
L9	N00°22'07"E	35.51
L10	N89°27'07"W	22.04
L11	S00°00'00"E	20.00
L12	N00°36'36"W	20.00
L13	N00°22'07"E	50.00
L14	N89°27'07"W	20.00
L15	N00°00'00"E	20.00
L16	S89°21'24"W	20.00
L17	N89°21'24"W	20.00
L18	S89°21'24"W	20.00
L19	N89°21'24"W	20.00
L20	S89°21'24"W	20.00
L21	N89°21'24"W	20.00
L22	N00°00'00"E	10.00

Earl, Mason & Stanfield, Inc.
Professional Engineers, Land Surveyors & Planners

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JMS05002 01/09/06
SHEET 2 of 4
BK. 37 PG 31

**WINDSOR CREEK NO. 1
A PLANNED UNIT DEVELOPMENT**

OWNERS CERTIFICATE

WE, Windsor Creek Development, L.L.C., being first duly sworn, depose and say we are the owners of WINDSOR CREEK NO. 1 more particularly described in the legal description below, state that it is our intention to include said property in this subdivision plat, that we do for ourselves, our heirs, transferees, successors and assigns, do hereby dedicate, donate and convey to the public forever the public streets shown on this plat. The easements as shown on this plat are not dedicated to the public. However, the right to use said easements is hereby perpetually reserved for public utilities and such other uses as designated within this plat and no permanent structures other than those for utility, irrigation, or drainage purposes is to be erected within the limits of said easements. The owners further certify that all lots in this subdivision will receive domestic water from the City of Caldwell Water Department, and that the City has agreed in writing to serve all of the lots in this subdivision.

WINDSOR CREEK NO. 1 is a parcel of land located in a portion of the NW 1/4 of Section 12, Township 3 North, Range 3 West, Boise Meridian, Caldwell, Canyon County Idaho, more particularly described as follows:

Commencing at the NW corner of said Section 12, said corner monumented with a 3 inch diameter brass cap;

Thence S. 0° 39' 33" W., a distance of 790.43 feet along the westerly boundary of said NW1/4 to the POINT OF BEGINNING, said point monumented with a 5/8 inch diameter iron pin;

Thence leaving the westerly boundary of said NW1/4, N. 89° 27' 01" E., a distance of 1009.33 feet parallel with the northerly boundary of said NW1/4 to a 5/8 inch diameter iron pin;

Thence S. 0° 02' 42" E., a distance of 880.63 feet to a 5/8 inch diameter iron pin;

Thence S. 89° 23' 24" W., a distance of 29.26 feet parallel with the southerly boundary of said NW1/4 to a 5/8 inch diameter iron pin;

Thence S. 0° 36' 36" E., a distance of 110.00 feet perpendicular to the southerly boundary of said NW1/4 to a 5/8 inch diameter iron pin;

Thence S. 89° 23' 24" W., a distance of 657.27 feet parallel with the southerly boundary of said NW1/4 to a 5/8 inch diameter iron pin;

Thence N. 0° 39' 33" E., a distance of 38.01 feet parallel with the westerly boundary of said NW1/4 to a 5/8 inch diameter iron pin;

Thence N. 89° 20' 27" W., a distance of 110.00 feet perpendicular to the westerly boundary of said NW1/4 to a 5/8 inch diameter iron pin;

Thence S. 82° 59' 16" W., a distance of 51.46 feet to a 5/8 inch diameter iron pin;

Thence N. 89° 20' 27" W., a distance of 175.00 feet perpendicular to the westerly boundary of said NW1/4 to a point on the westerly boundary of said NW1/4, said point monumented with a 5/8 inch diameter iron pin;

Thence N. 0° 39' 33" E., a distance of 953.31 feet along the westerly boundary of said NW1/4 to the POINT OF BEGINNING.

WINDSOR CREEK NO. 1 contains 22.74 acres more or less.

Also, WINDSOR CREEK NO. 1 is SUBJECT TO all easements and rights-of-way of record or implied.

Windsor Creek Development, L.L.C.
E. Don Hubble, Managing Member

ACKNOWLEDGMENT

STATE OF IDAHO }
COUNTY OF CANYON } SS

Be it remembered that on this _____ day of _____, 20____, before me, the undersigned, a notary public in and for said state, personally appeared E. Don Hubble, who is known or identified to me to be a Managing Member of the Limited Liability Company (L.L.C.) that executed the instrument or the person who executed the instrument on behalf of said L.L.C., and acknowledged to me that such L.L.C. executed the same.

In witness whereof, I have hereunto set my hand and notarial seal the day last above written.

Notary Public for _____
Residing at _____
Commission expires _____

CERTIFICATE OF SURVEYOR

I, Richard A. Gray do hereby certify that I am a Professional Land Surveyor licensed by the State of Idaho, and that this plat as described in the Owners Certificate and the attached plat, was drawn from an actual survey made by me and accurately represents the points thereon.

I further certify that I made this survey under the direction of the owner thereof and that the survey is in conformity with the State of Idaho Codes relating to plats and subdivision.

Richard A. Gray



P.L.S. License No. 7732

**WINDSOR CREEK NO. 1
A PLANNED UNIT DEVELOPMENT**

CERTIFICATE OF CANYON COUNTY SURVEYOR

I, THE UNDERSIGNED, PROFESSIONAL LAND SURVEYOR FOR CANYON COUNTY, hereby certify that I have examined this plat and find that it complies with the STATE OF IDAHO Title 50, chapter 13 relating to Plats and Vacations.

Canyon County Surveyor
David R. Kinzer PE/LS 2659

Date

APPROVAL OF CITY COUNCIL

I, the undersigned, City Clerk in and for the City of Caldwell, Canyon County, Idaho do hereby certify that at a regular meeting of the City Council held on the _____ day of _____, 20____, this plat was accepted and approved.

City Clerk, Caldwell, Idaho

HEALTH CERTIFICATE

Sanitary restrictions as required by Idaho Code, Title 50, Chapter 13 have been satisfied based on a review by a Qualified Licensed Professional Engineer (QLPE) representing the City of Caldwell, and the QLPE approval of the design plans and specifications and the conditions imposed on the developer for continued satisfaction of the sanitary restrictions. Buyer is cautioned that at the time of this approval, no drinking water extensions or sewer extensions were constructed. Building construction can be allowed with appropriate building permits if drinking water extensions or sewer extensions have since been constructed or if the developer is simultaneously constructing those facilities. If the developer fails to construct facilities then the sanitary restrictions may be reimposed, in accordance with Section 50-1326, Idaho Code, by the issuance of a certificate of disapproval, and no construction of any building or shelter requiring drinking water or sewer/septic facilities shall be allowed.

District Health Department, EHS

Date

CERTIFICATE OF COUNTY TREASURER

I, Tracie Lloyd, County Treasurer in and for the County of Canyon, State of Idaho, per the requirements of I.C.50-1308, do hereby certify that any and all current and/or delinquent County Property Taxes for the property included in this proposed subdivision have been paid in full.

This certificate is valid for the next thirty (30) days only.

County Treasurer

Date

APPROVAL OF CITY ENGINEER

I, Gordon N. Low, City Engineer, in and for the City of Caldwell, Canyon County, Idaho hereby approve this plat.

Gordon N. Low

Date

200638423

RECORDED

2006 MAY 19 PM 10:21

G NOEL PALLES

CANYON CNTY RECORDER

BY *J. Anne Johnson*

FOR RECORDING INFORMATION

REQUEST *Windsor Creek Dev.*
TYPE *MAAC* FEE *123.00*

AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
WINDSOR CREEK SUBDIVISION

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WINDSOR CREEK SUBDIVISION is made effective as of the 7th day of APRIL, 2006, by Windsor Creek Development, LLC, an Idaho limited liability company ("Grantor").

Upon the recording of this Declaration, the following document shall be void and of no further force or effect:

Declaration of Covenants, Conditions and Restrictions for Windsor Creek Subdivision dated April 7, 2006, and recorded April 20, 2006, as Instrument No. 200629074, in the official records of Canyon County, Idaho.

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ARTICLE I: RECITALS

1.1 **Property Covered.** The property potentially subject to this Declaration of Covenants, Conditions and Restrictions for Windsor Creek Subdivision is the real property legally described in Exhibit A, attached hereto and made a part hereof, which property consists of approximately 159 acres approved by the City of Caldwell for the development of residential units (sometimes referred to herein as "Windsor Creek Subdivision"). Grantor intends to develop the Property in several development Phases, defined below. Each Phase shall be subject to this Declaration, as may be amended or supplemented from time to time, and all property made subject to this Declaration shall be referred to as the "Property." Unless and until a Supplemental Declaration is recorded with the Canyon County Recorder's Office, no property located within Windsor Creek Subdivision or otherwise shall be subject to this Declaration; provided, however, the real property commonly known as Windsor Creek No. 1, legally described on Exhibit B attached hereto and made a part hereof, shall be subject to this Declaration upon recording hereof. Each Owner, by accepting a deed to any portion of the Property, acknowledges and agrees that Grantor is under no obligation to subject any portion of Windsor Creek Subdivision to this Declaration.

1.2 **Residential Development.** Windsor Creek Subdivision is presently planned as a residential development that Grantor currently intends to develop in accordance with existing development approvals obtained by Grantor from Canyon County and/or the City of Caldwell, File Number SUB/PUD-114P-04 and ANN-99-04, or any other development plan(s) for which Grantor may from time to time obtain approval from Canyon County and/or the City of Caldwell (the "Development Plan"). The Property may be developed for single-family residential homes (including, without limitation, single-family homes, townhomes, or patio homes), and common area uses. The Property may contain parcels of common area including, without limitation, streams, ponds and canals, public and/or private open space, park areas, landscaping, wildlife habitat, recreational facilities, private streets, drives, and other amenities and facilities. Any development plans or schemes for the Property in existence prior to or following the effective date of this Declaration are subject to change at any time by Grantor, and impose no obligation on Grantor as to how the Property is to be developed or improved.

1.3 **Purpose of Declaration.** The purpose of this Declaration is to set forth the basic restrictions, covenants, limitations, easements, conditions and equitable servitudes (collectively, "Restrictions") that will apply to the entire development and use of any and all portions of the Property, and any other property annexed into Windsor Creek Subdivision, as provided further herein. The Restrictions are designed to protect, enhance and preserve the value, amenities, desirability, and attractiveness of the Property; to ensure a well-integrated, high quality development; and to guarantee adequate maintenance of Common Area, defined below, in a cost effective and administratively efficient manner.

ARTICLE II: DECLARATION

Grantor hereby declares that the Property, and each lot, parcel or portion thereof, is and/or shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following terms and Restrictions, all of which are declared and agreed to be in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Property, and to enhance the value, desirability and attractiveness of the Property. The terms and Restrictions set forth herein shall run with the land constituting the Property, and with each estate therein, and shall be binding upon any Person having or acquiring any right, title or interest in the Property or any lot, parcel or portion thereof; shall inure to the benefit of every lot, parcel or portion of the Property and any interest therein; and shall inure to the benefit of and be binding upon Grantor, Grantor's successors in interest, and each grantee or Owner and such grantee's or Owner's respective successors in interest, and may be enforced by Grantor, any grantee or grantee's successors, any Owner or Owner's successors, or by the Association. In the event of any conflict between this Declaration and any other of the Project Documents, defined below, this Declaration shall control.

Notwithstanding the foregoing, until one hundred percent (100%) of all the Building Lots in the Property and Windsor Creek Subdivision are transferred by Grantor, no provision of this Declaration shall be construed as to prevent or limit Grantor's right to complete development of the Property and Windsor Creek Subdivision, including any subdivision or resubdivision of the Property and Windsor Creek Subdivision, and to construct improvements thereon, nor Grantor's right to use and to maintain model homes, construction, sales or leasing offices or similar facilities on any portion of the Property and Windsor Creek Subdivision, including the Common Area, recreational facilities, and/or any public and/or private right-of-way, nor Grantor's right to post signs incidental to construction, sales and/or leasing. Grantor and authorized marketing agents and builders shall have license for access to and use of such location and facilities. Windsor Creek Subdivision is planned to have several Phases and future amenities. Such plans, however, are subject to change. Grantor has no duty or obligation to develop the Property and Windsor Creek Subdivision in any specific manner or with any particular use, regardless of any drawings, depictions or presently proposed plans.

ARTICLE III: DEFINITIONS

- 3.1 "**Articles**" shall mean the Articles of Incorporation of the Association.
- 3.2 "**Assessments**" shall mean those payments required of Owners, as Association Members, including Regular, Special and Limited Assessments.
- 3.3 "**Association**" shall mean any Idaho nonprofit corporation, or its successors, organized and established by Grantor to exercise the powers and to carry out the duties set forth in this Declaration or any Supplemental Declaration. Grantor shall have the power, in Grantor's discretion, to name the Association the "Windsor Creek Subdivision Neighborhood Association, Inc.," or any similar name which fairly reflects its purpose.
- 3.4 "**Association Rules**" shall mean those rules and regulations that may be promulgated by the Association governing conduct upon and use of the Property under the jurisdiction or control of the Association, the imposition of fines and forfeitures for violation of Association Rules and regulations, and procedural matters for use in the conduct of business of the Association.
- 3.5 "**Board**" shall mean the Board of Directors of the Association.
- 3.6 "**Building Lot**" shall mean a lot within any Phase of Windsor Creek Subdivision as specified or shown on the Plat and/or by Supplemental Declaration upon which Improvements may be constructed. Building Lot shall not include any Common Area.
- 3.7 "**Bylaws**" shall mean the Bylaws of the Association.
- 3.8 "**Common Area**" shall mean any or all parcels of Common Area including, without limitation, all such parcels that are designated as private streets or drives, parking areas or drives, common open space, pastures, wildlife habitat, common landscaped areas, storage facilities, recreational facilities, other amenities and facilities, and Waterways. Common Area may be established from time to time by Grantor on any portion of the Property by describing such area on a recorded Plat, by granting or reserving a Common Area in a deed or other instrument, or by designating a Common Area as such in this Declaration or in any Supplemental Declaration. The Common Area may include easement and/or license rights.
- 3.9 "**Declaration**" shall mean this Declaration of Covenants, Conditions and Restrictions for Windsor Creek Subdivision as may be amended and supplemented from time to time with a Supplemental Declaration.

