

## DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR CANYON CREEK SUBDIVISION

For Platted Lands in Adams County, Idaho.

**THIS DECLARATION** is made this 13<sup>th</sup> day of July 2002, by CH Properties, LLC, hereinafter called "Declarant".

**WHEREAS** Declarant is the owner of the real property described in Article III of this Declaration ("the Property") and desires to create on a portion thereof a residential community:

**WHEREAS** Declarant desires to provide for the preservation of the values and amenities in the Property, and to this end, desires to subject the Property to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are intended for the mutual benefit of said property and of each owner of a portion thereof; and,

**NOW, THEREFORE**, the Declarant declares that the Property, and such additions to the Property as may be made pursuant to Article X hereof, is and shall be held, transferred, sold, conveyed and occupied subject to covenants, conditions, easements, charges, and liens hereinafter set forth.

### ARTICLE I DECLARATION

Declarant hereby declares that each lot, parcel or portion of the Property located within Canyon Creek, is and shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupies and improved subject to the following terms, covenants, conditions, easements and restrictions, all of which are declared and agreed to be in furtherance of a general plan for protection, maintenance, subdivision, improvement and sale of the Property, and to enhance the value, desirability and attractiveness of the Property. The terms, covenants, conditions, easements and restrictions set forth herein: (I) shall run with the land constituting the Property, and shall be binding upon all persons having or acquiring any right, title or interest in the Property or any lot, parcel or portion thereof; (II) shall inure to the benefit of and be binding upon Declarant, Declarant's successors in interest and each Grantee or Owner and such Grantee's or Owner's respective successors in interest; and (IV) may be enforced by Declarant, by any Owner or such Owner's successors in interest, or by the Association as hereinafter described.

## ARTICLE II DEFINITIONS

Architectural Control Committee: The term "Architectural Control Committee" shall mean the committee created pursuant to Article VIII.

Articles: "Articles" shall mean the Articles of Incorporation of the Association or other organizational or charter documents of the Association.

Assessments: "Assessments" shall mean those payments required of Residential Owners, including Regular, Special and Limited Assessments of the Association as further defined in the Declaration.

Association: "Association" shall mean the Canyon Creek Property Owners' Association.

Association Rules: "Association Rules" shall mean those rules and regulations promulgated by the Association governing conduct upon and use of the Residential Property under the jurisdiction or control of the Association, the imposition of fines and forfeitures for violation of Association Rules and regulations, and procedural matters for use in the conduct of business of an Association.

Board: "Board" shall mean the Board of Directors or other governing board or individual, if applicable, of the Association.

Bylaws: "Bylaws" shall mean the Bylaws of the Association.

Committee: The term "Committee" shall mean the Architectural Control Committee.

Declarant: The term "Declarant" shall mean CH Properties, LLC, an Idaho limited company, or its' successors in interest, or any person or entity to whom rights under this Declaration are expressly transferred by CH Properties, LLC.

Declaration: The term "Declaration" shall mean this Declaration of Protective Covenants, Conditions and Restrictions contained herein.

Dwelling, Dwelling Units: The term "Dwelling" and "Dwelling Units" are interchangeable and shall mean any building or portion thereof located on a parcel and designed and intended for use and occupancy as a single family residence.

Improvements: The term "Improvements" shall include buildings, outbuildings, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs and all other structures or landscaping improvements of every type and kind.

Lot: The term "Lot" shall mean any parcel of real property located in the Residential Property and designated as a Lot on the Recorded plat of the Existing Property.

Owner: The term "Owner" shall refer to that person or entity or those persons or entities who hold the ownership interest in any Lot as shown on the records of the County Recorder, Adams County, Idaho; such term shall also include any person, persons, entity or entities who succeed to such recorded interest by any means, including buyers under executory contracts of sale and excluding those holding an interest merely as security for the performance of an obligation.

Record, Recorded: The term "Record" or "Recorded" shall mean with respect to any documents, the recordation of said document in the Office of the County Recorder, Adams County, Idaho.

Residence: The term "Residence" shall mean a building or buildings, including any garage, carport or similar outbuilding, used for residential purposes.

Residential Owner: The term "Residential Owner" shall mean any Owner of a Lot within the Residential Property.

Residential Property: The term "Residential Property" is defined at Section 3.02 below.

Single Family Residential Use: The term "Single Family Residential Use" shall mean the occupation and use of a single family dwelling in conformity with this Declaration and any requirements imposed by applicable zoning laws or other state or municipal agencies, rules or regulations.

Structure: The term "Structure" shall include buildings, outbuildings roads, driveways, parking areas, fences, walls, stairs, decks and poles.

### ARTICLE III PROPERTY SUBJECT TO THIS DECLARATION

3.01 The Property: The real property which makes up the Canyon Creek Subdivision, as platted with the Adams County Recorder, is located in Adams County, Idaho and is more particularly described at **Exhibit "A"** attached hereto and incorporated herein by reference (hereafter the "Existing Property").

3.02 Residential Property: The real property which is, and shall be held, transferred, sold, conveyed and occupied subject to this declaration is located in Adams County, Idaho and is more particularly described at Lots 1 through 15 of Canyon Creek, as platted with the Adams County Recorder, as well as any additional Lots which may be annexed into Canyon Creek pursuant to Article X below.

## ARTICLE IV PROTECTIVE COVENANTS

4.01 Use and Living Units: All of the subject lots in the residential Property shall be used and occupied solely for single family residential purposes, or agricultural purposes, as allowed herein. There shall be no commercial use of the Residential Property, including but not limited to in-home businesses and pasture rental.

None of the subject lots or parcels that are part of the Residential Property shall be split, divided or subdivided into smaller lots or parcels than indicated on the Recorded Plat of Canyon Creek subdivision property, in the office of the County Recorder of Adams County, Idaho.

All single-family residences shall be subject to the following conditions and limitations:

A. No buildings other than one detached residence, a private garage for the use of the occupants of such residence, and such other usual and appropriate outbuildings strictly incidental and appurtenant to a private residence, or the care and keeping of animals, shall be erected or maintained on any parcel. No use whatsoever shall be made of any parcel herein other than the site and grounds of a private residence. The term "private residence" as used herein is intended to exclude every form of multi-family dwelling, boarding or lodging house and the like, but is not intended to exclude a guest house for the entertainment of social guests, or servants or caretakers' quarters, for persons employed upon the premises, if such guest housing is allowed by applicable Adams County Ordinances. There shall be no more than a maximum of three (3) buildings allowed on any lot, of which only two (2) may be occupied as residences.

B. No structure of a temporary character, to specifically include mobile home, basement, shack, garage, barn or other outbuilding, shall be used on any lot at any time as a residence, either temporarily or permanently; nor shall any residential structure be moved on to any lot from any other location, unless the prior written approval of the Architectural Control Committee is obtained, such approval to be obtained in the same manner as for new construction.

C. Visitors and guests may park a camper, motor home or trailer in the Subdivision for a reasonable term, not to exceed two (2) weeks consecutive duration nor more than a total of thirty (30) days each calendar year, except with the special permission of the Architectural Control Committee.

D. A residence shall contain a minimum of 2,000 (1,500 on the ground floor) square feet of total living area; and all construction must be of good quality and done in a good workmanlike manner.

E. All buildings shall be placed within the "building envelopes", as depicted on the Plat, unless approved in writing by the Architectural Control Committee, and shall not in any case be located within fifty (50) feet of a street right-of-way or within fifty (50) feet of an adjoining property line. No construction shall occur within designated wetlands areas, within the wildlife easement or the Goose Creek Canal easement.

F. No Improvements which will be visible above ground or which will ultimately affect the visibility of any above ground improvement shall be built, erected, placed or materially altered on, or removed from the Residential Property unless and until the building plans, specifications and plot plan, or other appropriate plans and specifications, have been reviewed in advance by the Architectural Control Committee and the same have been approved in writing. The procedures for review are more fully set forth in Article VIII. The review and approval or disapproval may be based upon the following factors: size, height, design and style elements, mass and form, topography, setbacks, finished ground elevations, architectural symmetry, drainage, color materials, physical or aesthetic impacts on other properties, artistic conformity to the terrain and other improvements on the Residential Property, and any and all other factors which the Architectural Control Committee, in its reasonable discretion, deems relevant. Said requirements as to the approval of the architectural design shall apply only to the exterior appearance of the improvements. This Declaration is not intended to serve as authority for the Architectural Control Committee to control the interior layout or design of residential structures except to the extent incidentally necessitated by use, size and height restrictions.

G. Detached garages, guest quarters, barns, outbuildings and storage sheds shall be allowed, if in conformity with the provisions of this Declaration and the applicable ordinances of Adams County. Garages, storage sheds, patio covers, and detached patio covers, shall be constructed of, and roofed and sided with, the same or compatible materials, and with similar colors and design, as the residential structure on the applicable Lot.

H. All access driveways shall have a wearing surface approved by the Architectural Control Committee and shall be graded to assure proper drainage. Where driveways intersect County roads, design approval of the approach shall be obtained from the Adams County Building Inspector. A ten (10) foot driveway setback from property lines shall be required.

I. Each residential structure shall have a street number discreetly placed at or near the street entrance to the Lot. All mailboxes and stands, if any, will be of consistent design, material and coloration.

J. Exterior lighting, including flood lighting shall be part of the architectural concept of the improvements on the Lot. Fixtures, standards and all exposed accessories shall be harmonious with building design and shall be approved by the Architectural

Control Committee. Lighting shall be restrained in design, shall be directed at the ground, and excessive brightness shall be avoided. For instance, lighted arenas shall not be allowed.

K. The maximum height of any building shall be in compliance with the applicable Adams County land use or zoning ordinances, but shall not exceed thirty five (35) feet in height, measured from the high side of the finished grade, adjacent to the highest point of any roofline.

L. Roofs shall be required to be of pitched design and shall be covered with non-flammable materials (e.g. composition shingle). Fire retardant wood shingles or shakes shall be discouraged, but may be used with prior consent of the Architectural Control Committee. Metal roofs are prohibited.

M. No exterior surfaces of any structure shall be painted other than earth tones, excluding trim. For example, white is not an earth tone, and shall not be permitted on the exterior surface of any structure, excluding trim. No reflective roofing material may be exposed on any lot. All exterior walls of any structure shall be of natural materials such as wood, stained wood, rock or brick, but may be a manufactured product, such as wood manufactured siding. Prior to construction, samples of such materials must be approved by the Architectural Control Committee.

N. TV Satellite dishes (larger than 24 inches) should be screened from view of the road and other homes, if possible, and be first approved by the Architectural Control Committee.

