

AFTER RECORDING, RETURN TO:

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Willis Creek Development Co.
1997 N. Highwood Ave.
Boise, ID 83713

**DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR WILLIS CREEK SUBDIVISION**

WILLIS CREEK DEVELOPMENT COMPANY
Declarant

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**DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR WILLIS CREEK SUBDIVISION**

THIS DECLARATION is made this _____ day of _____, 2005 by Willis Creek Development Company, an Idaho corporation (“**Declarant**”).

RECITALS

A. Declarant has recorded the plat of “Willis Creek Subdivision” in the plat records of Canyon County, Idaho.

B. Declarant desires to subject the property described in such plat to the conditions, restrictions and charges set forth in this instrument for the benefit of such property, and its present and subsequent owners, and to establish such property as a development to be known as “Willis Creek Subdivision.”

NOW, THEREFORE, Declarant hereby declares that the property described in Section 2.1 below shall be held, sold and conveyed subject to the following easements, covenants, restrictions and charges, which shall run with such property and shall be binding upon all parties having or acquiring any right, title or interest in such property or any part thereof and shall inure to the benefit of each Owner thereof.

**Article 1
Definitions**

As used in this Declaration, the terms set forth below shall have the following meanings:

1.1 **“Architectural Review Committee” or “the Committee”**. Means the committee appointed pursuant to Article 7 below.

1.2 **“Assessments”**. Means all assessments and other charges, fines and fees imposed by the Association on an Owner in accordance with this Declaration or the Bylaws of the Association, including, without limitation, Annual Assessments, Special Assessments, Emergency Assessments, and Individual Assessments as described in Article 10 below.

1.3 **“Association”**. Means the nonprofit corporation to be formed to serve as the Owners association as provided in Article 8 below, and its successors and assigns.

1.4 **“Board of Directors” or “the Board”**. Means the duly appointed or elected board of directors of the Association, which is invested with the authority to operate the Association and to appoint the officers of the Association. Prior to the Turnover Meeting, Declarant will appoint the Board of Directors. After the Turnover Meeting, the Board of Directors will be elected by the Owners.

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1.5 **“Bylaws”**. Means the duly adopted bylaws of the Association set forth in the attached Exhibit A as the same may hereafter be amended or replaced.

1.6 **“Common Areas”**. Means those lots or tracts designated as such on any plat of the Property, or in this Declaration, including any Improvements thereon, and shall also include any Lots converted to Common Areas as provided in Section 3.2 below.

1.7 **“Declarant”**. Means Willis Creek Development Company, an Idaho corporation, and its successors and assigns if such successor or assignee should acquire Declarant’s interest in the remainder of the Property, or less than all of such property if a recorded instrument executed by Declarant assigns to the transferee all of Declarant’s rights under this Declaration.

1.8 **“Design Guidelines”**. Means the guidelines adopted from time to time by the Architectural Review Committee pursuant to Article 7 below.

1.9 **“Willis Creek Subdivision”**. Means the real property described in Section 2.1 below.

1.10 **“Improvement”**. Means every structure or improvement of any kind, including, but not limited to, a fence, wall, driveway, swimming pool, storage shelter, mailbox and newspaper receptacles, or other product of construction efforts on or in respect to the Property.

1.11 **“Living Unit”**. Means a building or a portion of a building located upon a Lot within the Property and designated for separate residential occupancy, together with any permitted accessory dwelling unit.

1.12 **“Lot”**. Means a platted or partitioned lot within the Property, with the exception of any lot marked on a plat of the Property as being common or open space or so designated in this Declaration. Lots do not include Common Areas or Public Areas.

1.13 **“Mortgage”**. Means a mortgage or a trust deed, “mortgagee” means a mortgagee or a beneficiary of a trust deed, and “mortgagor” means a mortgagor or a grantor of a trust deed.

1.14 **“Owner”**. Means the person or persons, including Declarant, owning any Lot in the Property, but does not include a tenant or holder of a leasehold interest or a contract vendor or other person holding only a security interest in a Lot. The rights, obligations, and other status of being an Owner commence upon acquisition of the ownership of a Lot and terminate upon disposition of such ownership, but termination of ownership shall not discharge an Owner from obligations incurred prior to termination.

1.15 **“Pasture Area”**. Means any area of a Lot that is unimproved and unlandscaped. Pasture Area excludes, without limitation, the Living Unit and the landscaped front, back, and side yards.

1.16 **“Public Areas”**. Means any areas dedicated to the public or established for public use in any plat of the Property, or so designated in this Declaration.

1.17 **“Rules and Regulations”**. Means those policies, procedures, rules and regulations adopted by the Association pursuant to the authority granted in this Declaration, as the same may be amended from time to time.

1.18 **“Sold”**. Means that legal title has been conveyed or that a contract of sale has been executed and recorded under which the purchaser has obtained the right to possession.

1.19 **“The Property”**. Means Willis Creek Subdivision.

1.20 **“This Declaration”**. Means all of the easements, covenants, restrictions and charges set forth in this instrument, together with any rules or regulations promulgated hereunder, as the same may be amended or supplemented from time to time in accordance with the provisions hereof.

1.21 **“Turnover Meeting”**. Means the meeting called by Declarant pursuant to Section 8.7 below, at which Declarant will turnover administrative responsibility for the Property to the Association.

Article 2 **Property Subject to this Declaration**

2.1 **The Property**. Declarant hereby declares that all of the real property described below is owned and shall be owned, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration:

All real property within that certain plat entitled “Willis Creek Subdivision,” filed in the plat records of Canyon County, Idaho, [in Book _____ at Page _____ of Plat Records] [as Document No. _____].

2.2 **Improvements**. Declarant does not agree to build any Improvements on the Property other than as required by Canyon County, but may elect, at Declarant’s option, to build additional Improvements.

2.3 **Withdrawal of Property**. Property may be withdrawn from Willis Creek Subdivision only by duly adopted amendment to this Declaration, except that Declarant may withdraw all or a portion of the at any time prior to the sale of the first Lot in the plat of the Property, subject to the prior approval of Canyon County. Such withdrawal shall be by a declaration executed by Declarant and recorded in the deed records of Canyon County, Idaho. If a portion of the Property is withdrawn, all voting rights otherwise allocated to Lots being withdrawn shall be eliminated, and the common expenses shall be reallocated among the remaining Lots.

Article 3
Land Classifications

3.1 **Land Classifications.** All land within the Property is included in one or another of the following classifications:

- (a) Lots, which shall consist of Lots 2, 4 through 18 of the plat of the Property.
- (b) Common Areas, which shall be the areas marked as Lots 1, 3, and 19 on the plat of the Property.
- (c) Public Areas, as defined in Article 1.

3.2 **Conversion of Lots to Common Areas.** Declarant may elect to build common facilities on one or more Lots and designate such Lots as Common Areas by a declaration recorded in the deed records of Canyon County, Idaho. Such declaration shall be executed by Declarant as Owner of the Lots.

Article 4
Property Rights in Common Areas

4.1 **Owners' Easements of Enjoyment.** Subject to provisions of this Article, every Owner and his or her invitees shall have a right and easement of enjoyment in and to the Common Areas, which easement shall be appurtenant to and shall pass with the title to every Lot.

4.2 **Title to Common Areas.** Title to the Common Areas shall be conveyed to the Association by Declarant, free and clear of monetary liens, on or before the Turnover Meeting.

4.3 **Extent of Owners' Rights.** The rights and easements of enjoyment in the Common Areas created hereby shall be subject to the following and to all other provisions of this Declaration:

(a) **Association Easements.** Declarant grants to the Association for the benefit of the Association and all Owners of Lots within the Property the following easements over, under and upon the Common Areas.

(i) An easement for underground installation and maintenance of power, gas, electric, water and other utility and communication lines and services installed by Declarant or with the approval of the Board of Directors of the Association and any such easement shown on any plat of the Property. Such lines and services shall include, without limitation, irrigation delivery systems and drainage systems.

(ii) An easement for construction, maintenance, repair and use of such areas, including any common facilities thereon.

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(iii) An easement for the purpose of making repairs to any existing structures on Common Areas.

(b) Public and Utility Easements. The Common Areas shall be subject to such public and utility easements as may be established in any plat of the Property. In addition, Declarant or the Association may (and, to the extent required by law, shall) grant or assign such easements to municipalities or other utilities performing utility services and to communication companies, and the Association may grant free access thereon to police, fire and other public officials and to employees of utility companies and communications companies serving the Property.