3.10 "**First Mortgage**" shall mean any Mortgage which is not subordinate to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

3.11 "**Grantor**" shall mean Windsor Creek Development, LLC, an Idaho limited liability company, or its successors in interest, or any Person to whom the rights under this Declaration are expressly transferred, in whole or in part, other than a transfer to individual Building Lot Owners by Grantor.

3.12 "**Improvements**" shall mean any structure, facility or system, or other improvement or object, whether permanent or temporary, which is erected, constructed, placed upon or allowed on, under or over any portion of the Property, including, without limitation, residential structures, accessory structures, fences, streets, drives, driveways, parking areas, sidewalks, bicycle paths, curbs, landscaping, walls, hedges, plantings, trees, wildlife habitat improvements, living and/or dead vegetation, rocks, signs, lights, mail boxes, electrical lines, pipes, pumps, ditches, Waterways, recreational facilities, grading, road construction, utility improvements, removal of trees and other vegetation, and any new exterior construction or exterior improvement which may not be included in the foregoing. Improvement(s) includes both original improvements existing on the Property on the date hereof and all later changes and Improvements.

3.13 "**Limited Assessment**" shall mean a charge against a particular Owner, and such Owner's Building Lot, directly attributable to such Owner, equal to the cost incurred by the Association in connection with corrective action performed pursuant to the provisions of this Declaration, including, without limitation, damage to any Common Area, or the failure of an Owner to keep such Owner's Building Lot and/or Improvements in proper repair, and including interest thereon as provided in this Declaration.

3.14 "**Member**" shall mean each Owner holding a membership in the Association, including Grantor.

3.15 "**Mortgage**" shall mean any mortgage, deed of trust, or other document pledging any portion of the Property or interest therein as security for the payment of a debt or obligation.

3.16 "**Occupant**" shall mean any resident or occupant of a Building Lot other than the Owner, including, without limitation, family members, guests, invitees and/or tenants.

3.17 "**Owner**" shall mean the record owner, whether one or more Persons, including Grantor, holding fee simple interest of record to a Building Lot which is a part of the Property, and buyers under executory contracts of sale, but excluding those Persons having such interest merely as security for the performance of an obligation, unless and until such Person has acquired fee simple title pursuant to foreclosure or other proceedings.

3.18 "**Person(s)**" shall mean any individual, partnership, corporation, trust, estate or other legal entity, including Grantor.

3.19 "**Phase**" shall mean a defined portion of the Property which has been designated as a Phase by Plat and/or recorded Supplemental Declaration. Each Phase shall contain one or more residential Building Lots, and may, in Grantor's discretion, be managed to the extent permitted herein, or by Supplemental Declaration.

3.20 "**Plat**" shall mean any subdivision plat covering any portion of the Property as recorded in the Canyon County, Idaho, Recorder's Office, as the same may be amended by duly recorded amendments thereof.

3.21 "**Project Documents**" shall mean the basic documents creating and governing the Property including, without limitation: this Declaration, any Supplemental Declarations, Articles of

Incorporation and Bylaws of the Association, Association Rules, Plats, and any other procedures, rules, regulations or policies adopted under such documents by the Association and/or the Board.

3.22 "**Property**" shall mean the Property legally described in **Exhibit A** subject to this Declaration and any property subject to this Declaration by recorded Supplemental Declarations, including, without limitation, each lot, parcel and portion thereof and interest therein.

3.23 "**Regular Assessment**" shall mean the portion of the cost of designing, constructing, maintaining, improving, repairing, managing and/or operating all Common Areas, including all Improvements located thereon, and the other costs and expenses incurred to conduct the business and affairs of the Association that is levied against the Building Lot of each Owner by the Association, pursuant to the terms of this Declaration.

3.24 "**Special Assessment**" shall mean that portion of the cost of the capital improvements or replacements, equipment purchases and/or shortages in Regular Assessments which are authorized to be paid to the Association pursuant to the provisions of this Declaration.

3.25 "**Start-up Assessment**" shall mean that initial fee payable to Association to start up the Association and for other activities. This one-time start-up fee is assessed against the first Owner of a Building Lot other than Grantor.

3.26 "**Supplemental Declaration**" shall mean any Supplemental Declaration including additional covenants, conditions and restrictions that may be adopted by Grantor with respect to any Phase or any portion of the Property or property annexed and subject to this Declaration, as provided further herein.

3.27 "**Transfer Special Assessment**" shall mean that transfer fee assessed against each Building Lot transferred, which is to be paid to the Association upon each transfer of legal title and recording of a deed to a Building Lot except by (a) the initial builder of a residential structure on any such Building Lot and (b) the first Owner other than Grantor and the initial builder.

3.28 "**Townhomes or Patio Homes**" shall mean any development approach in which Building Lots are reduced in size and/or sited relatively closer together in clusters as compared to other Building Lots in the Property.

3.29 "**Waterway**" shall mean any surface water amenity, including, without limitation, any lake, pond, stream, canal, lateral, or reservoir, natural or artificial which is located on the Property.

ARTICLE IV: GENERAL AND SPECIFIC RESTRICTIONS

4.1 **Improvements – Generally**. The general instructions set forth in this Declaration shall govern the right of a Person or Owner, excluding Grantor, to construct, reconstruct, refinish, remove, add, alter or maintain any Improvement upon, under or above the Property, and to make or create any excavation or fill on the Property, or to make any change in the natural or existing surface contour or drainage, or install any utility line or conduit on, under or above the Property. All Building Lots, other than the Building Lot(s) used for Common Area or utility facilities and services, shall be used exclusively for and/or in connection with single-family residential purposes. All Improvements by any Owner, excluding Grantor, must be pre-approved in writing by the Board prior to such Owner's construction or reconstruction. This Declaration is not intended to serve as authority for the Board to control the interior layout or design of residential structures except to the extent incidentally necessitated by use, size and height restrictions. This Declaration is intended to serve as authority for the Board to use its judgment to see that all Improvements conform and harmonize as to external design, quality and type of construction, architectural character, materials, color and location on the Property as set forth in this Declaration.

The approval of the Board shall not be unreasonably withheld if the plans and specifications comply with:

- A) This Declaration, as may be amended;
- B) Any architectural control guidelines, which may be published by and, if published, shall be on file with, the Board;
- C) All applicable government regulations; and
- D) The general harmony of the existing structures and improvements located in Windsor Creek Subdivision.

The initial address of the Board shall be 701 S. Allen Street, Suite 103, Meridian, Idaho 83642

4.1.1 Setbacks and Heights. No residential or other structure shall be placed nearer to the Building Lot lines or built higher than permitted by the Plat and/or the Declaration and/or the Development Agreement recorded in the records of Canyon County, Idaho, and/or the approvals in connection with City of Caldwell File Number SUB/PUD-114P-04 and ANN-99-04 or by any applicable zoning restriction; provided, however, certain Building Lots may have special easements along the Building Lot boundary lines which are larger than such setbacks. These special easements are identified on the Plat and/or described herein. For those Building Lots with these special easements, the foundation of any structure shall not encroach on that easement area, and that easement area shall be the minimum required setback. Minimum setbacks within Windsor Creek Subdivision are as follows:

Front: 20 feet
Rear: 15 feet
Interior Side: 6 feet each side, total of 12 feet for both side yards
Street Side: 16 feet
Eave Encroachment: 1 foot into setback

Improvements constructed on the following Building Lots in Windsor Creek No. 1 are limited to a single story in height:

Lot 34, Block 1
Lot 35, Block 1
Lot 36, Block 1
Lot 37, Block 1
Lot 38, Block 1
Lot 39, Block 1
Lot 40, Block 1

4.1.2 Accessory Structures. Garages, detached storage sheds and patio covers shall be constructed of, and roofed with, the same materials and with similar colors and design, as the residential structure on the applicable Building Lot unless otherwise approved by the Board; provided, however, that the Board may approve a different design, color and materials if aesthetically compatible with the residential structure located on the Building Lot (a patio cover is not to be considered as an outbuilding). Outbuildings shall be limited to one per Building Lot, and shall be constructed of quality materials, be finished or painted in the same general color as the residential structure located on the Building Lot and be first approved by the Board. There shall be no metal or wood storage attachments to any residential structure except as approved by the Board.

4.1.3 Garages. All residential structures shall have an attached enclosed garage that holds no less than two (2) vehicles and shall be constructed of the same materials and with similar colors and design as the residential structure unless otherwise approved by the Board. Garages shall not be used as living quarters or to be used primarily as storage. Garages are primarily for the parking of vehicles. In no case shall a garage be used for storage such that no room is left for the parking of vehicles.

4.1.4 Driveways. All Building Lots shall have a concrete driveway and a minimum of two (2) concrete car parking spaces within the boundaries of each Building Lot. No driveway or parking area shall be asphalt, dirt, rock, or gravel.

4.1.5 Buoys, Docks and Piers. No buoy, pier, dock, jetty, bridge or similar structure shall be placed or extended into any Waterway beyond the boundary of a Building Lot unless so designated by Grantor as part of the overall plan for Windsor Creek Subdivision.

4.1.6 Roofs. Roofs must be of at least 5 in 12 pitch. No gravel roofs are allowed. Roofing materials and colors must be approved by the Board.

4.1.7 Mailboxes. All mailboxes shall be of consistent design, material and coloration and shall be located on the Building Lot lines at places designated by Grantor. Mailboxes will be initially installed by Grantor and maintained by each individual Owner.

4.1.8 Fencing. Fences are not required other than the corner lot fences described in Section 4.3.1 below. The fence must meet the criteria of this section. No fence, hedge or boundary wall situated anywhere upon a Building Lot shall have a height greater than six (6) feet above the finished graded surface of the Building Lot or Common Area upon which such fence, hedge or boundary wall is situated; provided, however, that any fence constructed immediately adjacent to a swimming pool for the purpose of safety may be at a height required by applicable government agencies and/or homeowner liability insurer(s). No chain link fences are allowed except along water courses, ditches or canals and then only after approval by the Board; all such fences shall be six (6) feet in height. All fences constructed by Grantor or the Association in any Common Area, shall be owned and maintained by the Association. No Owner shall be permitted to place a fence adjacent to and contiguous with a Common Area fence constructed in a Common Area. No fence shall be constructed so as to extend toward the front of the Building Lot past two (2) feet behind the front plane of the residential structure constructed thereon or closer than fifteen (15) feet to any side Building Lot line of a corner Building Lot adjacent to a dedicated street. Grantor may construct perimeter fencing around all or part of the exterior boundary of Windsor Creek Subdivision. It shall be the responsibility of the Owner of any Building Lot with such perimeter fencing to maintain, repair and/or replace, as needed, that portion of the perimeter fence on that Owner's Building Lot. The maintenance, repair and/or replacement shall be performed so as to keep the perimeter fencing uniform, attractive, and harmonious.

4.1.9 Lighting. Any street lights installed by Grantor shall be maintained and operated by the Association as a Common Area expense until such time as the City of Caldwell or other governmental agency assumes the maintenance and operation of such street lights. Maintenance and operation shall include all repairs and costs of power.

4.2 Exterior Maintenance: Owner's Obligation. No Improvement shall be permitted to fall into disrepair, and each Improvement shall at all times be kept in good condition and repair. In the event that any Owner shall permit any Improvement, including trees and landscaping, to fall into disrepair so as to create a dangerous or unsafe condition, or damages property or facilities on or adjoining such Owner's Building Lot, the Association, upon thirty (30) days' prior written notice to the Owner of such Building Lot, shall have the right to correct such condition, and to enter upon such Owner's Building Lot for the purpose of doing so, and such Owner shall promptly reimburse the Association for the cost thereof. Such cost shall be a Limited Assessment and shall create a lien enforceable in the same manner as other

Assessments as set forth herein. The Owner of the offending Building Lot shall be personally liable, and such Owner's Building Lot may be subject to a lien for all costs and expenses incurred by the Association in taking such corrective acts, plus all costs incurred in collecting the amounts due, if any. Each Owner shall pay all amounts due for such work within ten (10) days after receipt of written demand therefor.

4.3 Landscaping.

4.3.1 Front Yard. Within thirty (30) days of occupancy of the residential structure, the Owner thereof (excluding Grantor and the Initial Builder) shall landscape that portion of the Owner's Building Lot lying in between the lot lines of the Building Lot and which is in front of the residential structure, including any landscape strips between the sidewalk and the street curb. Such front yard landscaping shall, at a minimum, include: (i) street-side fencing to the rear lot lines on all corner lots; (ii) sod and automatic underground sprinklers; (iii) at least two (2) trees having a diameter of one inch (1") when measured six (6) inches above the root ball; and (iv) five (5) one-gallon shrubs. For Building Lots on corners, the front yard shall also include all of the side yard next to the side street from the front Building Lot line to the rear Building Lot line and two (2) additional trees of one inch (1") caliper shall be planted in such side yard.