4.02 Landscaping: All lots shall be properly cared for at all times so as to maintain a good appearance to the public view. The owner of each such lot, upon erecting a single family residence or other approved structure thereon, shall provide and maintain minimal natural landscaping on the rear and side portions of the lot as well as the front lot area. All disturbed areas shall be re-established with native vegetation. In the event of neglect to properly maintain and care for any such lot, or to provide for such minimal landscaping, the Architectural Control Committee shall have the right, but shall have no obligation, to have the necessary work performed on any parcel to keep it from presenting an unsightly appearance, the charges for work so performed to be billed to, and paid for by, the owner or owners of such lot and become a lien upon the property. Use of native vegetation is encouraged in order to create a harmonious theme within the subdivision.

All landscaping, exterior structure surfaces, dimensions and locations on the lot shall be approved by the Architectural Control Committee prior to commencement of any work thereon. Planting trees is encouraged on Lots without trees. Proper planning is required so matured trees do not unreasonable block the views of adjacent lot owners. No structure or landscaping shall be approved which shall detract from the attractiveness or desirability of the Canyon Ranch Subdivision.

4.03 Animals: Except as hereinafter provided, no animals, livestock or poultry of any kind shall be raised, bred or kept on any lot in the Residential Property other than dogs, cats or other household pets, provided that the same are not kept, bred or maintained for commercial purposes. No more than two (2) adult animals will be allowed per Lot unless an exception is granted in writing from the Architectural Control Committee. The same shall not be allowed to run at large and must be kept and maintained upon the property of the owner thereof. Dogs shall not be allowed to disturb wildlife, waterfowl or other game species. Dogs are expressly prohibited from chasing cattle.

Horses or llamas may be kept and maintained on any Lot, provided that the maximum number of such "large" animals that may be kept on any one lot shall be equal to two animals for each 5 acres. This restriction shall be calculated based upon the total number of acres in the Lot. Special arrangements may be made for one or two lot owners to provide horse or llama boarding for members of the association.

Each Lot Owner shall be required to fence in their own animals, pursuant to the fencing requirements of Section 4.11. Animals shall not be allowed outside of the fenced area which is defined in Section 4.11.

4.04 Garbage, Refuse Disposal and Storage of Materials:

A. No parcel shall be used or maintained as a dumping ground for rubbish, trash, junk or other waste materials. All such waste of this nature must be kept in sanitary containers out of sight of the street and secure from access by domestic or wild animals and must be removed from the parcel at least once each week. All equipment for the storage or disposal of such waste material shall be maintained in a clean and sanitary condition at all times.

B. All snowmobiles, extra vehicles, boats, boat trailers, travel trailers, camper trailers, motor homes, automotive campers or any other similar property on any lot stored beyond the time frame contemplated in Section 4.01C herein, such storage is considered to be of a permanent nature, said property shall be stored in an enclosed building of permanent design.

C. No building materials of any kind shall be placed or stored upon any lot until the owner thereof is ready and able to commence construction, and then such materials shall be placed and kept neatly within the property lines of such lot.

D. No burning of any household garbage, trash or other noxious refuse shall be permitted on any lot unless in a contained structure with spark eliminator. (Note: extreme caution during fire season). Any other burning shall take place only with proper notification to the New Meadows Rural Fire Department, The Southern Idaho Timber Association or any other agency or authority with jurisdiction. The policies, practices and instructions of such entity shall be strictly followed.

4.05 Nuisances: Discharge of firearms is strictly prohibited and no one shall perform in the Residential Property any activity which is noxious or offensive or an annoyance or nuisance to the owner of any lot, or involves the pollution of the earth or water of, or the air over, any part of the Residential Property or creates noxious, offensive, annoying or dangerous odors or noises or visual or tactile conditions or creates or leaves a residue of non-degradable substances. The feeding of wildlife, with the exception of birds, is prohibited

4.06 All Terrain Vehicles: Except as associated with agricultural activities, all terrain vehicles, snow machines, motorcycles and other similar motorized vehicles may be operated within the Subdivision only for direct ingress and egress from the owner's lot to areas outside of the Subdivision, and must obey posted speed limits and be courteous to horseback riders. Whether a violation of the sub-paragraph has occurred shall be determined by the Board of the Architectural Control Committee.

4.07 Prohibited Lot Uses:

A. There shall be no mining, smelting or milling of ores or similar mineral operations within the Residential Property.

B. No outdoor privy or any common cesspool shall be installed on any lot at any time except as required during residence construction.

C. Nothing shall be done or kept on any lot by any person which will increase the rate of insurance or any other lot or which will result in the cancellation of any insurance or which constitutes a violation of any law.

D. No excavation shall be made on any parcel except as is necessary for the erection or approved structures, in which case the same shall be properly filled within thirty (30) days of the completion of the underground work.

4.08 Utilities: The Declarant shall provide underground electrical power and phone service to the edge of each lot. The purchaser and owner of each parcel agree to use the service so provided. Private electrical generating systems shall not be permitted for domestic electrical service, except as a backup system in case of primary electrical service failure. Solar panels are allowed but need to be approved by the Architectural Control Committee. All electrical power lines, telephone lines and other utility service lines shall be underground from each individual parcel line to the point of use on each parcel. Overhead lines and utility poles shall not be permitted, except during the construction phase. Each lot owner is responsible for drilling a well and developing a septic system.

4.09 Weed Control: All Residential Owners shall conform to the county ordinances and state laws relating to noxious weed control, and if they fail to do so the Association or Architectural Control Committee, or their agents, shall have the right to come on the property and do what is necessary to make the property conform to such laws and ordinances at the lot owner's expense.



4.10 Signs: No signs of any kind containing more than six (6) square feet shall be displayed to the public view on any lot. Entrances to the area shall be signed in such a manner as to advise hunters and motorists of a residential community. One sign identifying the Contractor during construction or advertising a house or lot for sale shall be permitted per lot. The sign shall not be placed more than forty eight (48) inches above the prevailing ground plane, nor closer than twenty (20) feet to a street or road right-of-way.

4.11 Fences: No fence, wall or hedge higher than four (4) feet, six (6) inches shall be erected or maintained on any Lot; except, however, with the consent in writing of all adjoining lot owners, a fence, wall or hedge higher than four (4) feet, six (6) inches, but in no event higher than six (6) feet, may be erected and maintained on any lot. The Board shall develop rules for a uniform fencing requirement, pursuant to the terms of Section 5.06 with regard to Association Rules. Such rules shall document a uniform style and the materials to be utilized in each type of fencing; for example, perimeter and pasture fencing should be uniform, while enclosures for domestic animals may have different requirements. The architectural control committee shall first approve all fences.

Canyon Creek is subject to a Perimeter Fence Agreement as shown on the Plat. It is the responsibility of the Association to maintain its share of the perimeter fence in cooperation with the neighboring property owners.

As stated in Section 4.03, each Lot Owner shall be responsible for fencing in their animals. In other words, any Lot owner desiring to maintain large animals shall be required to fully enclose the area occupied by such animals. Further, as in provided below, no animals will be allowed within the three hundred foot (300') wildlife easement described immediately below, except that Lot Owners may trail ride horses within the wildlife easement.

There shall be no fencing within the Goose Creek Canal Easement, which easement is discussed at Section 4.17 below.

4.12 Drainage: There shall be no interference with the established drainage pattern over any portion of the Residential Property unless an adequate alternative provision is made for proper drainage and is first approved in writing by the Architectural Control Committee. For the purposes hereof, "established" drainage is defined as the system of drainage, whether natural or otherwise, which exists at the time the overall grading of any portion of the Residential Property is completed by Declarant, or that drainage which is shown on any plans approved by the Architectural Control Committee.

4.13 Parking: Parking shall be accommodated on Lots with no parking of vehicles allowed on private or public streets. The improvements on each Lot shall provide at least a two-car garage.

4.14 Fire Hazard Mitigation: All roofs shall be covered with fire resistant material. The use of fire retardant wood shakes or shingles shall be discouraged and shall be allowed only with the prior consent of the Architectural Control Committee, which may base its decision on the recommendation of the Meadows Valley Rural Fire

Protection Association. No combustible material shall be placed or allowed to accumulate within three (3) feet of a structure. Within a thirty-foot (30') perimeter surrounding a dwelling, grasses shall be kept below six inches (6") in height, shrubs and trees shall be appropriately thinned; mature conifers shall be limbed to a height of eight feet (8') above the ground and all dead and down wood shall be removed.

4.15 Wetlands: The designated Wetlands within the Subdivision shall be treated and managed in accord with regulations of the U.S. Army Corp of Engineers. No construction or fences will be allowed in Wetlands areas.

4.16 Tree Cutting: The cutting on any live trees more than eight (8") inches in diameter shall require prior approval from the Architectural Control Committee.

4.17 Water Rights / Goose Creek Canal: the Association shall hold the water rights associated with Canyon Creek in its entirety. The first priority of the water rights is to insure the fire pond has sufficient water to meet the requirements of The Meadows Valley Rural Fire District.

Canyon Creek is subject to The Goose Creek Canal Easement Agreement that is attached as Exhibit "B". In addition, the Goose Creek Canal Easement is shown on the final plat. It is the responsibility of each property owner to review and abide by the agreement.

Water Rights in the Goose Creek Canal shall be subject to the water rights of other property owners outside of Canyon Creek that have perfected water rights in the Ditch. The Declarant shall have exclusive discretion to determine the specific water allocation among properties, as aforesaid.

4.18 Wildlife Easement: All of the Lots shall be subject to, and all of the Lots shall have the right to utilize, the Wildlife Easement, which is shown on the Plat. Declarant, or Declarant's assigns, shall have the right to create and impose rules for to the use of the River Trail Easement and the Architectural Control Committee shall control and provide for enforcement of the easement.

Those who shall have a right of use of the Wildlife Easement, subject to the aforesaid rules, are as follows: the Residential Owners; Declarant; any other party to whom the Declarant may grant use of the Easement. Any such use shall be pursuant to the rules and regulations imposed by Declarant or Declarant's assigns.

The use of the Easement shall be for non-motorized recreational day use only, such as hiking, mountain biking and fishing. No camping or hunting will be allowed.

ARTICLE V  
CANYON RANCH  
PROPERTY OWNER'S ASSOCIATION

5.01 Organization: Declarant as an Idaho non-profit corporation shall initially organize The Canyon Creek Property Owner's Association. The Association is charged with the duties and vested with the powers prescribed by law and set forth in the Articles, Bylaws and this Declaration. Neither the Articles nor Bylaws shall for any reason be amended or otherwise changed so as to be inconsistent with this Declaration. In the event that there should exist any ambiguity in any provision of the Articles or Bylaws then such provision shall be construed, to the extent possible, so that such provision shall be interpreted so as to be consistent with the provisions of this Declaration.