(c) Use of the Common Areas. The Common Areas shall not be partitioned or otherwise divided into parcels for residential use, and no private structure of any type shall be constructed on the Common Areas. Except as otherwise provided in this Declaration, the Common Areas shall be reserved for the use and enjoyment of all Owners and no private use may be made of the Common Areas. Nothing herein shall prevent the placing of a sign or signs upon the Common Areas identifying the Property or identifying pathways or items of interest, signs restricting certain uses or warning signs, provided that such signs are approved by the Architectural Review Committee. The Board of Directors shall have authority to abate any trespass or encroachment upon the Common Areas at any time, by any reasonable means and with or without having to bring legal proceedings.

(d) Alienation of the Common Areas. The Association may not by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas owned directly or indirectly by the Association for the benefit of the Lots unless the holders of at least eighty percent (80%) of the Class A Association voting rights and the Class B member (as defined in Section 8.3 below), if any, have given their prior written approval and unless approved by Canyon County. The Association shall first offer to dedicate such property to Canyon County. This provision shall not apply to the easements described in Section 4.3(a) above. The Association, upon approval in writing of at least two-thirds of the Class A Association voting rights and the Class B member, if any, and if approved by order or resolution of Canyon County, may dedicate or convey any portion of the Common Areas to a park district or other public body.

(e) Limitations on Use. Use of the Common Areas by the Owners shall be subject to the provisions of this Declaration and to the following:

(i) The right of the Association to suspend such use rights of an Owner to the extent provided in Article 11 below.

(ii) The right of the Association to adopt, amend and repeal rules and regulations in accordance with this Declaration.

4.4 Delegation of Use. Any Owner may delegate, in accordance with the Bylaws of the Association, his or her right of enjoyment of the Common Areas to family members, tenants,

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invitees and guests, whose use shall be subject to this Declaration and the Rules and Regulations adopted under this Declaration.

4.5 **Easements Reserved by Declarant.** So long as Declarant owns any Lot, Declarant reserves an easement over, under and across the Common Areas to carry out sales and rental activities necessary or convenient for the sale or rental of Lots. In addition, Declarant hereby reserves to itself a perpetual easement and right-of-way for access over, upon and across the Common Areas for construction, utilities, communication lines, drainage, and ingress and egress for the benefit of other property owned by Declarant. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under and across the Common Areas 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 or other real property owned by Declarant; provided, however, that no such rights shall be exercised by Declarant in such a way as to unreasonably interfere with the occupancy of, use of, enjoyment of or access to an Owner's Lot by that Owner or his or her family, tenants, employees, guests or invitees.

Article 5 **Property Rights In Lots**

5.1 **Use and Occupancy.** The Owner of a Lot in the Property shall be entitled to the exclusive use and benefit of such Lot, except as otherwise expressly provided in this Declaration, but the Lot shall be bound by and each Owner and Declarant shall comply with the restrictions contained in Article 6 below, all other provisions of this Declaration and the provisions of any supplement or amendment to this Declaration.

5.2 **Easements Reserved.** In addition to any utility and drainage easements shown on any recorded plat, Declarant hereby reserves the following easements for the benefit of Declarant and the Association:

(a) **Adjacent Common Area.** The Owner of any Lot that adjoins or blends together visually with any Common Area shall, if the Association elects from time to time to so require, permit the Association to enter upon the Lot to perform the maintenance of such Common Area.

(b) **Right of Entry.** Declarant, the Architectural Review Committee and any representative of the Association authorized by it may at any reasonable time, and from time to time at reasonable intervals, enter upon any Lot for the purpose of determining whether or not the use and/or Improvements of such Lot are then in compliance with this Declaration. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Lot.

(c) **Utility Easements.** Easements for installation and maintenance of utilities and drainage facilities may be reserved over portions of certain Lots, as shown on any recorded plat. Within the easements, the Architectural Review Committee will not permit any structure, planting or other material to be placed or permitted to remain on the easement area if

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such structure, planting, or other material may damage or interfere with the installation or maintenance of utilities, change the direction of flow of drainage channels in the easements, or obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all Improvements in it shall be maintained continuously by the Owner of the Lot, except for those Improvements for which a public authority or utility company is responsible.

Article 6 **General Use Restrictions**

6.1 **Structures Permitted.** No structures shall be erected or permitted to remain on any Lot except structures containing a single detached Living Unit, together with an accessory dwelling unit if permitted by applicable regulations of Canyon County, and structures normally accessory thereto, all of which shall have first been approved by the Architectural Review Committee pursuant to Article 7 below. Such provision shall not exclude construction of a private greenhouse, storage unit, private swimming pool or structure for the storage of a boat and/or camping trailer for personal use, provided that the location of such structure is in conformity with the applicable regulations of Canyon County, is compatible in design and decoration with the dwelling structure constructed on such Lot, and has been approved by the Architectural Review Committee. The Living Unit, exclusive of garage, shall contain a minimum of 2200 square feet of enclosed floor area for a single level house, and 1500 square feet of enclosed floor area for the first floor and 800 square feet for the second floor of a two story house, and shall include a garage large enough to accommodate a minimum of three vehicles, and shall be constructed in accordance with the Design Guidelines adopted by the Architectural Review Committee.

Only one primary outbuilding per Lot will be allowed. No outbuildings shall be larger than 1500 square feet (unless specific approval is granted by the Architectural Review Committee). All outbuildings shall be constructed of quality building material, completely finished and painted on the outside, and to the extent reasonable, shall be of similar siding, roofing, and colors as the house. All buildings must be approved by the Architectural Review Committee.

6.2 **Residential Use.** Lots shall only be used for residential purposes. Except with the consent of the Board of Directors, no trade, craft, business, profession, commercial or similar activity of any kind shall be conducted on any Lot, nor shall any goods, equipment, vehicles, materials or supplies used in connection with any trade, service or business be kept or stored on any such Lot. The mere parking on a Lot of a vehicle bearing the name of a business shall not, in itself, constitute a violation of this provision. Nothing in this paragraph shall be deemed to prohibit (a) activities relating to the rental or sale of Living Units; (b) the right of Declarant or any contractor or home builder to construct Living Units on any Lot, to store construction materials and equipment on such Lots in the normal course of construction, and to use any Living Unit as a sales or rental office or model home for purposes of sales or rental in Willis Creek Subdivision; and (c) the right of the Owner of a Lot to maintain his or her professional personal library, keep his or her personal business or professional records or accounts, handle his or her personal business or professional telephone calls or confer with business or professional

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associates, clients or customers, in his or her Living Unit by appointment only. The Board of Directors shall not approve commercial activities otherwise prohibited by this paragraph unless the Board of Directors determines that only normal residential activities would be observable outside of the Living Unit and that the activities would not be in violation of applicable law.

Subdivision-wide yard sales are encouraged to build community relationships and shall be scheduled by the Association. Individual yard sales or garage sales are to be limited to not more than twenty-four (24) hours per sale and not more than two (2) sales per year. Miscellaneous individual items for sale, such as automobiles, boats, recreational vehicles, trailers, etc., are not to be placed on display in any common area or public street without permission of the Association.

6.3 **Offensive or Unlawful Activities.** No noxious or offensive activities shall be carried out upon the Property, nor shall anything be done or placed on the Property that interferes with or jeopardizes the enjoyment of the Property, or that is a source of annoyance to Owners or occupants. No unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction over the Property shall be observed. Owners and other occupants shall not engage in any abusive or harassing behavior, either verbal or physical, or any form of intimidation or aggression directed at other Owners, occupants, guests, or invitees, or directed at the managing agent, its agents or employees, or vendors.

6.4 **Animals.** All dogs and cats or household pets kept on the premises shall be fed and cared for and shall be fenced so as not to annoy or trespass upon the property of others. Dogs shall not be permitted to run at large. No more than three dogs, cats or other household pets may be kept at one time, except that a litter of young may be kept until eight (8) weeks old. Dog runs may be permitted, but must be no closer than thirty (30) feet away from any lot line. Dog runs must be not more than six (6) feet high. Dog runs must be approved by the Architectural Review Committee.