4.3.2 Back Yard. The Owner of the Building Lot shall landscape that portion of the Owner's Building Lot lying between the lot lines of the Building Lot and which is in the back of the residential structure with grass hydro-seed or sod and automatic underground sprinklers under one of the following conditions: (a) within one (1) year of occupancy if the back yard has been enclosed by a fence; or (b) within ninety (90) days of occupancy if the back yard has not been enclosed by a fence.

4.3.3 Variances. These landscape requirements (except for those required by applicable governmental agencies) may be varied at the discretion of the Board to account for the size of the Building Lot, Building Lot street frontage or dimensional irregularities of a Building Lot.

4.4 Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate anywhere upon the Property, and no odor shall be permitted to arise from any portion of the Property so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to the Property, its Owners or to its Occupants, or to any other property in the vicinity thereof. No clothing or fabric shall be hung, dried or aired in such a way as to be visible to any other portion of the Property. No refuse of any kind shall be placed into or allowed to enter any Waterway.

4.5 Trade or Business. Trade or business may be conducted in or from any Building Lot by an Owner or Occupant so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from the exterior of the dwelling on the Building Lot; (b) the business activity conforms to all zoning requirements; (c) the business activity does not involve persons coming onto the Building Lot who do not own or occupy the Building Lot; (d) the business activity does not increase the liability or casualty insurance obligation or premium of the Association; and (e) the business activity does not constitute a nuisance or hazardous or offensive use, as may be determined in the sole discretion of the Board.

4.6 No Hazardous Activities. No activities shall be conducted on the Property, and no Improvements shall be constructed on the Property that are or might be unsafe or hazardous to any Person or property.

4.7 No Mining or Drilling. No portion of the Property shall be used for the purpose of blasting, mining, quarrying, drilling, boring or exploring for or removing water, oil, gas or other hydrocarbons, minerals, rocks, stones, sand, gravel or earth. This Section shall not prohibit exploratory drilled or coring which is necessary to construct Improvements including, without limitation, water facilities.

4.8 Insurance Rates. Nothing shall be done or kept on the Property and/or any Building Lot that will increase the rate of, or cancel any insurance on any other portion of the Property without the approval of the Owner(s) of such other portion, nor shall anything be done or kept on the Property and/or any Building Lot that would result in the cancellation of insurance on any portion of the Property owned and/or managed by the Association or which would be in violation of any law.

4.9 Vehicles and Equipment. No motor homes, motor coaches, campers, trailers, snowmobiles, boats, recreational vehicles, all-terrain vehicles, abandoned or inoperable vehicles (that is, any vehicle which has not been driven under its own propulsion for a period of three (3) days or longer), oversized vehicles (that is, vehicles which are too high or too wide to clear the entrance of an approved residential garage door opening), dilapidated or unrepaired and unsightly vehicles or similar equipment such as snow removal equipment, garden maintenance equipment and all other potentially unsightly equipment and machinery, shall be placed upon any portion of the Property including, without limitation, streets and driveways, unless the same are enclosed by a structure concealing them from view in a manner approved by the Board. The Board or its agent may remove any vehicles in violation of this section at any time after giving the Owner fifteen (15) days written notice of the Board's intent to do so. For any such vehicles removed, the Owner shall reimburse the Board for the cost thereof. Such cost shall be a Limited Assessment and shall create a lien enforceable in the same manner as other Assessments as set forth herein.

4.10 Animals/Pets. No animals, birds, insects, pigeons, poultry or livestock shall be kept on the Property. This Section is not intended to prohibit the keeping of up to two (2) domesticated dogs, up to two (2) domesticated cats, and other typical household pets which do not unreasonably bother or constitute a nuisance to others. Without limiting the generality of the foregoing, consistent and/or chronic barking by dogs or similar sounds by other household pets shall be considered a nuisance. Each dog or other similar household pet in Windsor Creek Subdivision shall be kept on a leash, curbed, and otherwise controlled at all times when such animal is off the premises of its owner and are to be kept in compliance with all applicable State and local laws and ordinances. Such owner shall clean up any animal defecation immediately from any Common Area or public right-of-way. Failure to do so may result, at the Board's discretion, in a Limited Assessment levied against such animal owner. Dog runs or other pet enclosures shall be placed a minimum of ten (10) feet from the side and/or rear Building Lot line, shall not be placed in any front yard of a Building Lot, shall be appropriately screened and maintained in a sanitary condition.

4.11 No Mobile Homes or Temporary Structures. No house trailer, manufactured home, mobile home, tent (other than for short term recreational use), shack or other temporary building, improvement or structure shall be placed upon any portion of the Property, except temporarily as may be required by construction activity undertaken on the Property. Provided, however, that a mobile office may be placed upon a portion of the Property and/or Common Area by Grantor or Grantor's agents and/or employees for the purpose of construction, operation and/or marketing of Windsor Creek Subdivision or other adjacent land until all such construction and/or marketing is complete.

4.12 Drainage. There shall be no interference with the established drainage pattern over any portion of the Property, unless an adequate alternative provision is made for proper drainage and is first approved in writing by the Board. For the purposes hereof, "established" drainage is defined as the system of drainage, whether natural or otherwise, which exists at the time the overall grading of any portion of the Property is completed by Grantor, or that drainage which is shown on any plans approved by the Board, which may include drainage from a Common Area over a Building Lot in the Property.

4.13 Grading. Each Building Lot shall be graded and all landscaping shall be installed such that drainage, storm water and irrigation water will flow away from the foundation of the residential structure. Each Building Lot Owner shall maintain any drainage swales or sheet drainage on their Building Lot as it exists at the time of occupancy. Each Building Lot Owner shall have the specific duty to maintain proper drainage and the storm water and irrigation water swales as may be established on their Building Lot.

4.14 Water Supply Systems. Except for the Irrigation System described in Article 12 below, no separate or individual water supply system, regardless of the proposed use of the water to be delivered by such system, shall be permitted on any Building Lot

4.15 Water Rights Appurtenant to Subdivision Lands. Grantor owns certain water rights which are appurtenant to the Property and which may be utilized in connection with the Irrigation System, defined below, that will supply non-potable irrigation water to the Property, as provided further herein. Grantor hereby reserves unto itself any and all water and water rights, ditch and ditch rights, and storage and storage rights appurtenant to the Property, and accordingly, any Owner of any Building Lot(s) shall have no right, title or interest in any of such water and water rights, ditch and ditch rights, and storage and storage rights.

Each Owner, by accepting and recording a deed to a Building Lot or by occupying any Building Lot, acknowledges and agrees that: the Property is in the Pioneer Irrigation District (hereinafter "District"); the water in District has not been transferred from this Property; each Owner of any Building Lot is subject to all assessments levied by District, or other water supplier and/or the Association; each Building Lot Owner shall be responsible for any levies attributable to such Building Lot by the District and/or the Association; and water assessments are a lien upon each Building Lot. Each Owner or Occupant of any Building Lot specifically releases and waives any and all claims of any kind against Grantor, its agents, employees, officers, members and directors relating to irrigation water or the lack of irrigation water, or the quantity or quality of such irrigation water, in Windsor Creek Subdivision.

4.16 Energy Devices: Outside. No energy production devices, including, without limitation, generators of any kind and solar energy devices, shall be constructed or maintained on any portion of the Property without the written approval of the Board except for heat pumps shown in the plans for a residential structure and as approved by the Board. This Section shall not apply to passive solar energy systems incorporated into the approved design of a residential structure or any back-up devices necessary for utility pump stations.

4.17 Signs. No signs of any kind shall be displayed on or from any portion of the Property except those signs approved by the Board or signs of Grantor or its representatives, agents, employees or assigns, or signs required by law. Notwithstanding anything to the contrary herein, typical "for sale" signs that are no larger than five (5) square feet in size shall be permitted.

4.18 Antennae. No exterior radio antenna, television antenna, satellite dish antenna or other antenna of any type shall be erected or maintained on the Property unless such is located where practicable to the rear of the residential structure and reasonably screened from view of other Owners.

4.19 No Further Subdivision. No Building Lot may be further subdivided unless expressly approved in writing by Grantor and consistent with all applicable State and local laws and ordinances.

4.20 Leasing. The Owner of a Building Lot shall have the right to lease such Building Lot and residential structure thereon, subject to the following conditions: (1) all leases shall be in writing; (2) such lease shall be specifically subject to the Project Documents, and any failure of a tenant to comply with the Project Documents shall be a default under the lease; (3) the Owner shall be liable for any violation of the Project Documents committed by the tenant of such Owner, without prejudice to the Owner's right to collect any sums from such tenant paid by the Owner on behalf of the tenant; and (4) the Owner who leases such Owner's Building Lot shall be deemed to consent to the Association commencing and maintaining any actions and suits to restrain and enjoin any breach or threatened breach of this Declaration or the Articles or the Bylaws, including the Association Rules adopted pursuant to this Declaration, and to enforce by injunction or otherwise, all provisions hereof in connection with such Owner's tenant and/or such Owner's Building Lot.

4.21 Grantor's Right of Development. Nothing contained herein shall limit the right of Grantor, or Grantor's successors or assigns, to grant licenses, to reserve rights-of-ways and easements

for utility companies, public agencies or others, or to complete excavation, grading and construction of Improvements to and on, under or about any portion of the Property owned by Grantor and/or the Association, or to alter the foregoing and Grantor's construction plans and designs, or to construct such additional Improvements as Grantor deems advisable in the course of development of the Property so long as any Building Lot on the Property remains unsold by Grantor. Grantor need not seek or obtain Association or Board approval of any improvement constructed or placed by Grantor on any portion of the Property.

Each Owner, by acceptance of a deed to any Building Lot, agrees that such Owner shall not object to or oppose any development of any portion of the Property or other property owned or purchased by Grantor and annexed to the Property and made subject to the Declaration as more fully provided in Article XVI below. Such agreement not to oppose development is a material consideration to the conveyance of any portion of the Property by Grantor to any and all Persons.

4.22 Compliance with Laws. Subject to the rights of reasonable contest, each Owner shall promptly comply with the provisions of all applicable laws, regulations, ordinances and other governmental or quasi-governmental regulations with respect to all or any portion of the Property.

ARTICLE V: ASSOCIATION

5.1 Organization of Association. The Association shall be initially organized by Grantor as an Idaho nonprofit corporation under the provisions of the Idaho Code relating to nonprofit corporations and shall be charged with the duties and invested with the powers prescribed by law and set forth in the Articles and Bylaws of the Association and this Declaration. Neither the Articles nor the Bylaws of the Association shall be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. Grantor grants to the Association a revocable, non-exclusive license to use the name "Windsor Creek Subdivision" for the sole purpose of identifying the Association.

5.2 Members of Association. The Members shall be all Owners and no Owner, except Grantor, shall have more than one membership in the Association. Memberships in the Association shall be appurtenant to the Building Lot owned by such Owner. The memberships in the Association cannot be terminated and shall not be transferred, pledged, assigned or alienated in any way except upon the transfer of an Owner's title in and to such Owner's Building Lot and then only to the transferee of such title.

5.3 Voting. The Association will have two (2) classes of memberships.

5.3.1 Class B Member. Grantor shall be the Class B Member, and shall be entitled to ten (10) votes for each of Building Lot owned by Grantor in all Phases of Windsor Creek Subdivision. The Class B Member shall cease to be a voting Member in the Association at the earlier of: (a) when Grantor has deeded the last Building Lot to an Owner other than Grantor in the final Phase of Windsor Creek Subdivision; or (b) December 31, 2030.

5.3.2 Class A Members. Class A Members shall be all Owners except for Grantor. Class A Members shall be entitled to one vote per residential Building Lot.

5.4 Board of Directors and Officers. The affairs of the Association shall be conducted and managed by such directors and officers as the Board may elect or appoint, in accordance with the Articles and Bylaws of the Association. The Board shall be comprised of Class A Members and Grantor so long as Grantor owns any Building Lot. For purposes of voting at Board meetings, each Member, including Grantor, when acting in their capacity as Board members, shall have the same number of votes as provided in Section 5.3 above. The Association may exercise any right or privilege given to the Association expressly by this Declaration and the Project Documents, or as reasonably implied from or reasonably necessary to effectuate any such right or privilege.

5.5 Power and Duties of the Association.

5.5.1 Powers. The Association shall have all the powers of a nonprofit corporation organized under the nonprofit corporation laws of the State of Idaho subject only to such limitations upon the exercise of such powers as are expressly set forth in the Project Documents, and to do and perform any and all acts which may be necessary, proper, and/or incidental to the proper management and operation of the Association's business and the Common Area, and the performance of the other responsibilities herein enumerated, including, without limitation:

5.5.1.1 Assessments. The power to levy Assessments and to enforce payment of such Assessments, all in accordance with the provisions of this Declaration. This power shall include the right of the Association to levy Assessments on any Owner or any portion of the Property to cover the operation and maintenance costs of Common Area.

5.5.1.2 Right of Enforcement. The Association shall be the primary entity responsible for enforcement of this Declaration. The power and authority from time to time in its own name, on its own behalf, or on behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Project Documents, and to enforce by injunction or otherwise, all provisions hereof. The Association, after reasonable notice to the offender and/or to the Owner, may remove any Improvement constructed, reconstructed, refinished, removed, added, altered or maintained in violation of this Declaration, and the Owner of the Improvements shall immediately reimburse the Association for all expenses incurred with such removal.