5.02 Membership: Every person or entity who is a recorded Owner of a fee or undivided fee interest in any Lot within Canyon Creek shall be a Member of the Association. Membership shall be appurtenant to, and may not be separated from the fee ownership of any Lot. Ownership of such Lot shall be the sole qualification for membership. Transfer of a Lot shall automatically transfer membership in the Association.

5.03 Voting Rights: The Association shall have one (1) class of Members, all of whom shall be voting members.

All Members shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot all such persons shall be entitled to all rights and privileges of membership. The vote for such Lot shall be exercised as its Owners collectively determine but in no event shall more than one (1) vote be cast with respect to any Lot.

5.04 No Fractional Votes; No Severance of Voting Rights: Fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes should be cast, they shall lose their right to vote on the matter being put to a vote. When an Owner casts a vote, it will thereafter be presumed conclusively for all purposes that such Owner was acting with authority and consent of all joint Owners of the Lot(s) from which the vote derived. The right to vote may not be severed or separated from the ownership of the Lot to which it is appurtenant except that any Owner may give a revocable proxy or may assign such Owner's right to vote to a lessee, mortgagee, beneficiary or contract purchaser of the Lot concerned for the term of the lease, mortgage, deed of trust or contract. Any sale, transfer or conveyance of such Lot to a new Owner shall operate automatically to transfer the appurtenant voting right to the Owner subject to any assignment of the right to vote to a lessee, mortgage or beneficiary as provided herein.

5.05 Board of Directors and Officers: The affairs of the Association shall be conducted and managed by the Board of Directors ("Board") and such officers as the Board may elect or appoint in accordance with the Articles and Bylaws as the same may be amended from time to time. The Board of the Association shall be elected in accordance with the provisions set forth in the Association Bylaws.

5.06 Powers and Duties of the Association:

A. Powers: The Association shall have all the powers of a corporation organized under the nonprofit corporation laws of the State of Idaho subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, Bylaws and Declaration. The Association shall have the power to do any and all lawful things which

may be authorized, required or permitted to be done by the Association under Idaho law and under this Declaration and the Articles and Bylaws and to do and perform any and all acts which may be necessary to, proper for or incidental to the proper management and operation of the Associations affairs and the performance of the other responsibilities herein assigned without limitation.

(1) Assessments: The power to levy Assessments on any Member or any portion of the Property and to force payment of any Assessments all in accordance with the provision of this Declaration.

(2) Right of Enforcement: The power and authority from time to time in its own name, on its own behalf or on behalf of any Owner who consents thereto, to commence and maintain actions and suite to restrain and enjoin any breach or threatened breach of this Declaration or the Articles or Bylaws, including the Association Rules adopted pursuant of this Declaration and to enforce, by injunction or otherwise, all provisions hereof.

(3) Delegation of Powers: The authority to delegate its powers and duties to committees, officers, employees or to any person, firm or corporation. Neither the Association nor the members of its Board shall be liable for any omission or improper exercise by any person or entity of any such duty or power so delegated.

(4) Association Rules: The power to adopt, amend and repeal, by majority vote of the Board, such rules and regulations as the Association deems reasonable provided, however, that any Association Rules shall apply equally to all Owners, and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Association Rules as they may from time to time be adopted, amended or repealed shall be mailed or otherwise delivered to each Owner. Upon such mailing or delivery the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration. In the event of any conflict between such Association Rules and any provisions of this Declaration or the Articles or Bylaws, the provisions of the Association Rules shall be deemed to be superseded by the provision of this Declaration, the Articles or the Bylaws to the extent of any such inconsistency.

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

B. Duties: In addition to duties necessary and proper to carry out the powers delegated to the Association by this Declaration and the Articles and Bylaws, without limiting the generality thereof, the Association or its agent, if any, shall have the authority and the obligation to conduct all business affairs of the Association and to perform, with limitation, each of the following duties:

(1) Association Common Areas:

- a) The Declarant shall build Canyon Creek Way, as depicted on the Plat, to Adams County standards, and then shall convey the road to the Association. It is the responsibility of the Association to provide maintenance of the road, to a standard equal to Adams County's maintenance of County Roads, and to provide snow removal on a regular basis to any property owner that requests winter access to their property.
- b) The Declarant may elect to landscape the entry and to construct an entry gate, in which case, the Association would be responsible for its maintenance.
- c) It is the responsibility of the Association, as mentioned in section 4.11, to maintain its share of perimeter fencing in cooperation with neighboring property owners.
- d) The Declarant shall construct a pond, as shown on the Plat, and per the specifications of The Meadows Valley Rural Fire Dept., along with a dry hydrant, for use in fire suppression. The Association shall maintain the pond and hydrant per the requirements of the Fire Dept.

(1) Insurance: Obtain insurance from reputable insurance companies authorized to do business in the State of Idaho and maintain in effect any insurance policy the Board deems necessary or advisable including, without limitation, directors and officers liability insurance.

(2) Rule Making: Make, establish, promulgate, amend and repeal such Association Rules as the Board shall deem advisable.

(3) Architectural Control Committee: Appoint and remove members of the Architectural Control Committee subject to the provisions of this Declaration.

## ARTICLE VI ASSESSMENTS

6.01 Covenant to Pay Assessments: By acceptance of a deed to any Lot in the Property, each Owner of such Lot hereby covenants and agrees to pay, when due, all Assessments or charges made by the Association, including all Regular, Special and Limited Assessments and Charges made against such owner pursuant to the provisions of this Declaration or other applicable instrument.

A. Assessment Constitutes Lien: Such Assessments and charges, together with interest at a rate established by the Board, costs and reasonable attorney's fees which may be incurred in collecting the same 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.

B. Assessment is Personal Obligation: Each such Assessment, together with interest at a rate established by the Board, costs and reasonable attorney's fees, shall also be the personal obligation of the Owner of such property beginning with the time when the Assessment falls due. The personal obligation for delinquent Assessments shall remain such Owner's personal obligation regardless of whether he remains an Owner.

6.02 Regular Assessments: All Lot Owners, including the Declarant, are obligated to pay Regular Assessments to the Association on a schedule of payments established by the Board.

A. Purpose of Regular Assessments if Required: The proceeds from any Regular Assessments are to be used to pay for all costs and expenses incurred by the Association and the Architectural Control Committee, including legal and attorney's fees and other professional fees for the conduct of their affairs, and a reserve fund therefore.

B. Computation of Regular Assessments: The Association shall compute the amount of its Expenses on an annual basis. There shall be no initial regular assessments. Thereafter, the computation of Regular Assessments shall take place not less than thirty (30) nor more than sixty (60) days before the beginning of each fiscal year of an Association.

C. Amounts Paid by Owners: The Board can require in its discretion, or as provided in the Articles or Bylaws, payment of Regular Assessments in monthly, quarterly, semiannual or annual installments. The Regular Assessment to be paid by any particular Lot Owner, including Declarant, for any given fiscal year shall be computed as follows:

Each Lot Owner shall be assessed and shall pay an amount computed by multiplying the Association's total estimate of annual Expenses by the fraction produced by dividing the Lots attributable to the Lot Owner by the total number of Lots in the Property.

6.03

Each Lot Owner shall be assessed and shall pay an amount computed by multiplying the Association's total estimate of annual Expenses by the fraction produced by dividing the Lots attributable to the Lot Owner by the total number of Lots in the Property.

6.03 Special Assessments:

A. Purpose and Procedure: In the event that the Board shall determine that its regular Assessment for a given calendar year is or will be inadequate to meet the Expenses of the Association for any reason, including but not limited to attorney's fees and/or litigation costs, other professional fees or for any other reason, the Board shall determine the amount necessary to defray such Expenses and levy a Special Assessment which shall be computed in the same manner as Regular Assessments. No Special Assessment shall be levied without the vote or written assent of a majority of the votes of the Members of the Association who are entitled to vote, and who are present at a properly scheduled meeting or represented by proxy. The Board shall in its discretion determine the schedule under which such Special Assessment will be paid.

**B. Consistent Basis of Assessment:** Every Special Assessment levied by and for the Association shall be levied and paid upon the same basis as that prescribed for the levying and payment of Regular Assessment for the Association.

6.04 Limited Assessments: Notwithstanding the above provisions with respect to Regular and Special Assessments, a Board may levy a Limited Assessment against a Member as a remedy to reimburse the Association for costs incurred in bringing the Member and/or such Member's lot into compliance with the provisions of this Declaration and the Association's Articles and Bylaws.

6.05 Uniform Rate of Assessment: Unless otherwise specifically provided herein, Regular and Special Assessments shall be fixed at a uniform rate per Lot for all Members of the Association.

6.06 Assessment Period: Unless otherwise provided in the Articles or Bylaws, the Assessment period shall commence on January 1 of each year and terminate December 31 of the year.

6.07 Notice and Assessment Due Date: Ten (10) days prior written notice of Regular and Special Assessments shall be sent to the record Owner of every Lot subject thereto. Regular Assessment or Special Assessment shall become delinquent if not paid within twenty (20) days after the levy thereof. Payment which is delinquent shall accrue interest at eighteen percent (18%) per annum calculated the date of delinquency to and including the date full payment is received by the Association. The Association may bring an action against a delinquent Owner and/or may foreclose the lien against such Owner's Lot as more fully provided herein. Each Owner is personally liable for Assessment, together with all interest, costs and attorney's fees.

6.08 Estoppel Certificate: The Association, upon at least twenty (20) days prior written request, shall execute, acknowledge and deliver to the party making such request a statement in writing stating whether or not, to the knowledge of the Association, a particular Lot Owner is in default under the provisions of this Declaration and further stating the dates to which any Assessments have been paid by the Owner.

6.09 Special Notice Requirements: Notwithstanding anything to the contrary contained in either the Bylaws or the Articles, written notice of any meeting called for the purpose of levying a Special Assessment, or for the purpose of obtaining a membership vote in connection with an increase in the Regular Assessment, shall be sent to all Members of the Association not less than fifteen (15) days nor more than thirty (30) days before such meeting.