In addition to household pets, up to two (2) head of livestock will be allowed for recreational purposes. The raising and breeding of any animals for commercial purposes will not be allowed. As used herein, "livestock" shall include only equine, cattle, llama, or sheep. No goats, poultry, or swine will be allowed. No bird aviaries will be allowed.

All animals shall be reasonably controlled so as not to be a nuisance. Any inconvenience, damage, or unpleasantness caused by such animals shall be the responsibility of their respective Owners. Storage of animal feed shall be kept in a way as to not be a nuisance. All animal manure shall be disposed of regularly to not create a health, fly, or odor nuisance. Any unrestrained or barking dog shall constitute a nuisance. An Owner or occupant may be required to remove a pet upon receipt of the third written notice from the Board of Directors of violations of any rule, regulation or restriction governing pets within the Property.

6.5 **Maintenance of Structures.** Each Owner shall maintain the Owner's Lot and Improvements thereon in a clean and attractive condition, in good repair and in such fashion as not to create a fire or other hazard. Such maintenance shall include, without limitation, exterior

painting, repair, replacement and care for roofs, gutters, downspouts, exterior building surfaces, walks, lights and perimeter fences and other exterior Improvements and glass surfaces. All repainting or re-staining, any change in type of roof or roof color and any exterior remodeling or changes shall be subject to prior review and approval by the Architectural Review Committee. Damage caused by fire, flood, storm, earthquake, riot, vandalism, or other causes shall likewise be the responsibility of each Owner and shall be restored within a reasonable period of time.

6.6 **Maintenance of Landscape.** Each Owner shall keep all shrubs, trees, grass and plantings of every kind on the Owner's Lot or within the adjoining street right-of-way neatly trimmed, properly cultivated and free of trash, weeds and other unsightly material.

6.7 **Parking.** Except as may otherwise be provided in the Rules and Regulations of the Association, overnight parking of boats, trailers, motorcycles, commercial vehicles, mobile homes, campers or other recreational vehicles or equipment, regardless of weight, and overnight parking of any other vehicles with a gross vehicle weight in excess of 9,000 pounds shall not be allowed on any part of the Property or on public streets within the Property, excepting only within areas designated for such purposes by the Board of Directors or within the confines of an enclosed garage, outbuilding, or screened area, the plans of which shall have been reviewed and approved by the Architectural Review Committee before construction, and which must be constructed behind the front building line of the dwelling. No portion of the vehicle may project beyond the screened area. If there is no rear fencing and the vehicle could be seen from the outside the Lot other than from the front road, the vehicle must also be screened from view from that direction. Vehicles may not be used for storage of materials for more than forty-eight (48) hours without approval from the Architectural Review Committee. Each Owner shall provide adequate off-street parking on such Owner's Lot for parking of vehicles owned by such Owner and shall not park the Owner's vehicles on adjacent roads or streets for a period in excess of twelve (12) hours in any twenty (20) day period. Vehicles owned by others who are guests of the occupants of the dwelling may be parked on the driveway servicing the Living Unit for a period not to exceed fourteen (14) days and on the public street adjacent thereto for a period not to exceed twenty-four (24) hours. Any vehicle parked in violation of this section can be towed or impounded as provided in Section 11.1(c) below.

6.8 **Vehicles in Disrepair.** No Owner shall permit any vehicle that is in an extreme state of disrepair to be abandoned or to remain parked on the Owner's Lot (unless screened from view) or on the Common Area or any street for a period in excess of forty-eight (48) hours. A vehicle shall be deemed in an "extreme state of disrepair" when the Board of Directors reasonably determines that its presence offends the occupants of the area due to its appearance or continued inoperability. Should any Owner fail to remove such vehicle within five (5) days following the date on which notice is mailed to him or her by the Association, the Association may have the vehicle removed from the Property and charge the expense of such removal to the Owner. Any vehicle parked in violation of this section can be towed or impounded as provided in Section 11.1(c) below.

6.9 **Signs.** No signs shall be erected or maintained on any Lot except that not more than one "For Sale" or "For Rent" sign placed by the Owner, Declarant, or a licensed real estate agent, not exceeding twenty-four (24) inches high and thirty-six (36) inches long, may be

temporarily displayed on any Lot, and two such signs may be placed on a Lot during the course of initial construction of a dwelling on such Lot. The restrictions contained in this paragraph shall not prohibit the temporary placement of “political” signs on any Lot by the Owner, subject to reasonable regulations adopted by the Architectural Review Committee relating to size and length of display.

6.10 **Rubbish and Trash.** No part of the Property shall be used as a dumping ground for trash or rubbish of any kind. All garbage and other waste shall be kept in appropriate sanitary containers for proper disposal and out of public view, except during garbage pickup days. Yard rakings, dirt and other material resulting from landscaping work shall not be dumped onto Lots, streets or Common Areas. Should any Owner or occupant responsible for its generation fail to remove any trash, rubbish, garbage, yard rakings or any other such materials from any streets or the Property where deposited by such person within ten (10) days following the date on which notice is mailed to the Owner or occupant by the Board of Directors, the Association may have such materials removed and charge the expense of such removal to the Owner.

6.11 **Construction.** The construction of any building on any Lot, including painting and all exterior finish, shall be completed within eight (8) months from the beginning of construction so as to present a finished appearance when viewed from any angle. In the event of undue hardship due to strikes, fires, national emergency, or natural calamities, this provision may be extended for a reasonable length of time upon approval from the Architectural Review Committee. The building area shall be kept reasonably clean and in workmanlike order, free of litter, during the construction period with a garbage can or other garbage disposal facility on the site during such period. Debris may not be deposited on any other Lot. All construction debris, stumps, trees, etc. must be periodically removed from each Lot by the builder or Owner, and such debris shall not be dumped in any area within the Property unless approved by the Architectural Review Committee. Construction shall commence within six (6) months after acquisition thereof by the Owner (other than Declarant). The Architectural Review Committee may waive this requirement if it determines that construction will commence within a reasonable time. In any case, all unimproved or unoccupied Lots shall be kept in a neat and orderly condition, free of brush, vines, weeds and other debris, and grass thereon shall be cut or mowed at sufficient intervals to prevent creation of a nuisance or fire hazard.

The following requirements shall apply during the construction of improvements on a Lot:

- (a) All debris shall be removed from the Lot or placed in a container or trailer prior to each weekend.
- (b) No materials shall be placed or kept on any adjoining Lots.
- (c) Vehicles belonging to workmen or used in the construction of the improvements shall not be parked in front of occupied homes or interfere with traffic on public streets or private streets.

(d) Utilities, including water, shall not be taken from any other Lot without the approval of the Owner thereof.

(e) A receptacle for trash and debris shall be located on the subject Lot and shall not be over filled.

(f) Each Owner shall be responsible to repair any damage that may occur during the construction period to any road, mailbox, utility facility or other onsite or offsite improvement caused by the Owner or Owner's agents.

6.12 **Landscape.** A landscaping plan shall be submitted to and approved by the Architectural Review Committee prior to commencement of any landscaping work. Landscaping of the front and side yards adjacent to the dwelling must be completed within six (6) months from the date of completion of construction of the dwelling.

In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon approval of the Architectural Review Committee. No tree or shrub may be planted, cut down, or removed without the approval of the Architectural Review Committee.

6.13 **Temporary Structures.** No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuildings shall be used on any Lot at any time as a residence either temporarily or permanently.

6.14 **Fences, Hedges and Walls.** No fence, hedge, structure, wall, or retaining wall shall be constructed or exist anywhere on any Lot without prior approval of the Architectural Review Committee. If a Lot is fenced, the perimeter fencing must be three-rail tan or sand colored vinyl fencing. White vinyl fencing is not permitted. Fencing must be aesthetically pleasing and harmonious with other natural surroundings. No planting or structure obstructing vision at driveways or intersections shall be permissible or maintained. Installation and maintenance of retaining walls that are required and approved by the Architectural Review Committee due to topographic conditions of individual Lots are the sole and absolute responsibility of the individual Lot Owner and are to be aesthetically incorporated into the landscaping of the Lot and are not the responsibility of the Association.

Lots 2, 4 through 10 must install a three-rail vinyl fence along the property lines that border the Common Areas. One (1) gate, not larger than four (4) feet, is permitted to provide access to the Common Area pathways. The fencing is to be of the same construction and color as those installed by the Declarant in the Common Areas. Fences bordering the Common Areas must be completed within six (6) months from the date of completion of construction of the dwelling.