5.5.1.3 Delegation of Powers. The authority to delegate its power and duties to committees, officers, employees, or to any Person to act as manager for the maintenance, repair, replacement and operation of any Common Area. The Association and the members of the Association shall not be liable for any omission or improper exercise by the manager of any such duty or power so delegated.

5.5.1.4 Association Rules. The Association shall have the power to adopt, amend and repeal such Association Rules and regulations as the Association deems reasonable. The Association shall be the primary entity responsible for enforcement of the Association Rules, if any. The Association may govern the use of Common Area by Owners, their families, invitees, licensees, tenants or contract purchasers, including, without limitation, the use of Common Area for organized recreational activities; provided, however, that the Association Rules shall apply equally to all Owners and shall not be inconsistent with this Declaration. A copy of the Association Rules as they may from time to time be adopted, amended or repealed shall be mailed or otherwise delivered to each Owner. Upon such mailing or delivery, the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.

5.5.1.5 Emergency Powers. The power, exercised by the Association or by any Person authorized by the Association, to enter upon any portion of the Property (but not inside any building constructed thereon) in the event of any emergency involving potential danger to life or property or when necessary in connection with any maintenance or construction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Owner of such portion of the Property as practicable.

5.5.1.6 Licenses, Easements and Rights-of-Way. The power to grant and convey to any third party such licenses, easements and rights-of-way in, on, under and

about Common Area as may be necessary or appropriate for the orderly construction of Improvements, maintenance, preservation and enjoyment of the same.

5.5.2 Duties. In addition to duties necessary and proper to carry out the power delegated to the Association by the Project Documents, the Association or its agents, if any, shall have the authority and the obligation to conduct all business affairs of the Association and to perform, without limitation, each of the following duties:

5.5.2.1 Operation and Maintenance of Common Area. Operate, maintain, and otherwise manage or provide for the operation, maintenance and management of Common Area. All Waterways, drainage ponds, pipes and related facilities shall be maintained in accordance with sound hydrological principles and irrigation company rules, where applicable. The Association shall, at Grantor's sole discretion, own and/or operate and/or maintain all properties owned by Grantor which are designated by Grantor for temporary or permanent use by Members of the Association.

5.5.2.2 Reserve Account. Establish and fund a reserve account with a reputable banking institution or title insurance company authorized to do business in the State of Idaho, which reserve account shall be dedicated to the costs of repair, replacement, maintenance and improvement of Common Area.

5.5.2.3 Taxes and Assessments. Pay all real and personal property taxes and Assessments separately levied against Common Area. Such taxes and Assessments may be contested by the Association; provided, however, that such taxes and Assessments are paid or a bond insuring payment is posted prior to the sale or disposition of any property to satisfy the payment of such taxes and Assessments.

5.5.2.4 Tax Returns. Timely file any and all tax return(s) with the appropriate government entity.

5.5.2.5 Utilities. Acquire, provide and/or pay for water, sewer, garbage disposal, refuse and rubbish collection and other necessary services for Common Area, and to own and/or manage for the benefit of Windsor Creek Subdivision all water and water rights, ditch and ditch rights, and storage and storage rights, if any, and rights to receive water held by the Association, if any, whether such rights are evidenced by license, permit, claim, decree, stock ownership or otherwise.

5.5.2.6 Insurance. Obtain insurance from any reputable insurance company authorized to do business in the State of Idaho, and maintain in effect any insurance policy the Board deems necessary or advisable, and to the extent possible to obtain, including, without limitation the following policies of insurance.

a. Fire insurance including those risks embraced by coverage of the type known as the broad form "All Risk" or special extended coverage endorsement on a blanket agreed amount basis for the full insurable replacement value of all Improvements, equipment and fixtures located within Common Area.

b. Comprehensive public liability insurance insuring the Board, the Association, Grantor, and their agents and employees, invitees and guests of each against any liability incident to the ownership and/or use of Common Area. Limits on liability of such coverage shall be as follows: Not less than One Million Dollars (\$1,000,000) per person and One Million Dollars (\$1,000,000) per occurrence with respect to personal injury or death, and Five Hundred Thousand Dollars (\$500,000) per occurrence with respect to property damage.

c. Such other insurance, to the extent necessary to comply with all applicable laws, and indemnity, faithful performance, and fidelity and/or other bonds as the Board shall deem necessary or required to carry out the Association functions or to insure the Association against loss from malfeasance or dishonesty of any employee or other Person charged with the management or possession of the Association funds or other property.

d. The Association shall be deemed trustee of the interests of all Owners in connection with any insurance proceeds paid to the Association under such policies, and shall have full power to receive such Owner's interests in such proceeds and to deal therewith.

e. Insurance premiums for the above insurance coverage shall be deemed a common expense to be included in the Regular Assessments levied by the Association.

5.5.2.7 Newsletter; Community-wide Activities. If the Association so elects, prepare and distribute a newsletter on matters of general interest to Association Members and/or organize Windsor Creek Subdivision community-wide activities, the cost of which shall be included in Regular Assessments.

5.5.2.8 Rule Making. Make, establish, promulgate, amend and repeal such Association Rules as the Association shall deem advisable.

5.5.2.9 Board. Appoint and remove members of the Board following Grantor's relinquishment of right to appoint members of the Board, subject to the provisions of this Declaration.

5.5.2.10 Enforcement of Restrictions and Rules. Perform such other acts, whether or not expressly authorized by this Declaration, as may be reasonably advised or necessary to enforce any of the provisions of the Project Documents and any and all State or local laws, ordinances, rules and regulations. Also including, without limitation, the recordation of any claim of lien with the Canyon County Recorder's Office, as more fully provided herein.

5.5.2.11 Maintenance within a Phase. The Association may assume maintenance responsibility for property within any Phase in addition to that designated by any Supplemental Declaration, either by agreement with the Phase or because, in the opinion of the Board, the level and quality of service then being provided is inadequate. All costs of maintenance pursuant to this Section shall be assessed as a Special Assessment only against the Building Lots within the Phase to which such services are provided.

5.6 Annual Meeting. The Association shall hold an annual meeting each year and the first annual meeting shall be held during the month of March of the first calendar year following the first sale of a Building Lot in the Property. Subsequent regular annual meetings and special meetings of the Association shall be held as provided in the Bylaws. Notice of annual or special meetings of the Association shall be delivered to all Members of the Association as provided in the Bylaws. All meetings shall be held within the Property or as close thereto as practicable at a reasonable place selected by the Board. All Members of the Association are encouraged to attend all annual and special meetings of the Association.

5.7 Budgets and Financial Statements. Financial statements for the Association shall be prepared regularly and, upon request, copies shall be distributed to each Member of the Association as follows:

5.7.1 A pro forma operating statement or budget for each fiscal year shall be available for distribution not less than sixty (60) days before the beginning of each fiscal year. The operating statement shall include a schedule of Assessments received and receivable.

5.7.2 Within ninety (90) days after the close of each fiscal year, the Association shall cause to be prepared and available to each Owner, a balance sheet as of the last day of the Association's fiscal year for the Association and annual operating statements reflecting the income and expenditures of the Association for the fiscal last year.

5.8 **Manager.** The Association may employ or contract for the services of a professional manager or management company. The professional manager so employed or contracted with shall not have the authority to make expenditures chargeable against the Association except upon specific prior written approval and direction by the Board. The Board shall not be liable for any omission or improper exercise by such a professional manager of any such duty, power or function so delegated by or on behalf of the Board.

5.9 **Personal Liability.** No Member of the Board, or member of any committee of the Association, or any officer of the Association, or Grantor, or the manager, if any, shall be personally liable to any Owner, or to any other party including, without limitation, the Association, for any damage, loss or prejudice suffered or claimed on the account of any act, omission, error or negligence of the Association, the Board, the manager, if any, or any officer, committee, or other representative or employee of the Association, Grantor, or the Board, provided that such Person, upon the basis of such information as may be possessed by such Person, has acted in good faith without willful or intentional negligence and/or misconduct.

ARTICLE VI: RIGHTS TO COMMON AREAS

6.1 **Use of Common Area.** Every Owner shall have a right to use each parcel of Common Area, which right shall be appurtenant to and shall pass with the title to every Building Lot subject to the following provisions:

6.1.1 The right of the Association holding or controlling such Common Area to levy and increase Assessments for the construction, maintenance, repair, management and operation of Improvements on Common Area, including the right to Special Assessments.

6.1.2 The right of the Association to suspend the voting rights and rights of use, or interest in, Common Area by an Owner for any period during which any Assessment or charge against such Owner's Building Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of the Association Rules.

6.1.3 The right of the Association to dedicate or transfer all or any part of Common Area to any public agency, authority or utility or other Person as provided further herein.

6.1.4 The right of such Association to prohibit the construction of Improvements on all Common Areas.

6.1.5 The right of the Association to adopt rules regulating the use and enjoyment of the Common Area, including rules restricting use of the Common Area to occupants of Building Lots and their guests and rules limiting the number of guests who may use the Common Area.

6.1.6 The right of the Association to permit use of the Common Area by persons other than Owners, their families, tenants and guests upon payment of use fees established by the Board. There is hereby reserved to all authorized users of the Common Area an easement over the remaining Common Area for direct ingress and egress to and from such Common Area being leased.

6.1.7 The Common Area cannot be mortgaged or conveyed without the approval of Owners, excluding Grantor, by at least two-thirds (2/3) of the total voting power in the Association. If ingress or egress to any Building Lot is through Common Area, any conveyance or encumbrance of Common Area shall be subject to an easement in favor of the Owners of such Building Lots for the purpose of ingress and egress.

6.2 **Designation of Common Area.** Grantor shall designate and reserve Common Area in the Declaration, Supplemental Declarations and/or recorded Plats, deeds, or other instruments.

6.3 **Delegation of Right to Use.** Any Owner may delegate, in accordance with the Project Documents, such Owner's right of enjoyment to Common Area to the members of such Owner's family in residence, and such Owner's tenants or contract purchasers who reside on such Owner's Building Lot.

6.4 **Damages.** Each Owner shall be fully liable for any damage to any Common Area which may be sustained by reason of the negligence or willful misconduct of the Owner, such Owner's resident tenant or contract purchaser, or such Owner's family or guests, both minor and adult. The cost of correcting such damage shall be Limited Assessment against such Owner(s) Building Lot(s) and may be collected as provided herein for the collection of other Assessments.

ARTICLE VII: ASSESSMENTS

7.1 **Covenant to Pay Assessments.** By acceptance of a deed to any Building Lot, each Owner, except Grantor and the initial builder of a residential structure on any such Building Lot, thereby covenants and agrees to pay when due all Assessments or charges made by the Association, including all Regular, Special and Limited Assessments and charges made against such Owner pursuant to the provision of this Declaration, any Supplemental Declaration or other applicable Project Document.

7.1.1 **Assessment Constitutes Lien.** Such Assessments and charges together with late charge(s), interest, costs and reasonable attorney fees which may be incurred in collecting the same, shall be a continuing lien upon the property against which each such Assessment or charge is made.

7.1.2 **Assessment is Personal Obligation.** Each such Assessment, together with late charge(s), interest, costs and reasonable attorney fees, shall also be the personal obligation of the Owner beginning with the time when the Assessment is due. No Owner shall be exempt from such obligation by a waiver of the use and enjoyment of Common Area or by lease or abandonment of such Owner's Building Lot.

7.2 **Uniform Rate of Assessment.** All Regular and Special Assessments must be fixed at a uniform rate for each Building Lot.

7.3 **Date of Commencement of Assessments.** The obligation to pay Assessments shall commence as to each Building Lot, except Building Lots owned by Grantor and the initial builder of a residential structure on any such Building Lot, upon the acquisition of record title to a Building Lot by the first Owner thereof other than Grantor. Assessments shall be prorated based on the date of such acquisition of record title. The first annual Regular Assessment levied on each Building Lot shall be adjusted according to the number of days remaining in the fiscal year at the time Assessments commence on the Building Lot.

7.4 Exempt Property. The following property shall be exempt from payment of Regular Assessments and Special Assessments: (a) all Common Areas; (b) any property dedicated to and accepted by any governmental authority or public utility; (c) all Building Lots and other portions of the Property owned by Grantor; and (d) all Building Lots owned by the initial builder of a residential structure thereon.

7.5 Capitalization of Association and other Fees.

7.5.1 Start-up Development Assessment. Upon the acquisition of record title to a Building Lot by the first Owner thereof other than Grantor, including the initial builder of a residential structure on any such Building Lot, such first Owner shall pay to Association, at the closing of the transfer of the Building Lot from Grantor to such first Owner, an initial start-up fee equal to Two Hundred Seventy-five and No/100 Dollars (\$275.00). This fee shall be a one time initial start-up fee, and shall not be prorated for any time left in the calendar year following closing. This start-up fee shall be paid in full regardless of the time of year of the closing and is in addition to the prorated Regular Assessment referenced herein. From this start-up fee, Association shall pay all of the initial attorney fees, accounting fees, recording fees and filing fees relating to the creation of this Declaration and the Association, and the filing and recording thereof. Association may, in Association's sole discretion, use any remainder of the start-up fees for the cleaning of and/or mowing of areas in and around Windsor Creek Subdivision, or for any other purposes or uses of any kind in connection with Windsor Creek Subdivision.