## ARTICLE VII ENFORCEMENT OF ASSESSMENTS: LIENS

7.01 Right to Enforce: Each Owner is and shall be deemed to covenant and agree to pay the Association each and every assessment provided for in this Declaration; and agrees to the enforcement of all such assessments in the manner herein specified. In the event an attorney or attorneys are employed for collection of any assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and condition of the Declaration, each Owner agrees to pay reasonable attorney's fees and costs thereby incurred in addition to

any other amounts due or any other relief or remedy obtained against said owner. In addition to any other remedies herein or by law provided, the Board or its authorized representative, may enforce the obligations of the Owners to pay the assessments provided for in this Declaration, and each of them, in any manner provided by law in equity, or without any limitation of the foregoing, by either or both of the following procedures:

A. Enforcement by Suit: By commencement of a suit at law against any Owner or Owners personally obligated to pay assessments, for such delinquent assessments as to which they are personally obligated. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon as provided for herein, costs of collection, court costs and reasonable attorney's fees in such amount as the Court may adjudge against the delinquent Owner. Suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien hereinafter provided for.

B. Enforcement by Lien: There is hereby created a claim of lien with power of sale, on each and every Lot to secure payment in the Association of any and all assessments levied against any and all Owners, together with interest thereon as provided for in this Declaration, fines imposed for violation of these Covenants, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorney's fees. Any time after the occurrence of any delinquency in the payment of any assessment, the Board or any authorized representative thereof may make a written demand on the delinquent Owner for payment. Each delinquency shall constitute a separate basis for a demand claim of lien, and any number of defaults may be included with a single demand or claim of lien any demand of lien or lien on account of prior delinquencies shall be deemed to include subsequent delinquencies and amounts due on account thereof. If such delinquency is not paid within ten (10) days after delivery of such demand, the Board or its duly authorized representative may thereafter elect to file and record a Note of Delinquent Assessment of behalf of the Association against the Lot of the defaulting Owner. The amount of the assessment, plus any costs of collection, attorney's fees and interest assessed in accordance with this Declaration shall be a lien on the Owner's Lot from and after the time the Association records the Notice of Delinquent Assessment. Such Notice shall be executed and acknowledged by any officer of the Association and shall contain substantially the following:

1. The claim of lien made pursuant to this Declaration;
2. The name of record of the Owner;
3. The legal description of the Lot against which claim of lien is made;
4. The total amount claimed to be due and owing for the amount of the delinquency, interest thereon, collection costs, and attorney's fees (with any proper offset allowed); and
5. The name and address of the trustee authorized by the Association to enforce the lien by public sale.

Upon recordation, the lien claimed therein shall immediately attach and become effective in favor of the Association as a lien upon the Lot against which such assessment was levied. Such lien shall have priority over all liens or claims created subsequent to the recordation of the Notice. Any such lien may be foreclosed by appropriate action in Court or in the manner provided by the Idaho Code for the foreclosure of a deed of trust with power of sale, or in any



manner permitted by law. The Board is hereby authorized to appoint its attorney, any officer or as director of the Association, or any Title Company authorized to do business in Idaho as Trustee for the purpose of conducting such power of sale foreclosure. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other Owners and shall secure payment of all sums set forth in the Notice, together with all sums becoming due and payable in accordance with this Declaration after the date of recordation of said notice. The Association shall have the power to bid it at any foreclosure sale and to purchase, acquired, hold, lease, mortgage and convey any lot.

Each Owner hereby expressly waives any objection to the enforcement and foreclosure of assessment liens in this manner. Upon the timely curing of any default for which a Notice was filed by the Board, the Board shall cause an officer of the Association to file and record appropriate releases of such Notice in the Office of the County Recorder of Adams County, Idaho. No Owner may waive or otherwise escape liability for the assessments provided for in this Declaration by non-use or abandonment of his Lot. Notwithstanding anything contained in this Declaration to the contrary, no action may be brought to foreclose the lien created by recordation of a Notice of Delinquent Assessment, whether judicially, by power of sale, or otherwise, or until the expiration of ten (10) days after a copy of said Notice, showing the date of the recordation thereof, has been mailed to the Owner of the Lot which is described in such Notice.

## ARTICLE VIII ARCHITECTURAL CONTROL

8.01 Purpose and Theme of Controls: It is the desire of the Declarant that design controls be implemented for all building improvements within the Property to insure that the overall excellence of the Property shall be maintained throughout its development. To this end, the Architectural Control Committee (hereinafter referred to as the "Committee") will be established pursuant to Section 8.02 of this Article VIII to guide the site development and design of all structures and improvements. The Committee is be encouraged to offer and diversity of types, sizes, and styles of architecture and yet will be required to conform to a total visual homogeneity.

Consistent use of earth tone colors and textures, natural woods and masonry materials will be encouraged to enhance the aesthetic features of the buildings in this mountain environment.

The discretion hereinafter invested in the Committee will be exercised towards the end that high standards of workmanship and quality of materials will be maintained throughout the Property and that all improvements will be in harmony with and complement the natural landscape, topography and flora.

8.02 Architectural Control Committee: No building, fence, wall, structure or other improvement shall be commenced, altered, placed or maintained upon any Lot within the Property, nor shall any exterior addition to or change or alteration therein be made, until plans and specifications showing the nature, kind, shape, height, materials and location of the same have been submitted to and approved in writing by the Committee, which shall be composed initially of the Board of Directors. If any member of the Committee resigns or is unable to act,

the remaining members shall appoint his or her successor. Pending such appointment, the remaining members shall discharge the functions of the Committee. The Committee shall be comprised of three (3) members, who shall be appointed annually by the Board. A majority of the members shall be necessary for action. Meetings may be held by telephone conference. The Committee shall designate a Chairperson. The Board may elect to act of the Committee.

8.03 Documentation Required for Architectural Approval: No structure or improvement shall be considered approved by the Committee until the parcel owner has submitted the following to the Committee:

- A. Two (2) sets of plans and specifications for the proposed improvements;
- B. A site plan of the lot showing the location of all existing and proposed improvements, and which also identifies the location, size and type of all trees proposed to be removed;
- C. Drawings showing all exterior building elevations;
- D. A schedule of exterior materials and colors to be used on the proposed improvement;
- E. The owner's proposed construction schedule; and,
- F. An application fee in an amount to be set by the Committee. The fee shall be initially set at \$500.00, which fee may be increased by the Committee at their discretion. The intent of the application fee is to compensate a licensed architect to review plans and advise the Committee in the design review process.

8.04 Basis for Approval or Disapproval: The Committee shall give its approval for the requested improvement only if:

- A. The owner or applicant shall have strictly complied with the requirements of Section 8.03 hereof;
- B. The Committee finds that the plans and specifications conform to the requirement of Article IV on this Declaration, and furthermore that the owner or applicant is in compliance with all of the provisions and requirements of this Declaration in its entirety; and,
- C. The Committee, in its sole and reasonable discretion, finds that the proposed improvement is compatible with the theme of the Property and with the purposes intent of this Declaration as a whole as to quality of workmanship and materials, as to harmony of external design with existing structures, and as to location with respect to topography and finished grade elevations.

The Committee may waive submission of plans and specifications for approval where minor construction or a minor addition to an existing structure is involved which does not appear to materially affect the Property.

8.05 Form of Approval or Disapproval:

A. All approvals given under Section 8.04 shall be in writing; provided, however, that as to any request for approval which has not been rejected within thirty (30) days from the date of submission thereof to the Committee, such approval will not be required and the provisions of this Section will be deemed to have been fully complied with.

B. In disapproving any plans and specifications or other documents the Committee shall specify, in writing, the deficiencies it has relied upon in rendering such disapproval and shall give the applicant the right and opportunity to resubmit his or her plan and specifications or other documents in amended form. The Committee shall thereafter reconsider such documents as if they were being submitted for the first time.

C. One set of plans and specifications as finally approved or disapproved shall be retained by the Committee as a permanent record.

D. Nothing contained in this Section shall be deemed to relieve the owner of any parcel from complying with all of the provisions of this Declaration or with the provisions of all applicable building codes, zoning regulations, or other governmental regulations or laws governing the lands within the Property.

8.06 Arbitration: In the event an owner or applicant disputes the decision of the Committee, said dispute shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect unless the Committee and the owner or applicant mutually agree otherwise. The arbitrators shall be governed and guided in their decision by this Declaration. If so, the award rendered by the arbitrators shall be final and shall be binding upon the parties to the same extent as if it had been rendered by a judge of a competent court. The owner or applicant shall file a demand for arbitration with the Committee and with the American Arbitration Association. Such demand shall be made within a reasonable time after the dispute in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings on such dispute would be barred by the applicable statute of limitations.

8.07 Proceedings with Work: Upon receipt of approval from the Committee pursuant to Section 8.05 above, the owner shall as soon as practicable, satisfy all the conditions thereof and diligently proceed with the commencement and completion of all construction, reconstruction, refinishing, alterations and excavations authorized by such approval, said commencement to be in all cases within one (1) year from the date of such approval. If the owner shall fail to comply with this Section, the approval given pursuant to Section 8.05 shall be deemed revoked, unless the Committee upon written request of the owner made prior to the expiration of said one (1) year period extends the time for such commencement. No such extension shall be granted except upon a finding by the Committee that there has been no change in the circumstances upon which the original approval was granted.

8.08 Completion of Construction: The owner shall complete the construction authorized by the approval given in Section 8.05 within one (1) year after commencing construction thereof except, and only for so long, as such completion is rendered impossible or would result in great hardship to the owner due to strikes, fire, acts of God, unusual wintertime conditions, actual inability of the owner to procure deliveries of necessary materials, or by other forces or persons

beyond the control of the owner to prevent. Financial inability of the owner or his/her contractor to secure labor or materials or to discharge liens or attachments shall not be deemed a cause beyond his control.

8.09 Failure to Complete Work: Any construction which is not completed in a good and workmanlike manner, or in substantial conformity to the plans and specifications approved for it by the Committee, within the time limits provided by this Article, and where such failure is not excused by the provisions hereof, shall be deemed a nuisance, and the Committee shall have the

right to enter upon the premises and to have such incomplete construction removed or to carry such construction forward to completion, and the costs and expenses incurred in such removal of completion shall constitute a lien upon the property under the Mechanic's Lien Law of the State of Idaho, such lien to attach as of the time of the commencement of the work involved in removing or completing the incomplete construction. Such lien may be enforced in the same manner as provided for the enforcement of Mechanic's liens.

#### ARTICLE IX ENFORCEMENT

9.01 Persons Entitled to Enforce: The provisions of this Declaration may be enforced by any of the following persons or entities in accordance with the procedures outlined herein:

- A. The Declarant, its successors and assigns;
- B. The Board;
- C. The Committee; and,

D. The owner or owners of any lot adversely affected, but only after each of the aforementioned persons or entities has been given demand to take enforcement action and has failed to do so, may prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any covenant, conditions, or restriction and either to prevent him or her or them from so doing to recover damages or other relief for such violation.