All fencing installed by the Declarant along Lot lines shall be maintained in good order by the Owner, including those along Willis Road.

6.15 **Service Facilities.** Service facilities (garbage containers, fuel tanks, clotheslines, etc.) shall be screened such that the elements screened are not visible at any time from the street

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or a neighboring property. All telephone, power, natural gas, cable television and other communication lines shall be placed underground, except as otherwise mandated by local jurisdictions or public utility companies.

6.16 **Antennas and Satellite Dishes.** Exterior antennas, satellite receiver and transmission dishes and other communication devices shall not be permitted to be placed upon any Lot except in accordance with rules established by the Architectural Review Committee in accordance with Section 7.3.

6.17 **Exterior Lighting or Noisemaking Devices.** Except with the consent of the Architectural Review Committee, no exterior lighting or noisemaking devices shall be installed or maintained on any Lot, other than security and fire alarms. Seasonal holiday lighting and decorations are permissible if consistent with any applicable rules and regulations and if removed within thirty (30) days after the celebrated holiday.

6.18 **Weed and Pest Control.** No Owner shall permit any thing or condition to exist upon any portion of the Property that will induce, breed or harbor infectious plant or animal diseases or noxious insects or vermin. The Owner shall keep the Lot free of weeds and dead vegetation. Weed and pest control of the Common Areas are the responsibility of the Association.

6.19 **Setback, Maximum Height and Minimum Yard Requirements.** No building shall be located on any Lot closer than thirty (30) feet from any Lot line. Each Lot shall be subject to the setback, maximum height and minimum yard requirements set by Canyon County, which may be modified by an approved variance by Canyon County, and by the prior approval of the Architectural Review Committee. No Lot may be subdivided or partitioned, nor may its Lot lines be adjusted, without the approval of Canyon County and the Architectural Review Committee.

6.20 **Grades, Slopes and Drainage.** Each Owner of a Lot shall accept the burden of, and shall not in any manner alter, modify or interfere with, the established drainage pattern and grades, slopes and courses related thereto over any Lot or Common Area without the prior approval of the Architectural Review Committee, and then only to the extent and in the manner specifically approved. No structure, plantings or other materials shall be placed or permitted to remain on or within any grades, slopes, or courses, nor shall any other activities be undertaken that may damage or interfere with established slope ratios, create erosion or sliding problems, or obstruct, change the direction of, or retard the flow of water through drainage channels. The existing concrete irrigation drain ditch on the east boundary of Lots 10, 11, 15, and 16 cannot be removed, or altered, unless for repair, and shall be maintained free from debris for the drainage of irrigation water from adjacent neighbors on the eastern side of the Property.

6.21 **Garages.** All garage doors shall remain closed except to permit entrance and exit and in connection with outside activities. Garages shall be used primarily for parking of vehicles, and only secondarily for storage.

6.22 **Rules and Regulations.** In addition, the Association from time to time may adopt, modify or revoke such nondiscriminatory Rules and Regulations governing the conduct of

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persons and the operation and use of the Property as it may deem necessary or appropriate to ensure the peaceful and orderly use and enjoyment of the Property. A copy of the Rules and Regulations, upon adoption, and a copy of each amendment, modification, or revocation thereof, shall be delivered by the Board of Directors promptly to each Owner. The Rules and Regulations may be adopted by the Board of Directors, except as may be otherwise provided in the Bylaws of the Association.

Article 7 **Architectural Review Committee**

7.1 **Architectural Review.** No Improvement shall be commenced, erected, placed or altered on any Lot until the construction plans and specifications showing the nature, shape, heights, materials, colors and proposed location of the Improvement have been submitted to and approved in writing by the Architectural Review Committee, except that Declarant shall not be required to obtain such approval for Improvements commenced, erected, placed or altered by Declarant. The building plans to be submitted shall consist of one complete set of plans and specifications in the usual form showing insofar as appropriate, (i) the size and dimensions of the Improvements, (ii) the exterior design; (iii) approximate exterior color scheme; (iv) location of Improvements on the Lot, including setbacks, driveway and parking areas; and (v) location of existing trees to be removed. These plans and specifications shall be left with the Committee until sixty (60) days after notice of completion has been received by the Committee. This is for the purpose of determining whether, after inspection by the Committee, the Improvement complies substantially with the plans and specifications that were submitted and approved. The Architectural Review Committee is not responsible for determining compliance with structural and building codes, solar ordinances, zoning codes or any other governmental regulations, all of which are the responsibility of the applicant. The procedure and specific requirements for review and approval of construction may be set forth in Design Guidelines adopted from time to time by the Architectural Review Committee. The Committee may charge a reasonable fee to cover the cost of processing an application. In all cases in which the Architectural Review Committee's consent is required by this Declaration, the provisions of this Article shall apply, except that this Article shall not apply to construction by Declarant.

7.2 **Committee Decision.** The Architectural Review Committee shall render its decision with respect to a construction proposal within thirty (30) working days after it has received all material required by it with respect to the application. In the event the Committee fails to render its approval or disapproval within forty-five (45) working days after the Committee has received all material required by it with respect to the proposal, or if no suit to enforce this Declaration has been commenced within one year after completion thereof, approval will not be required and the related provisions of this Declaration shall be deemed to have been fully complied with.

7.3 **Committee Discretion.** The Architectural Review Committee may, at its sole discretion, withhold consent to any proposed work if the Committee finds the proposed work would be inappropriate for the particular Lot or incompatible with the Design Guidelines or design standards that the Committee intends for Willis Creek Subdivision. It is the intent and purpose of this Declaration to ensure quality of workmanship and materials, to ensure harmony

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of external design with the existing Improvements and with respect to topography and finished grade elevations and to ensure compliance with the setback requirements contained in the conditions of approval of Canyon County. Considerations such as siting, shape, size, color, design, materials, height, solar access, screening, impairment of the view from other Lots, or other effect on the enjoyment of other Lots or the Common Area, disturbance of existing terrain and vegetation, and any other factors that the Committee reasonably believes to be relevant may be taken into account by the Committee in determining whether or not to consent to any proposed work. Regulations on siting of television antennas and satellite receiving dishes shall be in conformance with any applicable Federal Communications Commission rules.

7.4 **Membership: Appointment and Removal.** The Architectural Review Committee shall consist of as many persons, but not less than two, as Declarant may from time to time appoint. Declarant may, at its discretion, remove any member of the Committee from office at any time and may appoint new or additional members at any time. The Association shall keep on file at its principal office a list of the names and addresses of the members of the Committee. Declarant may at any time delegate to the Board of Directors of the Association the right to appoint or remove members of the Architectural Review Committee. In such event, or in the event Declarant fails to appoint an Architectural Review Committee, the Board of Directors shall assume responsibility for appointment and removal of members of the Architectural Review Committee, or, if it fails to do so, the Board of Directors shall serve as the Architectural Review Committee.

7.5 **Majority Action.** Except as otherwise provided in this Declaration, a majority of the members of the Architectural Review Committee shall have the power to act on behalf of the Committee, without the necessity of a meeting and without the necessity of consulting the remaining members of the Committee. The Committee may render its decision only by written instrument setting forth the action taken by the consenting members.

7.6 **Liability.** Neither the Architectural Review Committee nor any member thereof shall be liable to any Owner, occupant, builder or developer for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the Committee or a member of the Committee, and the Association shall indemnify the Committee and its members therefrom, provided only that the member has, in accordance with the actual knowledge possessed by him or her, acted in good faith.

7.7 **Nonwaiver.** Consent by the Architectural Review Committee to any matter proposed to it or within its jurisdiction shall not be deemed to constitute a precedent or waiver impairing its right to withhold approval as to any similar matter thereafter proposed or submitted to it for consent.

7.8 **Appeal.** At any time after Declarant has delegated appointment of the members of the Architectural Review Committee to the Board of Directors pursuant to Section 7.4, any Owner adversely affected by action of the Architectural Review Committee may appeal such action to the Board of Directors. Appeals shall be made in writing within ten (10) days of the Committee's action and shall contain specific objections or mitigating circumstances justifying

the appeal. A final, conclusive decision shall be made by the Board of Directors within fifteen (15) working days after receipt of such notification.