7.5.2 Transfer Special Assessment. Upon each transfer of any Building Lot and the recording of the deed in connection with such transfer, each buyer other than Grantor (which buyer shall be an Owner upon recordation of the deed) at closing shall pay to the Association a Special Transfer Assessment of Two Hundred Seventy-five and No/100 Dollars (\$275.00) which shall be used for general Association purposes. Specifically exempt from paying the Transfer Special Assessment are: (a) the initial builder of a residential structure on any such Building Lot; and (b) the first Owner other than Grantor and the initial builder.

7.5.3 Late Fees; Interest on Past Due Assessments. Assessments of any kind that are not paid within thirty (30) days of the due date shall be assessed an additional late charge of Twenty-Five and no/100 Dollars (\$25.00). In addition, the Association shall have the discretion to charge interest on such unpaid Assessments at the highest rate allowed by law.

7.6 Regular Assessments. All Owners, except Grantor and the initial builder of a residential structure on any Building Lot, are obligated to pay Regular Assessments to the Association on a schedule of payments established by the Board.

7.6.1 Purposes of Regular Assessments. The proceeds from Regular Assessments are to be used for all costs and expenses incurred by the Association, including attorney fees and other professional fees, for the conduct of such Association affairs, including without limitation the costs and expenses of construction, improvement, maintenance, repair, management and operation of Common Area, including all improvements located on such areas owned and/or managed and maintained by the Association (the "Operating Expenses"), and an amount allocated to an adequate reserve fund to be used for repair, replacement, maintenance and improvement to those elements of Common Area, or other property of the Association that must be replaced and maintained on a regular basis (the "Repair Expenses"). The Operating Expenses and the Repair Expenses are collectively referred to herein as the "Expenses."

7.6.2 Computation of Regular Assessments. The Association shall compute the amount of Expenses on an annual basis. The Regular Assessments for the first fiscal year shall be Two Hundred Seventy-Five and No/100 Dollars (\$275.00). Thereafter, the computation of Regular Assessments by the Association shall take place not less than thirty (30) or more than sixty (60) days before the beginning of each fiscal year of the Association.

If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year. The Regular Assessment shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted expenses, including reserves. In determining the level of Assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Building Lots subject to Assessment on the first day of the fiscal year for which the budget is prepared and the number of Building Lots reasonably anticipated to become subject to Assessment during the fiscal year.

7.7 Special Assessments.

7.7.1 Purpose and Procedure. In the event that the Board shall reasonably determine that the Regular Assessment for a given calendar year is or will be inadequate to meet the Expenses for any reason, including, without limitation, costs of construction, improvement, maintenance, repair, management and operation of Improvements upon Common Area, attorney fees and/or litigation costs, other professional fees, or for any other reason, the Board shall determine the approximate amount necessary to defray such Expenses and levy a Special Assessment against the residential Building Lots, except those Building Lots owned by Grantor and the initial builder of a residential structure on any such Building Lot, which shall be computed in the same manner as Regular Assessments. The Board shall, in its discretion, determine the schedule under which such Special Assessment will be paid. Such Special Assessment determined by the Board shall be ratified by the Members at a meeting as provided immediately below.

7.7.2 Special Notice and Quorum Requirements. Notwithstanding anything to the contrary contained in the Project Documents, written notice of any meeting called for the purpose of levying a Special Assessment by the Association, shall be sent to all Members of the Association and to any Person in possession of a Building Lot, not less than fifteen (15) days nor more than thirty (30) days before such meeting. At the first such meeting called, the presence of voting Members or of proxies entitled to cast sixty percent (60%) of the total votes of the Association shall constitute a quorum. If such quorum is not present, subsequent meetings may be called subject to the same notice requirements, and the required quorum at the subsequent meetings shall be fifty percent (50%) of the quorum required at the preceding meeting. No such subsequent meeting shall be held more than thirty (30) days following the preceding meeting.

7.7.3 Consistent Basis of Assessment. Every Special Assessment shall be levied and paid upon the same basis as Regular Assessments.

7.8 Limited Assessments. Notwithstanding the above provisions with respect to Regular and Special Assessments, the Board may levy a Limited Assessment against a Member, except Grantor and the initial builder of a residential structure on any such Building Lot, as a remedy to reimburse the Association for costs including, without limitation, interest charges, incurred in bringing the Member and/or such Member's Building Lot into compliance with the provisions of the Project Documents or for damage caused by the Owner, or any of such Owner's family, representatives or invitees, to any Common Area.

7.9 Assessment Period. Unless otherwise provided in the Project Documents, the Regular Assessment period for the Association shall be annually, with payment of the Regular Assessment due on January 1 of each calendar year. The first Assessment shall be prorated according to the number of days remaining in the fiscal year and shall be payable in equal installments. The Regular Assessments to be paid by any particular Owner for any given fiscal year shall be computed by dividing the Association's total advance estimate of Expenses by the number of Building Lots.

7.10 Notice and Assessment Due Date. Thirty (30) days' prior written notice of Regular and Special Assessments shall be sent by the Association to the Owner of every Building Lot, and to any Person in possession of such Building Lot. The due dates for installment payments of Regular Assessments and Special Assessments shall be the first day of each month unless some other due date is established by the Board. Each installment of the Regular Assessment or Special Assessment shall become delinquent if not paid within ten (10) days after due. There may accrue, solely at the Board's discretion, on each delinquent installment payment a late charge equal to Twenty-Five and No/100 Dollars (\$25.00). The Association may bring an action against the delinquent Owner and may foreclose the lien against such Owner's Building Lot as more fully provided herein.

7.11 Reserve Budget and Capital Contribution. The Board shall annually prepare reserve budgets for both general purposes which 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 in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual Regular Assessments over the budget period.

7.12 Estoppel Certificate. The Association, upon at least twenty (20) days' prior written request, shall execute, acknowledge and deliver to the party making such request, a statement in writing stating whether, to the knowledge of the Association, a particular Owner is in default under the provisions of this Declaration, and further stating the dates through which any Assessments have been paid by such Owner. Any such statement delivered pursuant to this Article may be relied upon by any prospective purchaser or mortgagee of Owner's Building Lot. Reliance on such statement may not extend to any default of such Owner of which the signor of such statement shall have had no actual knowledge.

ARTICLE VIII: ENFORCEMENT OF ASSESSMENTS; LIENS

8.1 Right to Enforce. The Association has the right to collect and enforce Assessments pursuant to the provisions hereof. Each Owner of a Building Lot shall be deemed to covenant and agree to pay each and every Assessment provided for in this Declaration and agrees to the enforcement of all Assessments in the manner herein specified. In the event an attorney or attorneys are employed for the collection of any Assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms, and conditions of this Declaration, each Owner agrees to pay reasonable attorney fees in addition to any other relief or remedy obtained against such Owner. The Board or its authorized representative(s) may enforce the obligations of Owners to pay such Assessments by commencement and maintenance of a suit at law or in equity to enforce the liens created hereby. A suit to recover a money judgment for an unpaid Assessment shall be maintainable without foreclosing or waiving the lien hereinafter provided.

8.2 Assessment Liens. There is hereby created a claim of lien on each and every Building Lot to secure payment of any and all Assessments levied against such Building Lot pursuant to this Declaration together with interest thereon at the maximum rate permitted by law and all costs of collection which may be paid or incurred by the Association, including reasonable attorney fees. All sums assessed in accordance with the provisions of this Declaration shall constitute a lien on such respective Building Lots upon recordation of a claim of lien with the Canyon County Recorder's Office. Such lien shall be prior and superior to all other liens or claims created subsequent to the recordation of the notice of delinquency and claim of lien except for tax liens for real property taxes on any Building Lot and assessments on any Building Lot in favor of any municipal or other governmental assessing body which, by law, would be superior thereto.

8.3 Claim of Lien. Upon default of any Owner in the payment of any Regular, Special or Limited Assessment, the Association may cause to be recorded in the Canyon County Recorder's Office a claim of lien. The claim of lien shall state the amount of such delinquent sums and other authorized charges (including the cost of recording such notice), a sufficient description of the Building Lot(s) against which the same have been assessed, and the name of the record Owner thereof. Each delinquency shall

constitute a separate basis for a notice and claim of lien, but any number of defaults may be included within a single notice and claim of lien. Upon payment to the Association of such delinquent sums and charges in connection therewith or other satisfaction thereof, the Association shall cause to be recorded a further notice stating the satisfaction or relief of such delinquent sums and charges. The Association may demand and receive the cost of preparing and recording such release before recording the same.

8.4 Method of Foreclosure. Such lien may be foreclosed pursuant to any applicable Idaho law and/or proceeding. The Board is authorized to appoint an attorney, any officer or director of the Association, or any title company authorized to do business in Idaho as trustee for the purpose of conducting foreclosure to the extent allowed by applicable law.

8.5 Subordination to Certain Mortgages. The lien for the Assessments provided for herein in connection with a given Building Lot shall not be subordinate to the lien of any Mortgage except the lien of a First Mortgage given and made in good faith and for value that is of record as an encumbrance against such Building Lot prior to the recordation of a claim of lien for the Assessments. Except as expressly provided in this Article, with respect to a mortgagee of the First Mortgage who acquires title to a Building Lot, the sale or transfer of any Building Lot shall not affect the Assessment lien provided for herein, nor the creation thereof by the recordation of a claim lien, on account of the Assessments becoming due whether before, on, or after the date of such sale or transfer, nor shall such sale or transfer diminish or defeat the personal obligation of any Owner for delinquent Assessments as provided for in this Declaration.

ARTICLE IX: INSPECTION OF THE ASSOCIATION'S BOOKS AND RECORDS

The membership register, books of account and minutes of meetings of the Board shall be made available for inspection and copying by any Member or by such Member's duly appointed representatives, at any reasonable time and for a purpose reasonably related to such Member's interest as a Member at the office of the Association or at such other place as the Board shall prescribe.

ARTICLE X: BOARD OF DIRECTORS

10.1 Board Creation: Right of Appointment. Before or within thirty (30) days after the date on which Grantor first conveys a Building Lot to an Owner, Grantor shall appoint three (3) individuals to serve on the Board. The Board shall have exclusive jurisdiction over all original construction on any portion of the Property or any other real property annexed as provided further in Article XVI. Until one hundred percent (100%) of the Property has been developed and conveyed to Owners other than builders, Grantor retains the right to appoint all members of the Board who shall serve at Grantor's discretion. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Grantor.

10.2 Improvements Generally. No Improvements on any portion of the Property shall be constructed, reconstructed, placed or removed from the Property, except those placed or removed by Grantor, without prior written consent of the Board. In the event the Board fails to approve or disapprove such request within thirty (30) days after such request has been submitted in writing, approval shall not be required and such request shall be deemed to be in compliance with this Declaration. Nothing contained in this Article limits any Owner's obligation and duty to ensure that such Owner's Building Lot Improvements are in compliance with this Declaration, any Supplemental Declaration, any other Project Documents or applicable State or local laws.

10.3 Expenses. The Board shall have the right to charge a reasonable fee for each application submitted to the Board for review of any request for improvements made to Building Lots in an amount which may be established by the Board from time to time and such fees shall be collected by the Board and remitted to the Association to help defray the expenses of the Board's operation, including reasonable payment to each member of the Board for their services as provided herein.

10.4 Non-Liability of Board. Approval by the Board shall not imply that Improvements meet any applicable federal, state and/or local laws and ordinances, and does not assure approval of the Improvements by any appropriate governmental or quasi-governmental agency, board or commission. Applicant and/or Owner shall ensure that such improvements meet any and all applicable federal, state and/or local laws and ordinances. Notwithstanding that the Board has approved Improvements, plans and specifications, neither the Board nor any of their members shall be responsible or liable to the Association or to any Person, Owner, or Grantor with respect to any loss, liability, claim or expense which may arise by reason of such approval of the Improvements, unless due to the willful misconduct or bad faith of the Board.

10.5 Enforcement. Any Improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Board or Grantor, such offending Owner shall, at its own cost and expense, remove such Improvement or restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Board or its designees shall have the right to enter the Building Lot, remove the violation, and restore the Building Lot to substantially the same condition as previously existed. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the Building Lot and collected as a Limited Assessment.

10.6 Grantor's Exemption. Any and all Improvements constructed by Grantor on or to the Property are not subject to review and approval by the Board.

ARTICLE XI: EASEMENTS

11.1 Owners: Easements of Enjoyment. Every Owner shall have a nonexclusive easement for the use and enjoyment of Common Area which shall be appurtenant to and shall pass with the title to every Building Lot.

11.2 Delegation of Use. Any Owner may delegate, in accordance with the Project Documents, such Owner's right of enjoyment in Common Area to such Owner's tenants, employees, family, guests or invitees.

11.3 Recorded Easements. The Property shall be subject to all easements shown on any recorded Plat affecting the Property, or any portion thereof, and to any other easements of record or of use as of the date of recordation of this Declaration.

11.4 Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each Building Lot and such portion or portions of Common Area adjacent thereto, or as between adjacent Building Lots, due to the inadvertent placement or settling or shifting of Improvements constructed, reconstructed or altered thereon in accordance with the terms of this Declaration. Easements of encroachment shall be valid only so long as they exist, and the rights and obligations of Owners shall not be altered in any way because of encroachments, settling or shifting of the Improvements; provided, however, that in no event shall a valid easement for encroachment occur due to the willful or bad faith act(s) of an Owner.