#### ARTICLE X DECLARANT'S DEVELOPMENT RIGHTS, SPECIAL RIGHTS AND RESERVATIONS

10.01 Declarant's Right to Annex Property: Declarant shall have, retain and reserve certain rights as hereinafter set forth with respect to the Association, and the Property. The rights and reservations hereinafter set forth shall be deemed accepted and reserved in each deed or other instrument by which any property within the Property is conveyed by Declarant. The rights and reservations hereinafter set forth shall be prior and superior to any other provisions of the Association documents and may not, without Declarant's written consent, be modified, amended or rescinded or affected by any amendment of the Association documents. Declarant's consent to any one such amendment shall not be construed as a consent to any other amendment

10.02 Declarant's Right to Annex Property:

(a) Annexation of Property: For a period of twenty (20) years, or until such time as Declarant no longer owns any Lot within the Property, which ever shall first occur, Declarant may add or annex any real property owned by Declarant to the Property. The Owners of Lots within such annexed property shall become Members of the Association.

(b) Filings with Regard to Annexation: The additions authorized under this Section shall be made by filing of record a Supplementary Declaration of Protective Covenants with respect to the additional property which shall extend the scheme of the covenants and restrictions of this Declaration to such property. Such Supplementary Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as not inconsistent with the scheme of this Declaration. Upon recordation of such Supplementary Declaration, the additions authorized under this Section shall thereafter be treated in all respects as part of the Property. No permission shall be necessary from the owners of the Property before the Declarant may bring such lands within the scheme of this Declaration.

(c) Effects of Annexation: Such annexation(s) and Supplemental Declaration(s) may alter the rights and responsibilities of the Association and owners in several ways, including the fact that additional owners may be added to the Association, thereby diluting the relative effect of a current Lot Owner's vote, and the Association may incur other expenses as a result of such annexation.

10.03 Declarant's Approval: Until Declarant no longer owns any Lot in the property, the Association shall not, without first obtaining the prior written consent of the Declarant, which consent shall not be unreasonably withheld: levy any special assessment; change or repeal any rules of the Association; make any substantial change in Association services; or, make any amendment to Association Documents.

10.04 Other Reservations: Declarant shall have the right at any time, prior to acquisition of title to a Lot by a purchaser from Declarant, to grant, establish and/or reserve on that Lot additional licenses, reservations and rights-of-way to utility companies or to others as may from time to time be reasonably necessary to the proper development and disposal of the Property. The rights of Declarant hereunder may be assigned by Declarant to any successor in interest in connection with Declarant's interest in any portion of the Residential Property by an express written assignment recorded in the Office of the Adams County Recorder.

**ARTICLE XI  
GENERAL PROVISIONS**

11.01 Binding Effect: The various restrictive measures and provisions of these covenants and restrictions are declared to constitute mutual equitable servitudes for the protection and benefit of each parcel in the Property and of the owners thereof and for the benefit of the Property as a whole. Each grantee of a conveyance or purchaser under a contract of sale, by accepting a deed or contract of sale, accepts such subject to all of the covenants, conditions

and restrictions set forth in this Declaration and specifically agrees to be bound by each and all of them.

11.02 Term of Declaration: Unless amended as herein provided, all provisions covenants, conditions and restrictions and equitable servitudes contained in this Declaration shall be effective for twenty (20) years after the date upon which this Declaration was originally recorded, and, thereafter, shall be automatically extended for successive periods of ten (10) years each unless terminated by agreement of the Owners as provided for herein below.

11.03 Amendment of the Declaration by Declarant: Until the first lot subject to this Declaration has been conveyed by Declarant by recorded deed, any of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration may be amended or terminated by Declarant by the recordation of a written instrument, executed by Declarant, setting for such amendment or termination.

11.04 Amendment of Declaration by Members: Except as otherwise provided in this Declaration, and subject to provisions elsewhere contained in this Declaration requiring the consent of Declarant or others, any provision, covenant, condition, restriction, or equitable servitude contained in this Declaration may be amended or repealed at any time and from time to time, upon approval of the amendment or repeal by at least two-thirds (2/3<sup>rd</sup>) of those members who are entitled to vote and who are present or represented by proxy at a meeting of the membership, scheduled for the purpose of considering such amendments, at which a quorum is present.

11.05 Required Consent of Declarant to Amendment of Association Documents: Notwithstanding any other provision in this Declaration to the contrary, no proposed amendment nor repeal of any provision of this Declaration or any other Association Document shall be effective unless Declarant has given its written consent to such amendment or repeal, which consent may be evidenced by the execution by Declarant of a certificate of the amendment or repeal. The foregoing requirement for consent of Declarant to any amendment or repeal shall terminate at such time as the last Lot in the Property has been conveyed by the Declarant to an Owner other than the Declarant.

11.06 Priority of First Mortgage Over Assessments: Each lender who recorded its mortgage or deed of trust before assessments have become delinquent and who obtains title to the Lot encumbered by the first mortgage whether pursuant to remedies provided in the mortgage, by judicial foreclosure, or by deed or assignment in lieu of foreclosure, shall take title to the lot free and clear of any claims for unpaid assessment or charges against such Lot which accrued prior to the time such first mortgage acquires title.

11.07 Remedies Cumulative: Each remedy provided under the Association documents is cumulative and not exclusive.

11.08 Costs and Attorneys Fees: In any action or proceeding under the Association documents to the party which seeks to enforce the Association documents and prevails shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorneys fees and expert witness fees. "Action or proceeding" as herein stated shall include, without limitation, any arbitration, mediation, or alternative dispute resolution proceeding.

11.09 Limitation of Liability: The Association, Board of Directors, the Architectural Control Committee, Declarant and any member, agent or employee of any of the same shall not be liable to any person for any action or for any failure to act if the action or failure to act was in good faith and without malice, and shall be indemnified by the Association to the fullest extent permissible by the laws of Idaho, including without limitation, circumstances in which indemnification is otherwise discretionary under Idaho law, in accordance with and subject to the terms and limitations contained in the Bylaws.

11.10 Governing Law: The Association documents shall be construed and governed under the laws of the State of Idaho.

11.11 Severability: Invalidation of any one or more of the covenants, conditions and restrictions contained herein by judgment or otherwise shall in no way affect the validity of any of the other provisions, which shall remain full force and effect.

11.12 Number and Gender: Unless the context requires a contrary construction, as used in the Association documents, the singular shall include the plural and plural the singular, and the use of any gender shall include all genders.

11.13 Captions for Content: The titles, headings and captions used in the Association documents are intended solely for convenience of reference and are not intended to affect the meaning of any provision of this Declaration.

11.14 Mergers or Consolidations: The Association may merge with another incorporated association to the extent permitted by law. Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer and enforce the covenants, conditions and restrictions established by this Declaration governing the Property together with the covenants and conditions established upon any other property, as one plan.

11.15 Conflicts in Documents: In case of any conflict between the provisions of this Declaration and any Association Rules, the Articles of Incorporation, or the Bylaws of the Association, this Declaration shall control.

IN WITNESS THEREOF, said Declarant has executed this Declaration on  
this 13<sup>th</sup> day of July 2002.

By: Robert D. Crawford  
Robert D. Crawford  
Member

STATE OF IDAHO, )

County of Adams )

On this 16 day of December, 2007, before me, Christy A. Ward  
a Notary Public in and for said State, personally appeared **Robert D. Crawford** known or  
identified to me to be the Member of **CII Properties LLC**, that executed the instrument or the  
person who executed the instrument on behalf of said LLC, and acknowledged to me that such  
LLC executed the same.

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



Christy A. Ward  
NOTARY PUBLIC FOR IDAHO  
Residing at: Adrian Valley  
My Commission Expires: 9-17-04



"EXHIBIT A"

CANYON CREEK

legal description

A parcel of land situate in the S $\frac{1}{2}$  of the NW $\frac{1}{4}$  and the S $\frac{1}{2}$  of the NE $\frac{1}{4}$  and the N $\frac{1}{2}$  of the SE $\frac{1}{4}$  and the N $\frac{1}{2}$  of the SW $\frac{1}{4}$  of Section 8, T. 19 N., R. 2 E., B.M., Adams County, Idaho, more particularly described as follows:

Commencing at the southwest corner of the SW $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 8, T. 19 N., R. 2 E., B.M., Adams County, Idaho; thence, N. 00° 12' 33" E., 495.00 feet along the west boundary of said SW $\frac{1}{4}$  NW $\frac{1}{4}$  to the REAL POINT OF BEGINNING:

Thence, continuing N. 00° 12' 33" E., 833.48 feet to the north west corner of said SW $\frac{1}{4}$  NW $\frac{1}{4}$ ,  
Thence, S. 89° 12' 02" E., 2,626.84 feet to the north east corner of said S $\frac{1}{2}$  NW $\frac{1}{4}$ ,  
Thence, S. 89° 12' 00" E., 1,371.43 feet along the north boundary of said S $\frac{1}{2}$  NE $\frac{1}{4}$  to the  
boundary of Timber Ridge Subdivision as shown on the official plat thereof on file in the  
office of the Recorder of Adams County, Idaho,  
Thence, S. 26° 25' 51" W., 78.98 feet along said Timber Ridge Subdivision boundary,  
Thence, S. 04° 56' 37" W., 297.35 feet along said Timber Ridge Subdivision boundary,  
Thence, S. 01° 03' 41" W., 973.50 feet along said Timber Ridge Subdivision boundary,  
Thence, N. 88° 40' 54" W., 1,100.00 feet along said Timber Ridge Subdivision boundary,  
Thence, N. 89° 23' 54" W., 1,039.20 feet along said Timber Ridge Subdivision boundary,  
Thence, N. 00° 17' 39" E., 504.80 feet,  
Thence, N. 89° 16' 55" W., 474.07 feet,  
Thence, N. 89° 18' 56" W., 1,311.91 feet to the Point of Beginning, containing 100.062 acres,  
more or less.

Bearings are based on surveys of record.



**Mitigation Plan for Canyon Creek Wetland Impacts  
September 2002**

As compensatory mitigation for the 0.40 acres of direct fill to stream and wetlands, Canyon Creek intends to:

1. Construct 0.40 acres of wetland from nonwetland.
2. Enhance 14.2 acres of existing wetlands through the creation of a wildlife and wetland enhancement easement.
3. The establishment of a photographic and vegetative baseline will be conducted at the beginning of the 2003 growing season and or before construction begins on the constructed wetland area. The monitoring program criteria are outlined in this plan. The program will conduct monitoring through each of the two following growing seasons starting in 2003 after the completion of the mitigation construction.

The area of the Project where the work will take place is identified on figures 1-4. A larger scale depiction is presented on figure 4. In addition to the above, the following common place measures will be taken to further reduce the overall impacts of the Project on waters of the U.S.