7.9 **Effective Period of Consent.** The Architectural Review Committee's consent to any proposed work shall automatically be revoked one year after issuance unless construction of the work has been substantially commenced in the judgment of the Architectural Review Committee and thereafter diligently pursued, or unless the Owner has applied for and received an extension of time from the Committee.

7.10 **Estoppel Certificate.** Within fifteen (15) working days after written request is delivered to the Architectural Review Committee by any Owner, and upon payment to the Committee of a reasonable fee fixed by the Committee to cover costs, the Committee shall provide such Owner with an estoppel certificate executed by a member of the Committee and acknowledged, certifying with respect to any Lot owned by the Owner, that as of the date thereof, either (a) all Improvements made or done upon or within such Lot by the Owner comply with this Declaration or (b) such Improvements do not so comply, in which event the certificate shall also identify the noncomplying Improvements and set forth with particularity the nature of such noncompliance. Any purchaser from the Owner, and any mortgagee or other encumbrancer, shall be entitled to rely on such certificate with respect to the matters set forth therein, such matters being conclusive as between Declarant, the Architectural Review Committee, the Association and all Owners, and such purchaser or mortgagee.

7.11 **Enforcement.** If during or after the construction the Architectural Review Committee finds that construction does not comply with the approved plans, the Committee may require conforming changes to be made or that construction be stopped. The cost of any required changes shall be borne by the Owner. The Committee shall have the power and authority to order any manner of changes or complete removal of any Improvement, alteration or other activity for which prior written approval from the Committee is required and has not been obtained or waived in writing. If an Owner fails to comply with an order of the Committee, then, subject to the Owner's right of appeal under Section 7.8, either the Architectural Review Committee or the Association may enforce compliance in accordance with the procedures set forth in Section 11.1 below.

Article 8 **Association**

Before conveyance of the first Lot, Declarant shall organize an association of all of the Owners within Willis Creek Subdivision. Such Association, and its successors and assigns, shall be organized as an Idaho nonprofit corporation under the name "**Willis Creek Homeowners Association,**" and shall have such property, powers and obligations as are set forth in this Declaration for the benefit of the Property and all Owners of Lots located therein.

8.1 **Organization.** The Articles of Incorporation of the Association shall provide for its perpetual existence, but in the event the Association is at any time dissolved, whether inadvertently or deliberately, it shall automatically be succeeded by an unincorporated association of the same name. In that event, the assets of the Association shall be dedicated to a

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public body, or all of the property, powers and obligations of the incorporated Association existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated association, and such vesting shall thereafter be confirmed as evidenced by appropriate conveyances and assignments by the incorporated association. To the greatest extent possible, any successor unincorporated association shall be governed by the Articles of Incorporation and Bylaws of the Association as if they had been made to constitute the governing documents of the unincorporated association.

8.2 **Membership.** Every Owner of one or more Lots within the Property shall, immediately upon creation of the Association and thereafter during the entire period of such Owner's ownership of one or more Lots within the Property, be a member of the Association. Such membership shall commence, exist and continue simply by virtue of such ownership; shall expire automatically upon termination of such ownership; and need not be confirmed or evidenced by any certificate or acceptance of membership.

8.3 **Voting Rights.** The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Class B member and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member shall be Declarant and shall be entitled to three votes for each Lot owned by Declarant. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(i) When ninety percent (90%) of the Lots have been sold and conveyed to Owners other than Declarant or a successor Declarant; or

(ii) At such earlier time as Declarant may elect in writing to terminate Class B membership.

8.4 **General Powers and Obligations.** The Association shall have, exercise and perform all of the following powers, duties and obligations:

(a) The powers, duties and obligations granted to the Association by this Declaration.

(b) The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Idaho.

(c) Any additional or different powers, duties and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to this Declaration or otherwise promoting the general benefit of the Owners within the Property.

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

8.5 **Specific Powers and Duties.** The powers and duties of the Association shall include, without limitation, all of the following:

(a) **Maintenance and Services.** The Association shall provide maintenance and services for the Property as provided in Article 9 and other provisions of this Declaration.

(b) **Insurance.** The Association shall obtain and maintain in force policies of insurance as provided in this Declaration or the Bylaws of the Association.

(c) **Rulemaking.** The Association shall make, establish, promulgate, amend and repeal Rules and Regulations as provided in Section 6.22 of this Declaration.

(d) **Assessments.** The Association shall adopt budgets and impose and collect Assessments as provided in Article 10 of this Declaration.

(e) **Enforcement.** The Association shall perform such acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce the provisions of this Declaration and the Rules and Regulations adopted by the Association, including, without limitation, enforcement of the decisions of the Architectural Review Committee. Nothing in this Declaration shall be construed as requiring the Association to take any specific action to enforce violations.

(f) **Employment of Agents, Advisers and Contractors.** The Association, through its Board of Directors, may employ the services of any person or corporation as managers; hire employees to manage, conduct and perform the business, obligations and duties of the Association; employ professional counsel and obtain advice from such persons or firms or corporations such as, but not limited to, landscape architects, architects, planners, lawyers and accountants; and contract for or otherwise provide for all services necessary or convenient for the management, maintenance and operation of the Property; provided, however, the Association may not incur or commit to incur legal fees in excess of \$5,000 for any specific litigation or claim matter unless the Owners have enacted a resolution authorizing the incurring of such fees by a vote of seventy-five percent (75%) of the voting rights present in person or by absentee ballot or proxy at a meeting at which a quorum is constituted. This limitation shall not be applicable to legal fees incurred in defending the Association or the Board of Directors from claims or litigation brought against them. The limitation set forth in this paragraph shall increase by \$500 on each fifth anniversary of the recording of this Declaration.

(g) **Borrow Money, Hold Title and Make Conveyances.** The Association may borrow and repay moneys for the purpose of performing its duties under this Declaration,

and subject to Section 4.3(d) above, encumber the Common Areas as security for the repayment of such borrowed money. The Association may acquire, hold title to and convey, with or without consideration, real and personal property and interests therein, including, but not limited to, easements across all or any portion of the Common Area, and shall accept any real or personal property, leasehold or other property interests within Willis Creek Subdivision conveyed to the Association by Declarant.

(h) Transfer, Dedication and Encumbrance of Common Area. Except as otherwise provided in Section 4.3(d) above, the Association may sell, transfer or encumber all or any portion of the Common Area to a person, firm or entity, whether public or private, and dedicate or transfer all or any portion of the Common Area to any public agency, authority, or utility for public purposes.

(i) Create Classes of Service and Make Appropriate Charges. The Association may, in its sole discretion, create various classes of service and make appropriate Individual Assessments or charges therefor to the users of such services, including, but not limited to, reasonable admission and other fees for the use of any and all recreational facilities situated on the Common Areas, without being required to render such services to those of its members who do not assent to such charges and to such other Rules and Regulations as the Board of Directors deems proper. In addition, the Board of Directors shall have the right to discontinue any service upon nonpayment of Assessments or to eliminate any service for which there is no demand or for which there are inadequate funds to maintain the same.

(j) Implied Rights and Obligations. The Association may exercise any other right or privilege reasonably to be inferred from the existence of any right or privilege expressly given to the Association under this Declaration or reasonably necessary to effectuate any such right or privilege.

8.6 **Liability.** Neither a member of the Board of Directors nor an officer of the Association shall be liable to the Association, any Owner or any third party for any damage, loss or prejudice suffered or claimed on account of any action or failure to act in the performance of his duties, so long as the individual acted in good faith, believed that the conduct was in the best interests of the Association, or at least was not opposed to its best interests, and in the case of criminal proceedings, had no reason to believe the conduct was unlawful. In the event any member of the Board of Directors or any officer of the Association is threatened with or made a party to any proceeding because the individual was or is a director or officer of the Association, the Association shall defend such individual against such claims and indemnify such individual against liability and expenses incurred to the maximum extent permitted by law.

8.7 **Interim Board; Turnover Meeting.** Declarant shall have the right to appoint an interim board of one to three directors, who shall serve as the Board of Directors of the Association until replaced by Declarant or until their successors take office at the Turnover Meeting following termination of Class B membership. Declarant shall call a meeting of the Association for the purpose of turning over administrative responsibility for the Property to the Association not later than ninety (90) days after termination of the Class B membership in

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accordance with Section 8.3 above. At the Turnover Meeting the interim directors shall resign and their successors shall be elected by the Owners, as provided in this Declaration and in the Bylaws of the Association. If Declarant fails to call the Turnover Meeting required by this section, any Owner or mortgagee of a Lot may call the meeting by giving notice as provided in the Bylaws.