11.5 Easements of Access. Grantor expressly reserves for the benefit of all the Property reciprocal easements of ingress and egress for all Owners to, from, over and across their respective Building Lots for installation and repair of utility services, for drainage of water over, across and upon adjacent Building Lots and Common Areas resulting from the normal use of adjoining Building Lots and Common Areas, and for necessary construction, maintenance and repair of any Improvement. Such easements may be used by Grantor, and by all Owners, their guests, tenants and invitees, residing on or temporarily visiting the Property, for such purposes reasonably necessary for the use and enjoyment of a Building Lot or Common Area.

11.6 Drainage and Utility Easements. Notwithstanding anything expressly or impliedly contained to the contrary, the Property shall be subject to all easements heretofore or hereafter granted by Grantor for the installation and maintenance of utilities and/or drainage facilities that are required for the development of the Property. In addition, Grantor hereby reserves for the benefit of the Association the right to grant additional easements and rights-of-way over the Property, as appropriate, to utility companies and/or public agencies as necessary or expedient for the proper development of the Property until close of escrow for the sale of the last Building Lot in the Property.

11.7 Improvement of Drainage and Utility Easement Areas. The Owners of Building Lots are hereby restricted and enjoined from constructing or altering any Improvements upon any drainage and/or utility easement areas as shown on the Plat(s) or otherwise designated in any recorded document which would interfere with or prevent the easement from being used for its intended purpose.

11.8 Rights and Duties Concerning Utility Easements. The rights and duties of Owners of the Building Lots within the Property with respect to utilities shall be governed by the following:

11.8.1 Wherever utility house connections are installed within the Property, which connections or any portions thereof lie in or upon Building Lots owned by an Owner other than the Owner of the Building Lot served by the connections, the Owner of the Building Lot served by the connections shall have the right, and is hereby granted an easement to the full extent necessary therefor, to enter upon any Building Lot or to have their agent enter upon any Building Lot within the Property in or upon which such connections or any portion thereof lie, to repair, replace and generally maintain the connections as and when it may be necessary.

11.8.2 Whenever utility house connections are installed within the Property, which connections serve more than one Building Lot, the Owner of each Building Lot served by the connections shall be entitled to full use and enjoyment of such portions of such connections as service such Owner's Building Lot.

11.9 Grantor's Rights Incident to Construction. Grantor hereby retains a right and easement of ingress and egress over, in, upon, under, and across the Property and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the Improvements on the Property owned by Grantor; provided, however, that no such rights shall be exercised by Grantor in such a way so as to unreasonably interfere with the occupancy, use, enjoyment, or access to an Owner's Building Lot by that Owner or such Owner's family, tenants, guests, or invitees.

11.10 Easements Deemed Created. All conveyances of Building Lots made after the date of the recording of the Declaration, as amended and supplemented from time to time, whether by Grantor or otherwise, shall be construed to grant and reserve the easements contained in this Article, even though no specific reference to such easement or to this Article appears in the instrument for such conveyance.

11.11 Waterway Easements. Grantor hereby reserves an easement for all Waterways and related pipes, pumps and other equipment over, across, under and through all Building Lots and Common Areas to the extent reasonably required to maintain any Waterway system that may be installed by Grantor on the Property, including, without limitation, the Irrigation System. Any relocation of the water lines installed as a part of such system shall not be undertaken in any way which interrupts the flow of water through the system or damages the system in any other fashion. Grantor reserves the right to make any reconfiguration of any Waterway which Grantor determines, in Grantor's own discretion, to be necessary, expedient or desirable; provided, however, that nothing herein shall reserve unto Grantor the right to take any action which would disturb, encroach upon or endanger the foundation of any building, nor shall Grantor take any action which would materially alter any Waterway's proximity to improved property abutting such Waterway. Under no circumstances whatsoever shall the Waterways be used by any Owner, Member, tenants, invitees, and/or guests for recreational purposes including, without limitation, wading and/or swimming.

11.12 Reservation for Expansion. Grantor hereby reserves to itself and for Owners of Building Lots a perpetual easement and right-of-way for access over, upon, across and through the Property for construction, utilities, drainage, ingress and egress, and for use of Common Area. The location of these easements and rights-of-way must be approved by the Board and may be documented by Grantor by recorded instruments.

11.13 Emergency Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or Persons to enter the Property in the proper performances of their duties.

11.14 Association's Responsibility. The Association shall maintain and keep Common Area in good repair, such maintenance to be funded as provided herein. This maintenance shall include, without limitation, maintenance, repair and replacement, subject to any insurance then in effect, of all landscaping, structures and Improvements situated within Common Area.

ARTICLE XII: IRRIGATION WATER

12.1 Irrigation System. Each Building Lot shall have access to a pressured urban irrigation water system ("**Irrigation System**") and irrigation water, when seasonally available, will be supplied through the Irrigation System. It is contemplated that Grantor shall construct the Irrigation System, and the Irrigation System shall be owned, maintained and operated by either the Pioneer Irrigation District or the City of Caldwell with all operation and maintenance costs billed to Owners. Each Building Lot Owner shall pay for the cost of maintenance and operation of the Irrigation System, and all operation and maintenance costs of the Irrigation System may be paid by the Association through Assessments paid to the Association by the Owners. Use of the Irrigation System shall be subject to such rules and regulations of the District governing use of the Irrigation System.

12.2 Non-Potable Water. The non-potable Irrigation System contains inherent dangers. Use of the Irrigation System shall be subject to such rules, regulations, laws and ordinances as may be adopted and amended from time to time, of the local jurisdiction, the District, State of Idaho, and federal government, if any, and the Association, governing the use of the Irrigation System including, without limitation, all requirements of the "Idaho Rules for Public Drinking Water Systems." Each Owner shall clearly mark every non-potable water tap on such Owner's Building Lot with a warning label or sticker, and shall maintain such label or sticker. No Owner, or any other person claiming right under any Owner, shall cause or allow to be caused, any connection between the Domestic Water System and the Irrigation System. Cross-connections of any type or kind whatsoever between the non-potable Irrigation System and potable water lines are strictly prohibited.

12.3 Water Unreliable. The area of the country where Windsor Creek Subdivision is located is desert. Irrigation water is not always reliable and such water is not unlimited. Irrigation water may not be available due to, without limitation, drought, harsh weather conditions, government actions, system

breakdowns, transmission failures, overuse by Building Lot Owners or any other causes. Each Owner assumes the risk of any water shortage and, in the event that there is a water shortage, each Owner must be prepared to use such Owner's domestic water supply. No Building Lot shall have any right to an extended water season, and Grantor, District or the Association shall have no obligation to provide water over an extended season or supplemental water. All costs of extended season or supplemental water, if any, shall be included at the cost of operation of the Irrigation System and shall be assessed to the Building Lots.

12.4 Rotation. No Building Lot in any phase of Windsor Creek Subdivision shall have any right to, or assurance of, a continuous or unlimited supply of irrigation water from the Irrigation System. Nor is any Building Lot guaranteed enough water from the Irrigation System to irrigate all of the landscaping on the Building Lot. Each Building Lot shall be subject to, and each Building Lot Owner by accepting a deed to a Building Lot in Windsor Creek Subdivision agrees to be bound by and to comply with, any rules or regulations which may be established for the use and rotation of irrigation water between the Building Lots by the District, Grantor or Association.

12.5 No Liability. Neither the Association nor Grantor (or any members, employees, agents, officers or directors thereof) shall have any liability of any kind to any Owner, Occupant, Association or any others for any losses or damages relating in any respect to the Irrigation System, or irrigation water, or the lack thereof, including but not limited to damages to, or loss of lawns, landscaping, trees, shrubs, gardens or the like caused by the lack of, or shortage of, irrigation water. Each Owner accepts the risk of loss or damage due to the unavailability, shortage or lack of irrigation water.

12.6 WARNING! IRRIGATION WATER IS NOT DRINKABLE.

Notice is hereby given to each Owner in Windsor Creek Subdivision that the water in the Irrigation System is NOT fit for human consumption. It contains untreated ditch or pond water, which may contain dirt, hazardous wastes or farm chemicals or disease-causing organisms. Drinking of the irrigation water may make a person sick, and could result in death or permanent disability.

NEVER DRINK WATER FROM THE PRESSURIZED IRRIGATION SYSTEM

It is the duty of each Owner to: (a) educate all family members, guests, tenants and invitees that the water from the Irrigation System is not drinkable; (b) ensure that ALL of the faucets and risers in the Irrigation System are adequately marked, and if not marked to check with the local health department to determine what type of markings are required by that health department or agency; (c) not remove any existing tags or other warning markers from the irrigation risers; and (d) not install, or maintain the installation of, any cross connections between the Irrigation System and the drinking water system unless the cross connection has been approved in writing by the Association AND the supplier of the irrigation water AND the supplier of the drinking water AND the cross connection back flow prevention device meets all relevant governmental and building code requirements.

12.7 No Liability for Quality or Quantity of Water. Neither the Association nor Grantor (or any members, employees, agents, officers, shareholders or directors thereof) shall have any liability of any kind to any Owner, Occupant, Association, and/or any others for any losses, damages, or bodily injuries relating in any respect to the quantity or the quality of the irrigation water, or the ingestion of, or contact with, the irrigation water. Each Owner, Occupant and Association accepts the risk of using the irrigation water and waives and releases any and all claims relating thereto.

ARTICLE XIII: DAMAGE OR DESTRUCTION

13.1 Association as Attorney-in-Fact. Each and every Owner hereby irrevocably constitutes and appoints the Association as such Owner's true and lawful attorney-in-fact in such Owner's name, place, and stead for the purpose of dealing with the Improvements on Common Area upon damage or destruction as provided in this Article. Acceptance by any grantee of a deed or other instrument of

conveyance from Grantor or from any Owner shall constitute appointment of the attorney-in-fact as herein provided. As attorney-in-fact, the Association shall have full and complete authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary or appropriate to exercise the powers granted herein to the Association as attorney-in-fact.

13.2 Estimate of Damages or Destruction. As soon as practical after an event causing damage to or destruction to any part of Common Area, the Association shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that such Association deems reliable and complete of the costs of repair and reconstruction of that part of Common Area so damaged or destroyed. "Repair and reconstruction" as used in this Article shall mean restoring the damaged or destroyed Improvements to substantially the same condition in which they existed prior to the damage or destruction.

13.3 Repair and Reconstruction. As soon as practical after obtaining estimates, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Improvements. As attorney-in-fact for Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction, and no consent or other action by any Owner shall be necessary. Assessments of the Association shall not be abated during any period of insurance adjustments and repair and reconstruction.

13.4 Funds for Repair and Reconstruction. The proceeds received by the Association from any hazard insurance shall be used for the purpose of repair and reconstruction. If the proceeds of the insurance are insufficient to pay the estimated or actual costs of such repair and reconstruction, the Association may assess in advance from all Owners a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair or reconstruction. Further assessments may be made in like manner if the amounts collected prove insufficient to complete such repair and reconstruction.

13.5 Disbursement of Funds for Repair and Reconstruction. The insurance proceeds held by the Association and the amounts received from the Special Assessments constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all cost of such repair and reconstruction, such balance shall be distributed to Owners in proportion to the contributions each Owner made as a Special Assessment to the Association under this Article or, if no Special Assessments were made, in equal shares per Building Lot to Owners.

13.6 Decision Not to Rebuild. If Owners representing at least sixty-seven percent (67%) of the total votes of the Association and sixty-seven percent (67%) of the holders of a First Mortgage (based upon one vote for each mortgage owned) of the Building Lots agree in writing not to repair or reconstruct and no alternative Improvements are authorized, then and in that event the damaged Common Area shall be restored to its natural state and maintained as an undeveloped portion of Common Area by the Association in a neat and attractive condition, and any remaining insurance proceeds shall be distributed in equal shares per Building Lot to the Owners.

13.7 Damage or Destruction Affecting Building Lots. In the event of damage or destruction to the Improvements located on any of the Building Lots, the Owner thereof shall promptly repair and reconstruct the damaged Improvements to their condition prior to such damage or destruction. If such repair or reconstruction is not commenced within one hundred eighty (180) days from the date of such damage or destruction, or if repair or reconstruction is commenced but then abandoned for a period of more than ninety (90) days, then the Association may impose a fine of not less than Fifty Dollars (\$50) per day on the Owner of the Building Lot until repair and reconstruction is commenced, unless the Owner can prove to the reasonable satisfaction of the Association that such failure is due to circumstances beyond the Owner's control.

ARTICLE XIV: CONDEMNATION

14.1 Rights of Owners. Whenever all or any part of Common Area shall be taken or conveyed in lieu of and under threat of condemnation, the Board acting as attorney-in-fact for all Owners, shall notify each Owner of the taking, but the Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

14.2 Condemnation; Distribution of Award; Reconstruction. The award made for such partial or complete taking shall be payable to the Association as trustee for all Owners to be disbursed as follows: If the taking involves a portion of Common Area on which Improvements have been constructed, then, unless within sixty (60) days after such taking Grantor and Owners representing at least sixty-seven percent (67%) of the Class B and A Members shall otherwise agree, the Association shall restore or replace such Improvements so taken on the remaining land included in Common Area to the extent lands are available therefor, in accordance with plans approved by the Board. If such Improvements are to be repaired or restored, the provisions in Article XIII regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any Improvements on Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be distributed in equal shares per Building Lot.

ARTICLE XV: RESOLUTIONS OF DISPUTES

15.1 Avoiding Costs of Litigation and Limiting Right to Litigate Disputes. The Association, Grantor, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties"), shall encourage the amicable resolution of disputes involving the Property, and avoid the emotional and financial costs of litigation if at all possible. Accordingly, all claims, grievances or disputes between such Bound Party and any other Bound Party, including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the Project Documents and/or the Association rules (collectively "Claim"), shall be subject to the procedures set forth herein.