4. Grant a wildlife and wetland enhancement easement covering these mitigation areas with deed restrictions, covenants, and conditions insuring their permanent protection from development.

The objectives of the mitigation work are to:

1. Improve the ecological functions of the stream by removing the cattle and protecting the wetland riparian corridor.
2. Stabilize stream to prevent erosion and, improve riparian vegetative functions.
3. Replace wetland functions related to habitat value and water quality improvement by constructing new vegetated wetlands.
4. Improve the habitat for fish species and general wildlife by providing protective wetland areas.

**Existing Wetland Functions and Values**

The existing wetland functions consist of the following:

1. Groundwater recharge – The existing wetlands provide a limited function for groundwater recharge. The proposed land use change from cattle grazing will improve this function.

2. Sediment and pathogen retention - The existing wetlands provide a limited function for reducing degradation of water quality. The effectiveness of the existing wetlands as a trap for sediments and or pathogens will increase with the proposed land use change from cattle grazing and the implementation of wetland enhancement, easement channel stabilization, improvement of riparian vegetation and establishment of protective buffer.
3. Nutrient Removal - The existing wetlands provide a limited function for effectiveness to prevent adverse nutrients entering aquifers or surface water. The effectiveness of the existing wetlands as a prevention of nutrients entering the adjacent aquifers and surface water will increase with the proposed land use change from cattle and the implementation of wetland enhancement, channel stabilization, improvement of riparian vegetation and establishment of protective buffer.
4. Sediment and shoreline stabilization - The existing wetlands provide a limited function for stream bank stabilization. The effectiveness of the existing wetlands for stream bank stabilization will increase with the proposed land use change from cattle grazing and the implementation of wetland enhancement, easement.
5. Wildlife habitat - The existing wetlands provide a limited function to provide wildlife habitat for animal species. The effectiveness of the existing wetlands for wildlife habitat may increase with the proposed land use change from cattle grazing and the implementation of wetland enhancement, easement.

The existing wetland values consist of the following:

1. The existing wetlands provide visual aesthetic value. The visual aesthetic value may improve with the proposed land use change from cattle grazing and the implementation of wetland enhancement, easement, and channel bank stabilization and provided by the easement.

### **Constructed Wetlands**

0.40 acre constructed wetlands mitigation area figure 4 will be brought to final elevation consistent with 6 inches above grade of the natural bed of the creek adjacent to the mitigation site. Prior to planting, the soil will be disked to remove compaction caused by equipment operation. The 0.40 acre mitigation site will utilize the existing hydric topsoil from the road crossing and be sprigged immediately following construction with appropriate wetland herbaceous species at one-ft on center, harvested from other wetlands on the property. Hand-harvesting of plants will not thin the natural vegetation by more than 25 percent. Surplus soil material will be removed to a suitable upland storage site.

### **Long Term Protection**

Canyon Creek would agree, as a condition to proceeding with construction under the nationwide permit, to designate the areas and components identified within the mitigation plan i.e. constructed wetlands, wildlife and wetland enhancement easement, shown on figures 1-4 as permanent open space to be protected for wildlife habitat, riparian functions and values, and water

quality purposes. The protective measure will allow no building construction or fences in wetland areas. Pets must be leashed when in the area. The wildlife and wetland enhancement easement shall maintain the vegetative cover within the easement in as natural a condition as practicable, and shall plant only native, or native-compatible, vegetative species within such areas. All plantings, seeding, and vegetative management shall be consistent with protecting and enhancing wildlife habitat, riparian functions and values, and water quality, provided, that nothing in this condition shall prevent the pruning of trees and shrubs to maintain scenic views across portions of the easement area, provided that such pruning: 1) shall produce a natural-looking canopy; 2) shall be carried out only in 75-foot segments of a easement area, providing at least 100 feet between such segments; 3) shall reduce average canopy height in any such 75-foot segment to no less than ten feet; and 4) shall involve pruning of no more than twenty-five percent of the canopy of any individual plant. For purposes of this paragraph, pruning shall mean removal or shortening of limbs, not removal of an entire plant.

### **Monitoring**

Upon completion of the wetland construction area, surveys will provide plan and cross-sectional diagrams as appropriate, listings of plant species utilized and landscape photographs from standard, fixed positions to be used throughout the period of monitoring.

Monitoring will continue through two growing seasons following completion of the mitigation. An annual report will be provided by the end of each calendar year during the monitoring period. The report shall also detail any recommended or accomplished remediation of the mitigation site.

### **Success Criteria**

In the constructed wetland, success will be determined as 100 percent cover with wetland herbaceous vegetation and at least 50 percent of the perimeter with living-shrub, fringe at the end of the second growing season following completion of construction

At the end of the 2 year monitoring program the 0.40 mitigated wetland areas will be redelineated to verify that it has become a jurisdiction wetland.



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Instrument # **102923**  
COUNCIL, ADAMS, IDAHO  
2002-12-27 12:00:30 No. of Pages: 11  
Recorded by: **4 PROPERTIES**  
MICHAEL F. [Signature] Fee: 33.00  
Ex-Officio Recorder Deputy [Signature]  
Index to: BY LAWS

**BYLAWS  
OF  
CANYON CREEK PROPERTY OWNERS' ASSOCIATION, INC.**

AN IDAHO NONPROFIT CORPORATION

**ARTICLE I  
OFFICES**

**Section 1: Registered Agent & Registered Office:** The registered agent and the registered office for the Corporation shall be as stated in the Articles of Incorporation, and may be changed from time to time by appropriate Resolution of the Board of Directors.

**ARTICLE II  
MEMBERSHIP AND VOTING RIGHTS**

**Section 1: Organization:** The Corporation is organized as an Idaho corporation under the Idaho Nonprofit Corporation Law. The Corporation is charged with the duties and vested with the powers prescribed by law and set forth in the Articles, and the Declaration of Covenants, Conditions and Restrictions for Canyon Creek (hereinafter "Declaration"), recorded at the office of the Adams County Recorder. Neither the Articles nor these Bylaws shall, for any reason, be amended or otherwise changed so as to be inconsistent with the Declaration. In the event that there should exist any ambiguity in any provision of the Articles or these Bylaws, then such provision shall be construed, to the extent possible, so that such provision shall be interpreted to be consistent with the provisions of the Declaration.

**Section 2: Membership:** Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot located within the property which is known as Canyon Creek, and which is more particularly described in the attached Exhibit "A", shall be a Member of the Corporation. Membership shall be appurtenant to and may not be separated from the fee ownership of any Lot. Ownership of such Lot shall be the sole qualification for membership, and shall be determined by the records of the Office of Assessor and Recorder for Adams County, Idaho. Transfer of a Lot shall automatically transfer membership in the Corporation.

**Section 3: Members in Community Association:** Each Owner shall be a Member of the Association. An Owner shall automatically be a holder of the membership appurtenant to such Owner's Lot, and the membership shall automatically pass with fee simple title to the Lot. Declarant shall hold one membership in the Association for each Lot owned by Declarant. Membership in the Association shall not be assignable separate and apart from fee simple title to a Lot, except that the Owner may assign some or all the Owner's rights as an Owner and as a Member of the Association to a contract purchaser, tenant or First Mortgagee, and may arrange for such person to perform some or all of such Owner's obligations as provided in this

Declaration, but no such delegation or assignment shall relieve an Owner from the responsibility for full fulfillment of the obligations of the Owner under the Association documents.

**Section 4: Suspension of Voting Rights:** No member shall be entitled to vote or be counted for purposes of a quorum unless they are then current in the payment of assessments, whether Regular or Special, which have been levied by the Association.

### ARTICLE III MEETINGS

**Section 1: Annual Meetings:** An annual meeting of the Members shall be held during the month of July in each year. The exact date, time and place of the meeting shall be established by the Board of Directors. The annual meeting shall be for the purpose of electing directors, and for the transaction of such other business as may come before the meeting.

**Section 2: Special Meetings:** Special meetings of the Members may be called by the Board of Directors or on the request of not fewer than ten percent (10%) of the Members of the Corporation.

**Section 3: Place of Meetings:** The Board of Directors may designate any place, either within or without the State of Idaho, as the place of meeting for any annual meeting or for any special meeting. If no designation is made, or if a special meeting is otherwise called, the place of meeting shall be the registered office of the Corporation in the State of Idaho.

**Section 4: Notice of Meeting:** Written notice stating the place, day and hour of any meeting of Members shall be delivered either personally or by mail to each member, not less than fifteen (15) days before the date of the meeting. If mailed, notice shall be sent to each member at the address shown on the records of the Secretary of the Corporation; or, if no such record exists, to the address shown on the records of the Adams County Assessor.

**Section 5: Waiver of Notice:** Whenever any notice is required to be given to any member under the provisions of the Idaho Nonprofit Corporation Act as set forth in Title 30, Chapter 3, Idaho Code (the "Act") or under the provisions of the Articles of Incorporation of the Corporation (the "Articles") or these Bylaws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

**Section 6: Officers of the Members' Meeting:** The presiding officer at members' meetings shall be the President of the Corporation or, in the absence of the President, the Vice President or, in the absence of both the President and Vice President, a chairman elected by the Members present at the meeting. The Secretary of the Corporation or, in the absence of the Secretary, any person appointed by the presiding officer of the meeting, shall act as Secretary of a members' meeting.

**Section 7: Quorum and Voting Requirements:** One-third (1/3) of the Members entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of Members. The Members present at a duly organized and conveyed meeting where a quorum has been present can continue to do business as a quorum until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum. If a quorum is present, the affirmative vote of the majority of the Members represented at the meeting and entitled to vote on the subject matter shall be the act of the members, unless the vote of a greater number is required by the Act, the Articles, the Bylaws, or the Declaration.

**Section 8: Proxies:** A member may vote either in person or by proxy executed in writing by the member. No proxy shall be valid after eleven (11) months from the date of its execution. Every proxy shall be revocable at the pleasure of the member who executed it.

**Section 9: Action by Members Without a Meeting:** Any action required or permitted to be taken at a meeting of the Members of the Corporation may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Members entitled to vote with respect to the subject matter thereof. Such consent shall have the same effect as a unanimous vote of members, and may be stated as such in any articles or documents filed with the Idaho Secretary of State under the Act.

#### ARTICLE IV DIRECTORS

**Section 1: General Powers and Standard of Care:** All corporate powers shall be exercised by or under authority of, and the business and affairs of the Corporation shall be managed under the direction of, the Board of Directors, except as may be otherwise provided in the Act, in the Articles, or herein.