8.8 **Contracts Entered into by Declarant or Before Turnover Meeting.** Notwithstanding any other provision of this Declaration, any management contracts, service contracts or employment contracts entered into by Declarant or the Board of Directors on behalf of the Association before the Turnover Meeting shall have a term of not more than three (3) years.

8.9 **Bylaws.** The Bylaws of the Association and any amendment or modification of the Bylaws shall be recorded in the Deed Records of Canyon County, Idaho. Declarant hereby adopts, on behalf of the Association, the initial Bylaws attached as Exhibit A to this Declaration.

Article 9 **Maintenance, Utilities and Services**

9.1 **Maintenance and Lighting of Common Areas.** The Association may provide exterior lighting for and shall perform all maintenance upon the Common Areas, including, but not limited to, landscaping, irrigation, walks, private roads, entrance monuments, gates, fences, walls, signs, parking areas, walkways and trails, unless the maintenance thereof is assumed by a public body. Such areas shall be maintained in attractive condition and in a good and workmanlike manner to render them fit for the purposes for which they are intended.

9.2 **Maintenance of Utilities.** The Association shall perform or contract to perform maintenance of all private utilities within Common Areas, such as sanitary sewer service lines, domestic water service lines and storm drainage lines, except to the extent such maintenance is performed by the utilities furnishing such services. The Association shall not be liable for any interruption or failure of such services. Each Owner shall be responsible for maintaining utility lines within his Lot, except to the extent such maintenance is performed by the utilities furnishing such services.

9.3 **Security.** The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to make the Property safer than it otherwise might be. Neither the Association, any managing agent retained by the Association, Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Property, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or of ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system or other security system cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants that the Association, its Board of Directors and committees, any managing agent retained by the Association, Declarant, and any successor Declarant are not

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insurers and that each person using the Property assumes all risks for loss or damage to persons, to property and to the contents of Lots resulting from acts of third parties and releases such parties from any liability therefor.

9.4 **Services.** The Association shall provide or contract for such services as the Board may reasonably deem to be of benefit to the Property, which may include, without limitation, landscape services, garbage and trash removal for Common Areas and security services.

9.5 **Owner's Responsibility.** Except as otherwise provided in this Declaration or by written agreement with the Association, all maintenance of the Lots and Improvements thereon as provided in Section 6.5 above shall be the sole responsibility of the Owner thereof, who shall maintain such Lot and the portion of the street right-of-way between the Lot and the street in a neat and attractive condition in accordance with the community-wide standard of Willis Creek Subdivision. The Association shall, in the discretion of the Board of Directors, assume the maintenance responsibilities of such Owner if, in the opinion of the Board of Directors, the level and quality of maintenance being provided by such Owner does not satisfy such standard. Before assuming such maintenance responsibilities, the Board of Directors shall notify the Owner in writing of its intention to do so, and if such Owner has not commenced and diligently pursued remedial action within fifteen (15) days after mailing of such written notice, then the Association shall proceed. The expenses of such maintenance by the Association shall be reimbursed to the Association by the Owner, together with interest as provided in Section 11.5 below. Such charges shall be an Individual Assessment and lien on the Lot as provided in Sections 10.7 and 11.1 below.

9.6 **Damage Liability.** Any damage to any Common Area by Owners, their children, agents, visitors, friends, relatives, tenants, occupants, or service personnel shall be repaired by the Owner within fifteen (15) days following the date on which notice is mailed by the Association informing the Owner of such violation. If the damage has not been repaired within such time, then the Association shall perform such repair and the cost shall be assessed to the Owner as an Individual Assessment.

Article 10 **Assessments**

10.1 **Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Owners and occupants of the Property and for the improvement, operation and maintenance of the Common Areas.

10.2 **Types of Assessments.** The Association may levy Annual Assessments, Special Assessments, Emergency Assessments, and Individual Assessments, all as more particularly described below.

Apportionment of Assessment.

(a) **Lots Owned by Declarant.** A Lot owned by Declarant shall not be subject to Annual Assessments (including assessments for reserves), Special Assessments, or

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Emergency Assessments unless and until such time as the Lot is occupied for residential use, and then shall only be subject to such assessments as accrue thereafter.

(b) **Other Lots.** All Lots other than Lots owned by Declarant shall be subject to assessment and shall pay an equal share of the Annual Assessments, Special Assessments and Emergency Assessments. Declarant may elect to delay collection of Annual Assessments against all such other Lots, but in such case shall pay all common expenses of the Association until such Assessments commence. No Owner by the Owner's own action may claim exemption from liability for contribution towards common expenses by waiver by the Owner of use of enjoyment of any or the Common Area or by abandonment by the Owner of the Owner's Lot. An Owner may not claim an offset against an Assessment for failure of the Association to perform its obligations, and no Owner may offset amounts owing or claimed to be owing by the Association or Declarant to the Owner.

10.4 **Annual Assessments.** The Board of Directors of the Association shall from time to time and at least annually prepare an operating budget for the Association, taking into account the current costs of maintenance and services and future needs of the Association, any previous over-assessment and any common profits of the Association. The budget shall take into account the number of Lots subject to assessment as of the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to assessment during the fiscal year. The budget may be based upon a greater number of Lots than those reasonably anticipated to be subject to assessment during the fiscal year if the Declarant agrees to subsidize the Association for any shortfall in the Operations Fund until assumed number of Lots is subject to assessment. The budget shall provide for such reserve or contingency funds as the Board deems necessary or as may be required by law. Annual Assessments for such operating expenses and reserves ("Annual Assessments") shall then be apportioned among the Lots as provided in Section 10.3 above. Within thirty (30) days after adopting the annual budget, the Board of Directors shall provide a summary of the budget to all Owners. If the Board of Directors fails to adopt an annual budget, the last adopted budget shall continue in effect. The manner of billing and collection of Assessments shall be as provided in the Bylaws.

10.5 **Special Assessments.** In addition to the Annual Assessment authorized above, the Board of Directors may levy during any fiscal year a Special Assessment ("Special Assessment"), applicable to that year only, for the purpose of deferring all or any part of the cost of any construction or reconstruction, unexpected repair, or acquisition or replacement of a described capital improvement, or for any other one-time expenditure not to be paid for out of Annual Assessments. Special Assessments for acquisition or construction of new capital improvements or additions which in the aggregate in any fiscal year exceed an amount equal to fifteen percent (15%) of the budgeted gross expenses of the Association for the fiscal year may be levied only if approved by a majority of the voting rights voting on such matter, together with the written consent of the Class B member, if any. Prior to the Turnover Meeting, any Special Assessment for acquisition or construction of new capital improvements or additions must be approved by not less than fifty percent (50%) of the Class A voting rights, together with the written consent of the Class B member. Special Assessments shall be apportioned as provided in

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Section 10.3 above and may be payable in lump sum or in installments, with or without interest or discount, as determined by the Board of Directors.

10.6 **Emergency Assessments.** If the Annual Assessments levied at any time are or will become inadequate to meet all expenses incurred under this Declaration for any reason, including nonpayment of any Owner's Assessments on a current basis, the Board of Directors shall immediately determine the approximate amount of such inadequacy and issue a supplemental budget, noting the reason therefor, and levy an Emergency Assessment for the amount required to meet all such expenses on a current basis ("Emergency Assessment"). Any Emergency Assessment that in the aggregate in any fiscal year would exceed an amount equal to five percent (5%) of the budgeted gross expenses of the Association for such fiscal year may be levied only if approved by not less than a majority of the voting rights voting on such matter, together with the written consent of the Class B member, if any. Emergency Assessments shall be apportioned as set forth in Section 10.3 above and payable as determined by the Board of Directors.

10.7 **Individual Assessments.** Any common expense or any part of a common expense benefiting fewer than all of the Lots may be assessed exclusively against the Lots benefited ("Individual Assessment"). Individual Assessments include, without limitation, charges for services provided under Sections 8.5(i) and 9.5 and any common expense that the Board of Directors determines is the fault of the Owner and not paid by insurance. Individual Assessments shall also include default Assessments levied against any Lot to reimburse the Association for costs incurred in bringing such Lot or its Owner into compliance with the provisions of this Declaration or the Rules and Regulations of the Association and for fines or other charges imposed pursuant to this Declaration for violation thereof. Unless otherwise provided by the Board of Directors, Individual Assessments shall be due 30 days after the Board of Directors has given written notice thereof to the Owners subject to the Individual Assessments.