15.2 Mandatory Procedures for All Other Claims. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") shall not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of such Claim until it has complied with the following procedures:

15.2.1 Negotiation. Each Claimant and Respondent (the "Parties") shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. Upon receipt of a written request from any Party, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation.

15.2.2 Mediation. If the Parties do not resolve the Claim through negotiation, Claimant shall submit the Claim to mediation under the auspices of Idaho law. If the results of mediation are unsatisfactory to either Party, either Party shall then have all remedies at law or equity.

15.3 Allocation of Costs of Resolving Claims. Each Party shall bear all of its own costs incurred prior to and during the proceedings described herein, including the fees of its attorney or other representative. Each Party shall share equally all charges in connection with mediator(s).

ARTICLE XVI: ANNEXATION AND WITHDRAWAL OF PROPERTY

16.1 Annexation. Until all property described on Exhibit A has been subjected to this Declaration or December 31, 2030, whichever is earlier, Grantor may unilaterally subject all or portions of the property described in Exhibit A to the provisions of this Declaration. Grantor may transfer or assign this right to annex, provided that the transferee or assignee is the developer of at least a portion of the

property described in **Exhibit A** and that such transfer is memorialized in a written, recorded instrument executed by Grantor. Nothing in this Declaration shall be construed to require Grantor or any successor to annex or develop any of the property set forth in **Exhibit A** in any manner whatsoever. Such annexation shall be accomplished by filing a Supplemental Declaration in the records of Canyon County, Idaho, describing the property to be annexed and specifically subjecting such property to the terms of this Declaration. Such Supplemental Declaration shall not require the consent of voting Members, but shall require the consent of the owner of such property, if other than Grantor. Any such annexation shall be effective upon the recording of such Supplemental Declaration.

16.2 Additional Covenants and Easements. Grantor may unilaterally subject any portion of the Property submitted to this Declaration initially or by Supplemental Declaration to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through Assessments. Such additional covenants and easements shall be set forth in a Supplemental Declaration recorded either concurrently with or after the annexation of the such property, and shall require the written consent of the owner(s) of such property, if other than Grantor.

16.3 Contiguous Land Subject to Annexation. Grantor hereby reserves the right to annex any abutting, adjoining or contiguous real property, into Windsor Creek Subdivision by recording a Notice of Annexation or Supplemental Declaration particularly describing the real property to be annexed and added to Windsor Creek Subdivision created by this Declaration, pursuant to the provisions of this Article, and no Owner shall object or protest such annexation and/or development of such annexed property.

Upon the recording of a Notice of Annexation containing the provisions set forth in this Section (which Notice may be contained within a Supplemental Declaration affecting such property), except as may be provided for therein, the covenants, conditions and restrictions contained in this Declaration shall apply to the added land in the same manner as if it were originally covered by this Declaration and originally constituted a portion of Windsor Creek Subdivision; and thereafter, the rights, privileges, duties and liabilities of the parties to this Declaration with respect to the added land shall be the same as with respect to the original land, and the rights, privileges, duties and liabilities of the Owners and Occupants of Building Lots within the added land shall be the same as in the case of the original land. Notwithstanding the foregoing, any Supplemental Declaration may provide a special procedure for amendment of any specified provision thereof, e.g., by a specified vote of only the owners of building lots within the area subject thereto. Any provision of a Supplemental Declaration for which no special amendment procedure is provided shall be subject to amendment in the manner provided in this Declaration.

16.4 Procedure for Annexation. Any of the above-described real property may be annexed into Windsor Creek Subdivision by the recordation of a Notice of Annexation executed by Grantor and containing the following information:

- A. A reference to this Declaration, which reference shall state the date of recordation hereof and the Recorder's instrument number or the book and page of the official records of Canyon County where this Declaration is recorded;
- B. An exact legal description of the added land;
- C. A statement that the provisions of this Declaration shall apply to the added land, except as set forth therein; and
- D. A statement of the use restrictions applicable to the annexed property, which restrictions may be the same or different from those set forth in this Declaration.

16.5 Deannexation. Grantor may delete all or a portion of the property described on **Exhibit A** and any annexed property from coverage of this Declaration and the jurisdiction of the

Association, so long as Grantor is the owner of all such property being deannexed, and provided that a notice of deannexation is filed in the records of Canyon County, Idaho, describing the property to be deannexed and specifically excepting such property from the terms of this Declaration.

16.6 Amendment. This Article shall not be amended without the prior written consent of Grantor so long as Grantor owns any portion of the Property described in Exhibit A.

ARTICLE XVII: MISCELLANEOUS

17.1 Term. The Restrictions created hereunder shall be perpetual, subject only to extinguishment by the holders of such Restrictions as provided by law.

17.2 Amendment.

17.2.1 By Grantor. Until the recordation of the first deed to a Building Lot, the provisions of this Declaration may be amended, modified, clarified, supplemented, added to or terminated (collectively, "amendment") by Grantor by recordation of a written instrument setting forth such amendment. Any amendment affecting only a particular Phase may be made by Grantor by an amendment or supplement to this Declaration at any time up to the recordation of the first deed to a Building Lot in such Phase.

17.2.2 By Owners. After the recordation of the first deed to a Building Lot, any amendment to any provision of the Declaration, other than to this Article, shall be by an instrument in writing signed and acknowledged by the president and secretary of the Association certifying and attesting that such amendment has been approved by the vote or written consent of Members representing at least two-thirds of the total voting power in the Association, except where a greater percentage is required by express provision in this Declaration, and such amendment shall be effective upon its recordation with the Canyon County Recorder's Office. Any amendment to this Article shall require the vote or written consent of Members representing ninety percent (90%) of the voting power of the Association.

17.2.3 Effect of Amendment. Any amendment of this Declaration approved in the manner specified above shall be binding on and effective as to all Owners and their respective Building Lots notwithstanding that such Owners may not have voted for or consented to such amendment. Such amendments may add to and increase the covenants, conditions, restrictions and easements applicable to the Property but shall not prohibit or unreasonably interfere with the allowed uses of such Owner's Building Lot(s) which existed prior to such amendment.

17.3 Mortgage Protection. Notwithstanding any other provision of this Declaration, no amendment of this Declaration shall operate to defeat or render invalid the rights of the beneficiary under any First Mortgage upon a Building Lot made in good faith and for value, and recorded prior to the recordation of such amendment, provided that after foreclosure of any such First Mortgage, such Building Lot shall remain subject to this Declaration.

17.4 Notices. Any notices permitted or required to be delivered as provided in this Declaration shall be in writing and may be delivered either personally or by U.S. mail. If delivery is made by U.S. mail, delivery shall be deemed to have been delivered seventy-two (72) hours after the same has been deposited in the United States mail, first class, postage prepaid, addressed to any Person at the address given by such Person to the Association for the purpose of service of such notice, or to the residence of such Person if no address has been given to the Association or to the address of such Person as contained in the Canyon County tax assessor's rolls. Such address may be changed from time to time by notice in writing to the Association.

17.5 Enforcement and Non-Waiver.

17.5.1 Right of Enforcement. Except as otherwise provided herein, any Owner, Association or Grantor shall have the right to enforce any or all of the provisions hereof against any portion of the Property and against Owners thereof.

17.5.2 Violations and Nuisances. The failure of any Owner of a Building Lot to comply with any provision hereof, or with any provision of the Project Documents, is hereby declared a nuisance and will give rise to a cause of action in Grantor, the Association or any Owner for recovery of damages or for negative or affirmative injunctive relief or both.

17.5.3 Violation of Law. Any violation of any State, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any portion of the Property is hereby declared to be a violation of this Declaration and subject to any and all of the enforcement procedures set forth in this Declaration and any and all enforcement procedures in law and equity.

17.5.4 Remedies Cumulative. Each remedy provided herein is cumulative and not exclusive.

17.5.5 Non-Waiver. The failure to enforce any of the provisions herein at any time shall not constitute a waiver of the right to enforce any such provision.

17.6 Use of Trade Name. Each Owner by acceptance of a deed for such Owner's Building Lot shall be deemed to acknowledge that "Windsor Creek Subdivision" is or may become a servicemark, trade name and/or trademark of Windsor Creek Development, LLC, or its licensees, and to covenant that any such Owner shall not use the term Windsor Creek Subdivision without the prior written permission of Windsor Creek Development, LLC, or its licensees.

17.7 Interpretation. The provision of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Property. This Declaration shall be construed and governed under the laws of the State of Idaho.

17.8 Restrictions Construed Together. All of the provisions hereof shall be liberally construed together to promote and effectuate the fundamental concepts of the development of the Property as set forth in the recitals of this Declaration.

17.9 Restrictions Severable. Notwithstanding the provision of the foregoing Section 17.8, each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity of partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision herein.

17.10 Singular Includes Plural. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular, and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

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

17.12 Successors and Assigns. All references herein to Grantor, Owner, Members, the Association or Person shall be construed to include all successors, assigns, partners and authorized agents of such Grantor, Owners, Members, Association or Person.

17.13 Owners' Further Acknowledgments. By accepting a deed to any Building Lot(s) contained within the Property, each Owner acknowledges and agrees that Owner has read and understands the Project Documents.

IN WITNESS WHEREOF, the undersigned has duly executed this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Windsor Creek Subdivision effective upon the recording hereof.

GRANTOR:

WINDSOR CREEK DEVELOPMENT, LLC, an Idaho limited liability company

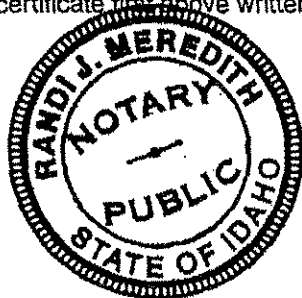
By: *Daniel G. Zang*

Printed Name: Daniel G. Zang
Its: Managing Member

STATE OF IDAHO)
) ss.
County of Ada)

On this 16 day of May, 2006, before me, the undersigned, a Notary Public in and for said State, personally appeared Daniel G. Zang, known or identified to me to be a Managing Member of WINDSOR CREEK DEVELOPMENT, LLC, the limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company, and acknowledged to me that such company executed the same.

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



Randi J. Meredith
Notary Public for Idaho
Residing at Meridian, ID
My commission expires: 8-18-09

EXHIBIT A
Legal Description of Property
Windsor Creek Subdivision

EARL, MASON, & STANFIELD, INC.

PROFESSIONAL ENGINEERS, LAND SURVEYORS & PLANNERS

314 BADIOLA STREET
CALDWELL, IDAHO 83605

TELEPHONE: (208) 454-0256
FAX: (208) 454-0979
Email: rgray@emands.net

FOR: Providence Development Group, L.L.C.
JOB NO.: MY0804
DATE: September 28, 2004
RE: Windsor Creek Subdivision

ANNEXATION DESCRIPTION

A parcel of land being all of the W 1/2 NW 1/4 and also a parcel of land being a portion of the E 1/2 NW 1/4 of Section 12, Township 3 North, Range 3 West, Boise Meridian, Caldwell, Canyon County Idaho, more particularly described as follows:

BEGINNING at the NW corner of said W 1/2 NW 1/4, (Section corner common to sections 1, 2, 11 and 12), said corner monumented with a found brass disk;

Thence N. 89° 27' 01" E., a distance of 1323.37 feet along the northerly boundary of said W 1/2 NW 1/4 to the NW corner of said E 1/2 NW 1/4, (W 1/16 corner common to sections 1 and 12), said corner monumented with a found 5/8 inch diameter iron pin;

Thence along the northerly boundary of said E 1/2 NW 1/4, N. 89° 27' 01" E., a distance of 773.06 feet to the NW boundary corner of a parcel of land as shown on a Record of Survey for Russell Edwards, recorded in the Office of the Recorder of Canyon County, Idaho, as Instrument No. 9826497, said corner monumented with a found 1/2 inch diameter iron pin;

Thence along the westerly, southerly and easterly boundary of said Record of Survey for Russell Edwards, the following courses and distances:

Thence S. 43° 48' 58" W., a distance of 106.66 feet to a found 1/2 inch diameter iron pin;

Thence S. 69° 33' 59" W., a distance of 93.83 feet to a found 1/2 inch diameter iron pin;

Thence S. 1° 28' 07" W., a distance of 101.92 feet to a found 1/2 inch diameter iron pin;

Thence N. 89° 27' 01" E., a distance of 262.40 feet to a found 1/2 inch diameter iron pin;

Thence N. 0° 32' 59" W., a distance of 210.02 feet to a point on the northerly boundary of said E 1/2 NW 1/4, said point also being the NE boundary corner of said Record of Survey for Russell Edwards and is monumented with a found 1/2 inch diameter iron pin;

Thence leaving the easterly boundary of said Record of Survey for Russell Edwards and along the northerly boundary of said E 1/2 NW 1/4, N. 89° 27' 01" E., a distance of 454.24 feet to the NE corner of said E 1/2 NW 1/4, (N 1/4 corner), said corner monumented with a found 3 inch diameter aluminum disk;

Thence S. 0° 27' 11" W., a distance of 2355.15 feet along the easterly boundary of said E 1/2 NW 1/4 to a set 5/8 inch diameter iron pin;

Thence S. 89° 23' 24" W., a distance of 150.00 feet parallel with the southerly boundary of said E 1/2 NW 1/4 to a set 5/8 inch diameter iron pin;

Thence S. 0° 27' 11" W., a distance of 290.40 feet parallel with the easterly boundary of said E 1/2 NW 1/4 to a point on the southerly boundary of said E 1/2 NW 1/4, said point monumented with a set 5/8 inch diameter iron pin;

Thence S. 89° 23' 24" W., a distance of 1178.12 feet along the southerly boundary of said E 1/2 NW 1/4 to the SE corner of said W 1/2 NW 1/4, (Center west 1/16 corner);

Thence S. 89° 23' 24" W., a distance of 1328.12 feet along the southerly boundary of said W 1/2 NW 1/4 to the SW corner of said W 1/2 NW 1/4, (West 1/4 corner), said corner monumented with a found 2 inch diameter aluminum disk;

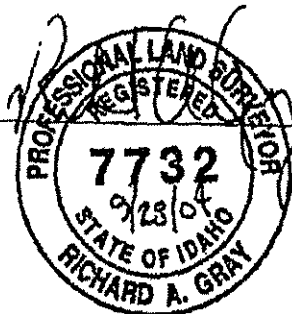
Thence N. 0° 39' 33" E., a distance of 2648.53 feet along the westerly boundary of said W 1/2 NW 1/4 to the POINT OF BEGINNING.