**Section 2: Number, Tenure and Qualifications:** There shall be not less than three (3) nor more than five (5) directors.

Directors shall be elected for staggered terms. Each director shall hold office until the end of the term or until a successor shall be elected and qualified. Directors shall be elected when necessary at the annual meeting of the membership by a majority vote of the voting Members present. Directors need not be members of the Corporation. The initial Board of Directors shall determine by lot the initial term of each director so that one-two Directors shall have a one-year term, one-two Directors shall have a two-year term, and one Director shall have a three-year term.

**Section 3: Vacancies:** Any vacancy occurring on the Board of Directors and any directorship to be filled by reason of any increase in the number of directors shall be filled by the Board of Directors. Directors elected to fill a vacancy shall be elected for the unexpired term of their predecessor in office.



**Section 4: Removal of Directors:** Any director may be removed from office either with or without cause at any time by a vote of the Members representing fifty-one percent (51 %) of the total membership at any special meeting called for that purpose.

**Section 5: Regular Meetings:** A regular annual meeting of the Board of Directors shall be held without other notice than this Bylaw, immediately following the annual meeting of members. The Board of Directors may provide by resolution the time and place for the holding of additional regular meetings of the Board.

**Section 6: Special Meetings:** Special meetings of the Board of Directors may be called by or at the request of the President or any two (2) directors. The person or persons authorized to call special meetings of the Board may designate any place as the place for holding any special meeting of the Board called by them.

**Section 7: Notices:** Notice of any special meeting of the Board of Directors shall be given at least five (5) days previous thereto by written notice delivered personally or sent by mail or telegram to each director at his address as shown by the records of the Corporation. The attendance of a director at any meeting shall indicate that such director received notice of such meeting. The purpose of any special meeting of the Board shall be specified in the notice or waiver of notice of such meeting.

**Section 8: Quorum:** A majority of the Board of Directors shall constitute a quorum for the transaction of business at any meeting of the Board, but if fewer than a majority of the directors are present at said meeting, a majority of the directors present may adjourn the meeting without further notice. Once a quorum is established, it shall remain for the duration of the meeting.

**Section 9: Manner of Acting:** The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless otherwise provided by law or by these Bylaws.

**Section 10: Informal Action:** Any action required to be taken at a meeting of the Board of Directors may be taken without a meeting if a consent in writing setting forth the action as taken shall be signed by a majority of the directors.

**Section 11: Compensation:** The officers and directors shall serve without compensation, but reasonable expenses incurred may be reimbursed when expended for and in the interest of the Corporation and approved by the Board of Directors in advance.

**Section 12: Director Conflicts of Interest:** No contract or other transaction between the Corporation and one or more of its Directors or any other corporation, firm, association, or entity in which one or more of its directors are Directors or officers or are financially interest shall be either void or voidable because of such relationship or interest or because such Director or Directors are present at the meeting of the Board of Directors or a committee thereof which

authorizes, approves or ratifies such contract or transaction or because such Director's or Directors' votes are counted for such purposes, if:

(a) The fact of such relationship or interest is disclosed or known to the Board of Directors or committee which authorizes, approves, or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the vote or consent of such interested Directors; or.

(b) The fact of such relationship or interest is disclosed or known to the Members entitled to vote and they authorize, approve, or ratify such contract or transaction by vote or written consent, in which vote or consent such interested Directors may participate to the extent that they are also members; or

(c) The contract or transaction is fair and reasonable to the Corporation and the fact of such relationship or interest is fully and fairly disclosed or known to the Corporation.

Interested Directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or a committee thereof which authorized, approves, or ratifies such contract or transaction.

## ARTICLE V OFFICERS

**Section 1: Number and Title:** The officers of the Corporation shall be a President, one or more Vice Presidents (the number thereof to be determined by the Board of Directors), a Secretary, a Treasurer, and such other officers as may be elected in accordance with the provisions of this Article. The Board of Directors may elect one or more assistant secretaries or one or more assistant Treasurers as it may be felt desirable. Any two or more offices may be held by the same person, except the office of President and the office of Secretary must be held by two different persons when there is more than one Director.

**Section 2: Election and Term of Office:** The officers of the Corporation shall be elected annually by the Board of Directors at the annual meeting of the Board of Directors. If the election of officers shall not be held at such meeting, such election shall be held as soon as possible. Each officer shall hold office until their successor shall be duly elected and qualified.

**Section 3: Vacancies:** Vacancies may be filled or a new office created and filled at any meeting of the Board.

**Section 4: Removal:** Any officer elected or appointed by the Board of Directors may be removed by an affirmative vote of two-thirds (2/3) of the total Board whenever, in its judgment, the best interest of the corporation would be served thereby.

**Section 5: President:** The President shall preside at all meetings of the Board of Directors and the general membership. S/he may sign with the Secretary, or any other proper

officer of the corporation authorized by the Board of Directors, any deed, mortgage, bond, contract, or other instrument which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated to some other officer or agent of the Corporation. In general, s/he shall perform all duties incident to the office of President and such other duties which shall be prescribed by the Board of Directors from time to time.

**Section 6: Vice President:** In the absence of the President or in the event of the President's inability or refusal to act, the Vice President (or in the event there shall be more than one Vice President, the Vice Presidents in order of their election) shall perform the duties of the President, and when so acting shall have all the powers of and be subject to all the restrictions upon the President. Any Vice President shall perform other duties as from time to time may be assigned by the President or the Board of Directors.

**Section 7: Secretary:** The Secretary shall keep the permanent minutes of the meetings of the Board of Directors in one or more books provided for that purpose, see that all notices are duly given in accordance with the provisions of these Bylaws, or as required by law; be custodian of the corporate records and corporate seal; keep a register of the name and post office address of each corporate member, and in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned by the President or the Board of Directors.

**Section 8: Treasurer:** The Treasurer shall have charge and custody of and be responsible for all funds and securities of the corporation; the Treasurer shall assure that the bookkeeper receive and give receipts for money due and payable to the Corporation from any source whatsoever and deposit all monies in the name of the Corporation in such bank or other financial institution as shall be selected by the Board of Directors, and in general perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned by the Board of Directors. The Treasurer and executive director shall, with the appropriate standing committee, prepare an annual operating budget showing income and expenses to be presented to the Board for approval at the annual regular meeting of the Board of Directors.

## ARTICLE VI COMMITTEES

**Section 1: Standing Committees:** The Board of Directors may establish such additional committees as are necessary and appropriate to carry out the business of the Corporation. Each committee shall have the duties and responsibilities delegated to it by the Board of Directors.

**Section 2: Duties:** The duties, responsibilities, authority and composition of all standing committees and ad hoc committees shall be stated in writing and adopted by resolution of the Board of Directors.

**Section 3: Term of Office:** All committee Members shall serve until the first meeting following their appointment or until their successors have been appointed.

## ARTICLE VII DUTIES AND POWERS OF THE CORPORATE

**Section 1: General Powers of the Corporation:** The specific and primary purposes and powers of the Corporation and its Board of Directors are to enforce the provisions of the Declaration and the Corporation's Articles and these Bylaws, and any other instruments relating to the management and control of the Corporation. The Corporation may do any and all other acts and things that a nonprofit corporation is empowered to do, which may be necessary, convenient or desirable in the administration of its affairs for the specific and primary purposes of meeting its duties set forth in the Declaration. The Corporation, through its Board of Directors, shall have the authority to delegate its powers to committees, offices of the Corporation or its employees.

**Section 2: Corporation Rules:** The Board of Directors shall have the power to adopt, amend, and repeal such rules and regulations as it deems reasonable. The rules of the Corporation shall govern such matters in furtherance of the purposes of the Corporation. The rules of the Corporation may not discriminate among Owners and shall not be inconsistent with the Declaration, the Articles or Bylaws. A copy of the rules of the Corporation as they may from time to time be adopted, amended or repealed or a notice setting forth the adoption, amended or repealed or a notice setting forth the adoption, amendment or repeal of specific portions of the rules of the Corporation shall be delivered to each Owner in the same manner established in the Declaration for the delivery of notices. Upon completion of the notice requirements, said rules of the Corporation shall have the same force and effect as if they were set forth in and were part of the Declaration and shall be binding on the Owners and their successors in interest whether or not actually received. The rules of the Corporation, as adopted, amended or repealed, shall be available at the registered office of the Corporation to each owner. In the event of any conflict between any such rules of the Corporation and any other provision of the Declaration, or the Articles or these Bylaws, the provisions of the rules of the Corporation shall be deemed to be superseded by the provisions of the Declaration, the Articles or these Bylaws to the extent of any such conflict.

## ARTICLE VIII MISCELLANEOUS

**Section 1: Indemnification:** The Corporation shall indemnify any director, officer or former director or officer of the Corporation against expenses actually and reasonably incurred by him in connection with the defense of any action, suit or proceeding, civil or criminal, in which he is made a party by reason of being or having been a director or officer, except in relation to matters as to which he is adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty to the Corporation.

**Section 2: Depositories:** All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, savings and loan associations, trust companies, or other depositories as the Board of Directors may elect.

**Section 3: Contracts:** The Board of Directors may authorize any officer(s) or agent(s) of the Corporation, in addition to the officers authorized by these Bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

**Section 4: Checks, Drafts, Etc.:** All checks, drafts, or orders for the payment of money, notes, or other evidence of indebtedness issued in the name of the Corporation shall be signed by such persons and in such manner as shall from time to time be determined by resolution of the Board of Directors. In the absence of such determination by the Board of Directors, such instrument shall be signed by the Treasurer or an assistant Treasurer.

**Section 5: Fiscal Year:** The fiscal year of the Corporation shall end on the last day of December of each year.

**Section 6: Investment:** Any funds of the Corporation which are not needed currently for the activities of the Corporation may, at the direction of the Board of Directors, be invested in such investments as are permitted by law.

**Section 7: Non-liability of Directors, Officers, Committee Members:** To the fullest extent permitted by law, neither the Board, any committees of the Corporation or any member of such Board or committee shall be liable to any Member of the Corporation for any damage, loss or prejudice suffered or claimed on account of any decision, course of action, act, omission, error, negligence or the like, made in good faith, and while such Board, committees or persons reasonably believed to be acting within the scope of their duties.

**Section 8: Books and Records:** The Corporation shall keep correct and complete books and records of accounts and shall also keep minutes of the proceedings of its members, Board of Directors, and committees having any of the authority of the Board of Directors, and shall keep a record giving the name and address of the Members entitled to vote. All books and records of the Corporation may be inspected by any member or his agent or attorney or the general public for any proper purpose at any reasonable time.

**Section 9: Dissolution:**

(a) A resolution to dissolve the Corporation shall be submitted to a vote of the members.