10.8 **Operations Fund.** The Association shall keep all funds received by it as Assessments, other than reserves described in Section 10.9, separate and apart from its other funds, in a bank account in the State of Idaho in the name of the Association to be known as the "Operations Fund." All expenses of the Association shall be paid from the Operations Fund or from the Reserve Fund referred to in Section 10.9. The Association shall use such fund exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents within the Property and in particular for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas and of the Lots situated upon the Property, including but not limited to:

(a) Payment of the cost of maintenance, utilities, and services as described in Article 9.

(b) Payment of the cost of insurance referred to in Section 8.5(b) of this Declaration or the Bylaws of the Association.

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(c) Payment of taxes assessed against the Common Areas and any improvements thereon.

(d) Payment of the cost of other services that the Association deems to be of general benefit to the Owners, including, but not limited to, accounting, legal and secretarial services.

10.9 **Reserve Fund.** The Board of Directors may establish a Reserve Fund for major maintenance, repair or replacement of those items to be maintained by the Association, all or a part of which could not reasonably be funded from operating Assessments (“Reserve Fund”). Such Reserve Fund shall be funded by Assessments against the individual Lots assessed for maintenance of the items for which the Reserve Fund is being established. The Reserve Fund shall be established in the name of the Association and shall be adjusted at regular intervals to recognize changes in current replacement costs over time. The Reserve Fund shall be used only for replacement of common property as determined by the Board of Directors and shall be kept separate from the Operations Fund. The Board of Directors, however, may borrow funds from the Reserve Fund to meet high seasonal demands on the regular operating funds or to meet other temporary expenses that will later be paid from Annual Assessments, Special Assessments, or Emergency Assessments. Nothing in this section shall prohibit prudent investment of the Reserve Fund. Assessments paid into the Reserve Fund are the property of the Association and are not refundable to sellers or Owners of Lots. Sellers of the Lots, however, may treat their outstanding share of the Reserve Fund as a separate item in any sales agreement.

10.10 **Creation of Lien and Personal Obligation of Assessments.** Declarant, for each Lot owned by it within the Property, does hereby covenant, and each Owner of any Lot by acceptance of a conveyance thereof, whether or not so expressed in any such conveyance, shall be deemed to covenant to pay to the Association all Assessments or other charges as may be fixed, established and collected from time to time in the manner provided in this Declaration or the Association Bylaws. Such Assessments and charges, together with any interest, late charges, expenses or attorneys’ fees imposed pursuant to Section 11.5, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment or charge is made. Such Assessments, charges and other costs shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment or charge fell due. Such liens and personal obligations shall be enforced in the manner set forth in Article 11 below.

10.11 **Voluntary Conveyance.** In a voluntary conveyance of a Lot the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments against the grantor of the Lot up to the time of the grant or conveyance, without prejudice to the grantee’s right to recover from the grantor the amounts paid by the grantee therefor. However, upon request of an Owner or Owner’s agent for the benefit of a prospective purchaser, the Board of Directors shall make and deliver a written statement of the unpaid Assessments against the prospective grantor of the Lot effective through a date specified in the statement, and the grantee in that case shall not be liable for any unpaid Assessments against the grantor not included in the written statement.

Article 11 **Enforcement**

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DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR WILLIS CREEK SUBDIVISION – Page 23

11.1 **Violation of General Protective Covenants.** In the event that any Owner constructs or permits to be constructed on his Lot an Improvement contrary to the provisions of this Declaration, or violates any provisions of this Declaration, the Bylaws, or the Rules and Regulations, then the Association acting through its Board of Directors shall notify the Owner in writing of any such specific violations. If the Owner is unable, is unwilling, or refuses to comply with the Association's specific directives for remedy or abatement, or the Owner and the Association cannot agree to a mutually acceptable solution within the framework and intent of this Declaration, after notice and opportunity to be heard as provided in the Bylaws and within fourteen (14) days after issuing written notice to the Owner, then the Association acting through its Board of Directors shall have the right to do any or all of the following:

(a) Assess reasonable fines against such Owner, based upon a resolution adopted by the Board of Directors that is delivered to each Lot, mailed to the mailing address of each Lot or mailed to the mailing address designated by the Owner of each Lot in writing, which fines shall constitute Individual Assessments for purposes of this Declaration;

(b) Enter the offending Lot and remove the cause of such violation, or alter, repair or change the item that is in violation of this Declaration in such a manner as to make it conform thereto, in which case the Association may assess such Owner for the entire cost of the work done, which amount shall be payable to the Operations Fund as an Individual Assessment, provided that no items of construction shall be altered or demolished in the absence of judicial proceedings;

(c) Cause any vehicle parked in violation of this Declaration or of the Rules and Regulations to be towed and impounded at the Owner's expense;

(d) Suspend the voting rights, any utility services paid for out of Assessments and the right to use the Common Areas for the period that the violations remain unabated, provided that the Association shall not deprive any Owner of access to and from his Living Unit; and

(e) Bring suit or action against the Owner on behalf of the Association and other Owners to enforce this Declaration.

11.2 **Default in Payment of Assessments; Enforcement of Lien.** If an Assessment or other charge levied under this Declaration is not paid within thirty (30) days after its due date, such Assessment or charge shall become delinquent and shall bear interest from the due date at the rate set forth below. In such event the Association may exercise any or all of the following remedies:

(a) The Association may suspend such Owner's voting rights, any utility services paid for out of Assessments and right to use the Common Areas until such amounts, plus other charges under this Declaration, are paid in full and may declare all remaining periodic installments of any Annual Assessment immediately due and payable. In no event, however, shall the Association deprive any Owner of access to and from his Lot.

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(b) The Association shall have a lien against each Lot for any Assessment levied against the Lot, including any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Lot, may record a notice of lien against such Lot, and may foreclose such lien in the manner provided for the foreclosure of mortgages.

(c) The Association may bring an action to recover a money judgment for unpaid Assessments, fines and charges under this Declaration without foreclosing or waiving the lien described in paragraph (b) above. Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.

(d) The Association shall have any other remedy available to it by law or in equity.

11.3 **Reports to First Mortgagees.** In response to a written request of any first mortgagee of a Lot, the Association shall report to such mortgagee whether such Lot is current or past-due with respect to Assessments.

11.4 **Subordination of Lien to Mortgages.** The lien of the Assessments or charges provided for in this Declaration shall be subordinate to the lien of any mortgage or deed of trust on such Lot, which was made in good faith and for value and that was recorded before the recordation of the notice of lien. Sale or transfer of any Lot shall not affect the Assessment lien, but the sale or transfer of any Lot that is subject to any mortgage or deed of trust pursuant to a decree of foreclosure thereunder or any deed or proceeding, deed or assignment in lieu of foreclosure shall extinguish any lien of an Assessment, notice of which was recorded after the recording of the mortgage or trust deed. The unpaid Assessments as a result of such foreclosure or sale shall become a common expense of all Owners, including the mortgagee or purchaser, and such sale or transfer shall not release the Lot from liability for any Assessments or charges thereafter becoming due or from the lien of such Assessments or charges.

11.5 **Interest, Late Charges and Expenses.** Any amount not paid to the Association when due in accordance with this Declaration shall bear interest from the due date until paid at a rate that is the greater of twelve percent (12%) per annum or three percentage points per annum above the prevailing Boise, Idaho prime rate as of the due date, or such other rate as may be established by the Board of Directors, but not to exceed the lawful rate of interest under the laws of the State of Idaho. A late charge may be charged for each delinquent Assessment in an amount established from time to time by resolution of the Board of Directors, which resolution is delivered to each Lot, mailed to the mailing address of each Lot or mailed to the mailing address designated by the Owner in writing, together with all expenses incurred by the Association in collecting such unpaid assessments, including attorneys' fees (whether or not suit is instituted). In the event the Association shall file a notice of lien, the lien amount shall also include the recording fees associated with filing the notice, and a fee for preparing the notice of lien, established from time to time by resolution of the Board of Directors.