This parcel contains 159.09 acres more or less.

SUBJECT TO a 28.00 foot Ingress-Egress Easement recorded as Instrument No. 9843777 in the Office of the Canyon County Recorder.

Also, this parcel is **SUBJECT TO** all easements and rights-of-way of record or implied.

All according to the record of surveys as recorded in the Office of the Canyon County Recorder as Instrument No. 9826497 for "Russell Edwards", Instrument No. 200443319 for "Madison River L.L.C." and Instrument No. 200302898 for "Centennial Development, L.L.C.".



WINDSOR CREEK ANNEXATION EXHIBIT

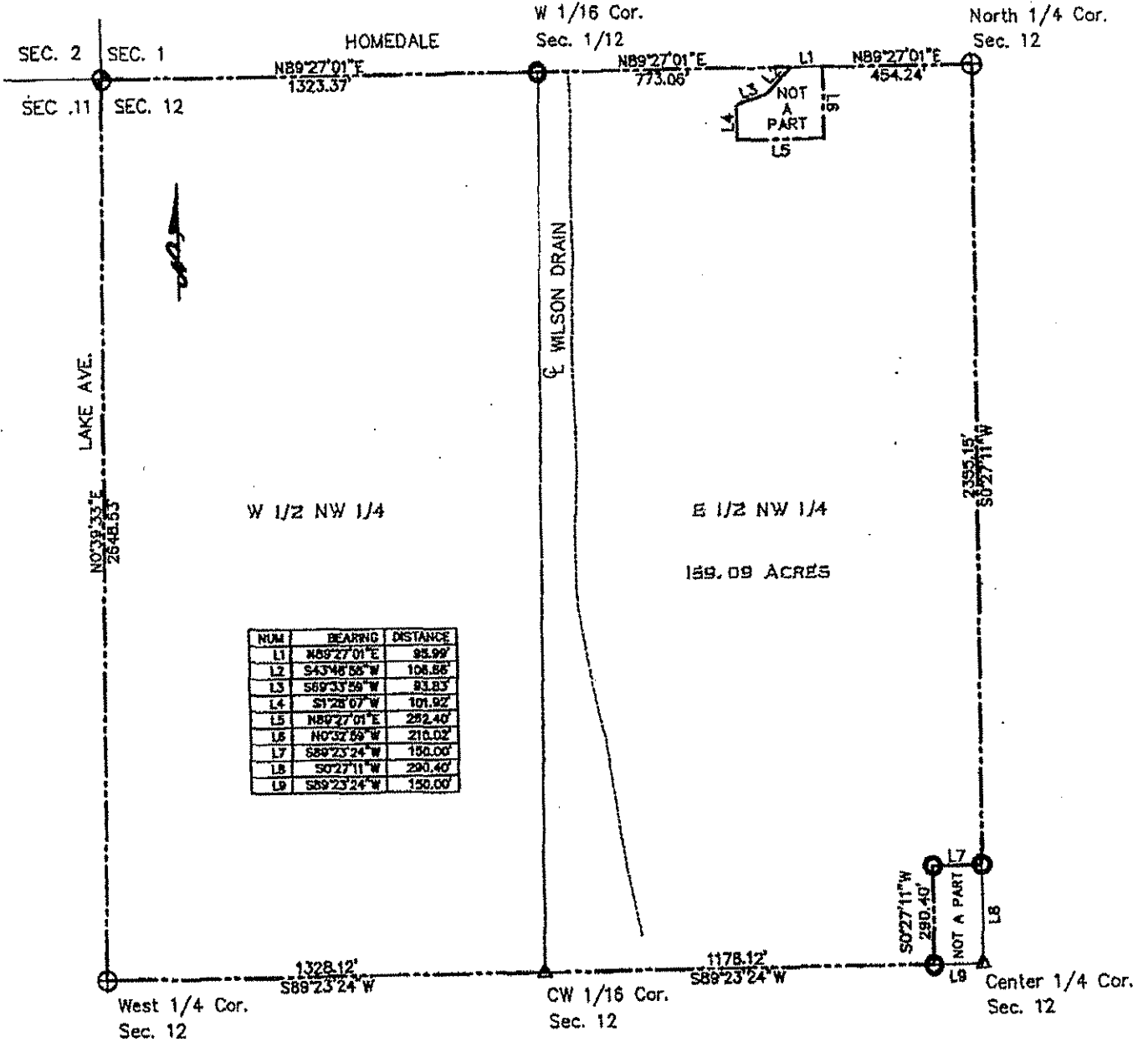


EXHIBIT B
Legal Description of Phase 1
Windsor Creek No. 1

EARL, MASON, & STANFIELD, INC.

PROFESSIONAL ENGINEERS, LAND SURVEYORS & PLANNERS

314 BADIOLA STREET
CALDWELL, IDAHO 83605

TELEPHONE: (208) 454-0256
FAX: (208) 454-0979
Email: jbeagley@emands.net

FOR: Hubble Homes
JOB NO.: JA0505
DATE: February 04, 2005
RE: Windsor Creek No. 1

PROPERTY DESCRIPTION

A part of the NW 1/4 of Section 12, Township 3 North, Range 3 West, Boise Meridian, Caldwell, Canyon County Idaho, more particularly described as follows:

Commencing at the NW corner of said Section 12, said corner monumented with a 3 inch diameter brass cap;

Thence S. 0° 39' 33" W., a distance of 790.43 feet along the westerly boundary of said NW1/4 to the POINT OF BEGINNING, said point monumented with a 5/8 inch diameter iron pin;

Thence leaving the westerly boundary of said NW1/4, N. 89° 27' 01" E., a distance of 1009.33 feet parallel with the northerly boundary of said NW1/4 to a 5/8 inch diameter iron pin;

Thence S. 0° 02' 42" E., a distance of 880.63 feet to a 5/8 inch diameter iron pin;

Thence S. 89° 23' 24" W., a distance of 29.26 feet parallel with the southerly boundary of said NW1/4 to a 5/8 inch diameter iron pin;

Thence S. 0° 36' 36" E., a distance of 110.00 feet perpendicular to the southerly boundary of said NW1/4 to a 5/8 inch diameter iron pin;

Thence S. 89° 23' 24" W., a distance of 657.27 feet parallel with the southerly boundary of said NW1/4 to a 5/8 inch diameter iron pin;

Thence N. 0° 39' 33" E., a distance of 38.01 feet parallel with the westerly boundary of said NW1/4 to a 5/8 inch diameter iron pin;

Thence N. 89° 20' 27" W., a distance of 110.00 feet perpendicular to the westerly boundary of said NW1/4 to a 5/8 inch diameter iron pin;

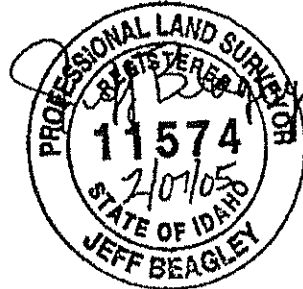
Thence S. 82° 59' 16" W., a distance of 51.46 feet to a 5/8 inch diameter iron pin;

Thence N. 89° 20' 27" W., a distance of 175.00 feet perpendicular to the westerly boundary of said NW1/4 to a point on the westerly boundary of said NW1/4, said point monumented with a 5/8 inch diameter iron pin;

Thence N. 0° 39' 33" E., a distance of 953.31 feet along the westerly boundary of said NW1/4 to the POINT OF BEGINNING.

This parcel contains 22.74 acres more or less.

Also, this parcel is SUBJECT TO all easements and rights-of-way of record or implied.



200693175

RECORDED

2006 NOV 22 PM 3 09

CANYON COUNTY RECORDER

[Handwritten signature]

REQUEST Windsor Creek
TYPE *M/A* FEE 9

FOR RECORDING INFORMATION

FIRST SUPPLEMENT TO
DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
WINDSOR CREEK SUBDIVISION

This First Supplement to Declaration of Covenants, Conditions and Restrictions for Windsor Creek Subdivision (this "First Supplement") is made as of the 13th day of November, 2006, by Windsor Creek Development, LLC, an Idaho limited liability company ("Grantor").

RECITALS

A. Grantor is the owner of, or has an interest in, certain real property located in Canyon County, Idaho, more commonly known as Windsor Creek Subdivision, and more particularly described in that certain Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Windsor Creek Subdivision dated April 7, 2006, and recorded in the official records of Canyon County, Idaho, on May 19, 2006, as Instrument No. 200638423 (the "Declaration").

B. Grantor has caused to be recorded that certain plat identified as Windsor Creek No. 2 as filed in Book 38 of Plats, at Page 47, and recorded on November 13, 2006, as Instrument No. 200690410, official records of Canyon County, Idaho (the "Subdivision No. 2 Plat").

C. Pursuant to the Section 16.1 of the Declaration, Grantor has the unilateral right to supplement the Declaration for the purpose of subjecting thereto certain portions of the Property.

D. Grantor now desires to supplement the Declaration as set forth below, and to declare that certain real property comprising a portion of Windsor Creek Subdivision, which portion is legally described on Exhibit A attached hereto and made a part hereof (the "Phase 2 Property"), is subject to the Declaration as supplemented by this First Supplement.

NOW THEREFORE, Grantor hereby declares the Phase 2 Property and each lot, parcel or portion thereof, is and/or shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following terms, covenants, conditions, easements and restrictions, all of which are declared and agreed to be in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Phase 2 Property, and to enhance the value, desirability and attractiveness of the Phase 2 Property. The terms, covenants, conditions, easements and restrictions set forth herein: shall run with the land constituting the Phase 2 Property, and with each estate therein, and shall be binding upon all persons having or acquiring any right, title or interest in the Phase 2 Property or any lot, parcel or portion thereof; shall inure to the benefit of every lot, parcel or portion of the Phase 2 Property and any interest therein; and shall inure to the benefit of and be binding upon Grantor, Grantor's successors in interest, the Association, and each grantee or Owner and such grantee's or Owner's respective successors in interest, and may be enforced by Grantor, by any Owner or such Owner's successors in interest, or by the Association.

1. **Defined Terms.** Capitalized terms used but not defined herein shall have the same meaning as found in the Declaration.

2. **Exclusion of Lot 42 Block 1.** Lot 42 in Block 1 of the Phase 2 Property is specifically excluded from the Declaration.

3. **Effect Upon Recording.** Upon the recording hereof, the terms and provisions set forth in the Declaration recorded as Instrument No. 200638423 shall be supplemented by the terms hereof. If there is any conflict between the terms of this First Supplement and the Declaration, this First Supplement shall control.

IN WITNESS WHEREOF, this First Supplement to Declaration of Covenants, Conditions and Restrictions for Windsor Creek Subdivision has been executed on the date first written above.

WINDSOR CREEK DEVELOPMENT, LLC,
an Idaho limited liability company

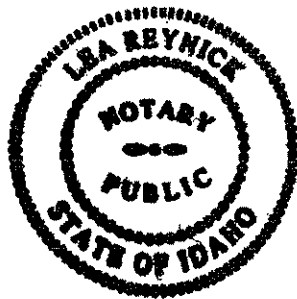
By: _____

Printed Name: Peter Wilson
Its: Managing Member

STATE OF IDAHO)
) ss.
County of Ada)

On this 22 day of November, 2006, before me, the undersigned, a Notary Public in and for said State, personally appeared Peter Wilson, known or identified to me to be a Managing Member of WINDSOR CREEK DEVELOPMENT, LLC, the limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company, and acknowledged to me that such limited liability company executed the same.

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



Lea Reynick
Notary Public for Idaho
Residing at Boise, ID
My commission expires: 9-6-2012

EXHIBIT A
Legal Description of Phase 2 Property

A parcel of land being a portion of the NW 1/4 of Section 12, Township 3 North, Range 3 West, Boise Meridian, Canyon County, Idaho, more particularly described as follows:

WINDSOR CREEK NO. 2, according to the official plat thereof filed in Book 38 of Plats at Page 47, and recorded November 13, 2006, as Instrument No. 200690410, Official Records of Canyon County, Idaho.

EXCEPTING THEREFROM Lot 42 of Block 1 of WINDSOR CREEK NO. 2, according to the official plat thereof filed in Book 38 of Plats at Page 47, and recorded November 13, 2006, as Instrument No. 200690410, Official Records of Canyon County, Idaho.