(b) In the event of dissolution of the Corporation, the Board of Directors shall, after payment of all liabilities of the Corporation, dispose of the assets of the Corporation, exclusively for the purposes of the Corporation in such manner or to such organizations organized and operating exclusively for charitable, educational, religious, or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal

Revenue Law) and which is organized for purposes substantially similar to that of the Corporation.

**Section 10: Nondiscrimination:** This Corporation is an equal opportunity employer and shall make available its services without regard to race, creed, age, sex, color, ancestry, or national origin.

**Section 11: Political Activity:** The Corporation shall not, in any way, use corporate funds in the furtherance of, nor engage in, any political activity for or against any candidate for public office. However, this Bylaw shall not be construed to limit the right of any official or member of this Corporation to appear before any legislative committee, to testify as to matters involving the Corporation.

**Section 12: Gifts:** The Board of Directors may accept, on behalf of the Corporation, any contribution, gift, bequest, or devise for the general purposes or for any special purposes of the Corporation.

**Section 13: Parliamentary Procedure:** All meetings of the Board of Directors and membership shall be governed by *Roberts' Rules of Order* (Current Edition), unless contrary procedure is established by the Articles of Incorporation or these Bylaws, or by resolution of the Board of Directors.

#### ARTICLE IX AMENDMENTS

These Bylaws may be altered, amended, or repealed and a new set of Bylaws adopted by a two-thirds (2/3) majority vote of the Board of Directors except that any amendment of these Bylaws which would alter, amend or modify the provisions of Article II, Section 2 or 3 herein shall require the written consent of Declarant (as long as Declarant owns any Lots in the Property) and the approval of sixty-seven percent (67%) of the Members of the Association who are present or represented by proxy at a properly scheduled meeting of the Members at which a quorum is present. At least ten (10) days' prior written notice setting forth a proposed action and time and place of meeting shall be given to all Directors.

**SECRETARY'S CERTIFICATION**

This is to certify that the foregoing Bylaws have been duly adopted by the Board of Directors at a meeting held on October 11, 2002.

CANYON CREEK PROPERTY OWNERS' ASSOCIATION, INC.

By: David G. Hanson  
DAVID G. HANSON, President

STATE OF IDAHO.        )  
                                  (ss.  
County of Valley.        )

On this 11th day of October, 2002, before me, Debra Martens, a Notary Public in and for said State, personally appeared DAVID G. HANSON, president of Canyon Creek Property Owners' Association, Inc., known or identified to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same for and on behalf of said corporation.

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



Debra Martens  
NOTARY PUBLIC FOR IDAHO  
Residing at: McCall Id  
My Commission Expires: 10/11/2008

"EXHIBIT A"

CANYON CREEK

legal description

A parcel of land situate in the S $\frac{1}{2}$  of the NW $\frac{1}{4}$  and the S $\frac{1}{2}$  of the NE $\frac{1}{4}$  and the N $\frac{1}{2}$  of the SE $\frac{1}{4}$  and the N $\frac{1}{2}$  of the SW $\frac{1}{4}$  of Section 8, T. 19 N., R. 2 E., B.M., Adams County, Idaho, more particularly described as follows:

Commencing at the southwest corner of the SW $\frac{1}{4}$  of the NW $\frac{1}{4}$  of Section 8, T. 19 N., R. 2 E., B.M., Adams County, Idaho; thence, N. 00° 12' 33" E., 495.00 feet along the west boundary of said SW $\frac{1}{4}$  NW $\frac{1}{4}$  to the REAL POINT OF BEGINNING:

- Thence, continuing N. 00° 12' 33" E., 833.48 feet to the north west corner of said SW $\frac{1}{4}$  NW $\frac{1}{4}$ ,
- Thence, S. 89° 12' 02" E., 2,626.84 feet to the north east corner of said S $\frac{1}{2}$  NW $\frac{1}{4}$ ,
- Thence, S. 89° 12' 00" E., 1,371.43 feet along the north boundary of said S $\frac{1}{2}$  NE $\frac{1}{4}$  to the boundary of Timber Ridge Subdivision as shown on the official plat thereof on file in the office of the Recorder of Adams County, Idaho.
- Thence, S. 26° 25' 51" W., 78.98 feet along said Timber Ridge Subdivision boundary,
- Thence, S. 04° 56' 37" W., 297.35 feet along said Timber Ridge Subdivision boundary,
- Thence, S. 01° 03' 41" W., 973.50 feet along said Timber Ridge Subdivision boundary,
- Thence, N. 88° 40' 54" W., 1,100.00 feet along said Timber Ridge Subdivision boundary,
- Thence, N. 89° 23' 54" W., 1,039.20 feet along said Timber Ridge Subdivision boundary,
- Thence, N. 00° 17' 39" E., 504.80 feet,
- Thence, N. 89° 16' 55" W., 474.07 feet,
- Thence, N. 89° 18' 56" W., 1,311.91 feet to the Point of Beginning, containing 100.062 acres, more or less.

Bearings are based on surveys of record.







ARTICLES OF INCORPORATION  
OF  
CANYON CREEK PROPERTY OWNERS' ASSOCIATION, INC.  
A NONPROFIT CORPORATION

The undersigned, acting as the incorporator of a corporation under, and pursuant to the Idaho Nonprofit Corporation Act, Chapter 3, Title 30, Idaho Code (Act) adopt the following Articles of Incorporation for the Corporation.

ARTICLE I  
NAME

The name of the Corporation shall be CANYON CREEK PROPERTY OWNERS' ASSOCIATION, INC.

ARTICLE II  
NON-PROFIT STATUS

This Corporation shall be a nonprofit corporation.

ARTICLE III  
DURATION

The period of this Corporation shall be perpetual.

ARTICLE IV  
PURPOSES

The purposes for which this Corporation is organized are as follows:

- (a) To perform the functions and provide service as set forth in the Declaration of Protective Covenants, Conditions and Restrictions for Canyon Creek, a subdivision located in Adams County, Idaho, hereinafter referred to as the "Declaration."
- (b) To be operated exclusively for the above-stated purposes and for other non-profit purposes within the meaning of Section 501 (c)(3) of the Internal Revenue Code of 1986, as amended from time to time, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under such Section 501(c)(3).
- (c) To exercise all powers granted by law necessary and proper to carry out the above stated purposes and to further common interests of the membership, including but not limited to the power to accept donations of money, property, whether real or personal, or any other thing of value. Nothing herein contained shall be deemed to authorize or permit the Corporation to carry

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on any business for profit, to exercise any power, or to do any act that a corporation formed under the Act, or any amendment thereto or substitute therefor, may not at that time lawfully carry on or do.

#### ARTICLE V NON-STOCK CORPORATION

This Corporation shall be non-stock, and no dividends or pecuniary profits shall be declared or paid to its members.

#### ARTICLE VI MEMBERS

The Corporation shall have one (1) class of Members who shall be voting Members.

#### ARTICLE VII ASSESSMENTS

Assessments shall be levied against the members in accordance with the Declaration of Covenants, Conditions, Restrictions and Easements for Canyon Creek. The amount and method of collection of said assessments shall be as provided in said Declaration. Assessments may be made enforceable by civil action or by the forfeiture of membership, or both, upon notice given in writing twenty (20) days before commencement of such action or such forfeiture. Assessments may be secured by a lien upon real property to which membership rights are appurtenant, and action may be brought to foreclose any such lien.

#### ARTICLE VIII LIMITATIONS

No part of the net earnings or the assets of the Corporation shall inure to the benefit of, or be distributable to, its members, directors, officers, or other private persons except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article four hereof. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of these articles, the Corporation shall not carry on any other activities not permitted to be carried on by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended from time to time.

**ARTICLE IX  
DISTRIBUTION ON DISSOLUTION**

Upon dissolution of the Corporation, the Board of Directors shall, after paying or making provision for payment of liabilities of the Corporation, distribute all the assets of the Corporation consistent with the purposes of the Corporation, to such organization or organizations as shall at the time qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended from time to time, in such manner as the Board of Directors shall determine. Any such assets not so distributed shall be distributed by the district court of the county in which the principal office of the Corporation is then located, exclusively for such purposes or to such organizations, as such court shall determine to be consistent with the purposes of the Corporation.

**ARTICLE X  
REGISTERED AGENT AND OFFICE**

The street address of the initial registered office of the Corporation shall be 355 Rio Vista Blvd, McCall, Idaho, 83638. The name of the Corporation's initial registered agent at such address is DAVID G. HANSON. The mailing address for the Corporation shall be P.O. Box 2036, McCall, ID 83638.

**ARTICLE XI  
DIRECTORS**

The affairs of the Corporation shall be managed by its Board of Directors. The Board of Directors shall consist of not less than three (3) nor more than five (5) individuals. Directors need not be members of the Corporation. Other than the Directors constituting the initial Board of Directors, who are designated in these Articles, the Directors shall be elected by the members in the manner and for the term provided in the Bylaws of the Corporation.

The name and mailing address of the persons constituting the initial Board of Directors is as follows:

<u>NAME</u>	<u>ADDRESS</u>
David G. Hanson	355 Rio Vista Blvd, McCall, ID 83638
Alma M. Hanson	355 Rio Vista Blvd, McCall, ID 83638
Robert D. Crawford	P.O. Box 2036, McCall, ID 83638
Cindy C. Crawford	P.O. Box 2036, McCall, ID 83638

INSTRUMENT NO. 102924  
PAGE 4 OF 4

Instrument # **102924**  
COUNCIL, ADAMS, IDAHO  
2002-12-27 12:00:30 No. of Pages: 4  
Recorded for: CH PROPERTIES  
MICHAEL FISK Fee: 12.00  
Ex-Officio Recorder Deputy Logan Linkel  
Index to: MISCELLANEOUS RECORDING

**ARTICLE XII  
INCORPORATOR**

The name and address of the incorporator of this Corporation is as follows:

<u>NAME</u>	<u>ADDRESS</u>
David G. Hanson	355 Rio Visa Blvd McCall, Idaho 83638

**ARTICLE XIII  
BYLAWS**

Provisions for the regulation of the internal affairs of the Corporation shall be set forth in the Bylaws.

DATED this 11th day of October, 2002.

David G. Hanson  
DAVID G. HANSON, Incorporator

STATE OF IDAHO,     )  
                                  (ss.  
County of Valley.    )

On this 11th day of October, 2002, before me, Debra Masters, a Notary Public in and for said State, personally appeared DAVID G. HANSON, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

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



Debra Masters  
NOTARY PUBLIC FOR IDAHO  
Residing at: McCall, ID  
My Commission Expires: 10/11/2008