11.6 **Costs and Attorneys' Fees.** In the event the Association shall bring any suit or action to enforce this Declaration, the Bylaws of the Association or the Rules and Regulations, or to collect any money due hereunder or to foreclose a lien, the Owner-defendant shall pay to the

Association all costs and expenses incurred by it in connection with such suit or action, including a foreclosure title report, and the prevailing party in such suit or action shall recover such amount as the court may determine to be reasonable as attorneys' fees at trial and upon any appeal or petition for review thereof or in connection with any bankruptcy proceedings or special bankruptcy remedies.

11.7 **Nonexclusiveness and Accumulation of Remedies.** An election by the Association to pursue any remedy provided for violation of this Declaration shall not prevent concurrent or subsequent exercise of another remedy permitted under this Declaration. The remedies provided in this Declaration are not exclusive but shall be in addition to all other remedies, including actions for damages and suits for injunctions and specific performance, available under applicable law to the Association. In addition, any aggrieved Owner may bring an action against another Owner or the Association to recover damages or to enjoin, abate or remedy any violation of this Declaration by appropriate legal proceedings.

11.8 **Enforcement by Canyon County.** The provisions of this Declaration relating to preservation and maintenance of Common Areas shall be deemed to be for the benefit of Canyon County as well as the Association and Owners of Lots, and Canyon County may enforce such provisions by appropriate proceedings at law or in equity, or may cause such maintenance to be performed, the costs of which shall become a lien upon the Property.

Article 12 **Mortgagees**

12.1 **Notices of Action.** An institutional holder, insurer, or guarantor of a first mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any delinquency in the payment of assessments or charges owned by a Lot subject to the mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of this Declaration, the Bylaws or the Rules and Regulations relating to such Lot or the Owner or occupant which is not cured within sixty (60) days;

(b) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; and

(c) Any proposed action that would require the consent of a specified percentage of Eligible Holders.

12.2 **No Priority.** No provision of this Declaration gives or shall be construed as giving an Owner or other party priority over the rights of the first mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

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12.3 **Notice of Association.** Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any mortgage encumbering such Owner's Lot.

12.4 **Failure of Mortgagee to Respond.** Any mortgagee who receives a written request from the Board of Directors to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the mortgagee by certified or registered mail, return receipt requested.

12.5 **Construction of this Article.** Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under this Declaration, the Bylaws or Idaho law for any of the acts set out in this Article.

Article 13 **Amendment And Repeal**

13.1 **How Proposed.** Amendments to or repeal of this Declaration shall be proposed by either a majority of the Board of Directors or by Owners holding thirty percent (30%) or more of the Association's voting rights. The proposed amendment or repeal must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon or attached to any request for consent to the amendment or repeal.

13.2 **Approval Required.** This Declaration, or any provision thereof, as from time to time in effect with respect to all or any part of the Property, may be amended or repealed by the vote or written consent of Owners representing not less than seventy-five percent (75%) of the Lots, based upon one vote for each such Lot, together with the written consent of the Class B member, if such Class B membership has not been terminated as provided in this Declaration. In no event shall an amendment under this section create, limit or diminish special Declarant rights without Declarant's written consent, or change the boundaries of any Lot or any uses to which any Lot is restricted under this Declaration or change the method of determining liability for common expenses, the method of determining the right to common profits or the method of determining voting rights of any Lot unless the Owners of the affected Lots unanimously consent to the amendment. Declarant may not amend this Declaration to increase the scope of special Declarant rights reserved in this Declaration after the sale of the first Lot unless Owners representing seventy-five percent (75%) of the total vote, other than Declarant, agree to the amendment. To the extent any amendment relates to the preservation or maintenance of the Common Areas or private utility lines, or the existence of an entity responsible for accomplishing the same, such amendment shall be approved by the zoning administrator of Canyon County.

13.3 **Recordation.** Any such amendment or repeal shall become effective only upon recordation in the Deed Records of Canyon County, Idaho of a certificate of the president and secretary of the Association setting forth in full the amendment, amendments or repeal so approved and certifying that such amendment, amendments or repeal have been approved in the

manner required by this Declaration, and acknowledged in the manner provided for acknowledgment of deeds.

13.4 **Regulatory Amendments.** Notwithstanding the provisions of Section 13.2 above, until the Turnover Meeting has occurred, Declarant shall have the right to amend this Declaration or the Bylaws of the Association in order to comply with the requirements of any applicable statute, ordinance or regulation or of the Federal Housing Administration; the United States Department of Veterans Affairs; the Farmers Home Administration of the United States; the Federal National Mortgage Association; the Government National Mortgage Association; the Federal Home Mortgage Loan Corporation, any department, bureau, board, commission or agency of the United States or the State of Idaho or any corporation wholly owned, directly or indirectly, by the United States or the State of Idaho that insures, guarantees or provides financing for a planned community or lots in a planned community. After the Turnover Meeting, any such amendment shall require the approval of a majority of the voting rights of the Association voting in person, by proxy or by ballot at a meeting or ballot meeting of the Association at which a quorum is represented.

Article 14 **Miscellaneous Provisions**

14.1 **Lessees and Other Invitees.** Lessees, employees, invitees, contractors, family members and other persons entering the Property under rights derived from an Owner shall comply with all of the provisions of this Declaration restricting or regulating the Owner's use, improvement or enjoyment of his Lot and other areas within the Property. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner himself or herself.

14.2 **Nonwaiver.** Failure by the Association or by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

14.3 **Construction; Severability; Number; Captions.** This Declaration shall be liberally construed as an entire document to accomplish the purposes hereof as stated in the introductory paragraphs hereof. Nevertheless, each provision of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision shall not affect the validity or enforceability of the remaining part of that or any other provision.

As used in this Declaration, the singular shall include the plural and the plural the singular, and the masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration.

14.4 **Notices and Other Documents.** Any notice or other document permitted or required by this Declaration may be delivered either personally or by mail. Delivery by mail shall be deemed made twenty-four (24) hours after having been deposited in the United States mail as certified or registered mail, with postage prepaid, addressed as follows: If to Declarant

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or the Association, 1997 N. Highwood Ave. Boise Idaho, 83713; if to an Owner, at the address given at the time of the Owner's purchase of a Lot, or at the Lot. The address of a party may be changed at any time by notice in writing delivered as provided herein.

14.5 **Private Agreement.** This Declaration and the covenants and agreements contained herein constitute a private agreement among the Owners of Lots in Willis Creek Subdivision. This Declaration does not restrict Canyon County's authority to adopt or amend its development regulations. There may be conflicting requirements between this Declaration and regulations of Canyon County. Canyon County will limit its review of a development application to the requirements of its regulations. It is the duty of every person engaged in development or remodeling of a Lot and/or Improvement in Willis Creek Subdivision to know the requirements of this Declaration and the covenants and agreements contained herein. In the event there is a conflict between a regulation of Canyon County and this Declaration, any question regarding which provision controls shall be directed to the Architectural Review Committee. Canyon County will not be liable for any approvals or permits that are granted in compliance with the regulations of Canyon County, the State of Idaho, or any other jurisdiction, but that are not in compliance with this Declaration. Declarant, the Architectural Review Committee and/or the Association will not be liable for any approvals that are granted in compliance with this Declaration, but that are not in compliance with the regulations of Canyon County, the State of Idaho or any other jurisdiction.

IN WITNESS WHEREOF, Declarant has executed this Declaration on the date set forth above.

DECLARANT

Willis Creek Development Company

By: C. Michael McLain
Its: President

Willis Creek Development Company

By: Carole L. McLain
Its: Vice-President

STATE OF IDAHO)
)ss.
COUNTY OF _____)

On this ____ day of _____, 20__, before me, _____, a Notary Public, personally appeared **C. Michael McLain** known or identified to me, to be the president of **Willis Creek Development Company**, the company that executed the above instrument, or the person who executed the instrument on behalf of said company and acknowledged to me that such company executed the same.

9/22/2005

Notary Public for Idaho
Printed Name: _____
Commission Expires: _____

STATE OF IDAHO)
)ss.
COUNTY OF _____)

On this ____ day of _____, 20__, before me, _____, a Notary Public, personally appeared **Carole L. McLain** known or identified to me to be the vice-president of **Willis Creek Development Company**, the company that executed the above instrument or the person who executed the instrument on behalf of said company and acknowledged to me that such company executed the same.

Notary Public for Idaho
Printed Name: _____
Commission Expires: _____

Exhibit A By-Laws

By-laws of the Association