



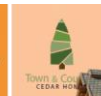
**“Local Brokerage, National Results.”**

## Maps & Documents

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DECLARATIONS OF COVENANTS, CONDITIONS AND  
RESTRICTIONS  
FOR  
WINDERMERE

FILED

AT THE REQUEST OF

*First American*

AT 22 MINUTES PAST 11 a.m.

DATE *Aug. 21, 1997*

*Asa J. Drake*

BY *Nora Right*

This is a Declaration of Covenants, Conditions and Restrictions regulating and controlling the use and development of real property, made effective this 12<sup>th</sup> day of AUGUST, 1997, by Donald W. Thompson and Carol Winder Haynes, Declarants.

1. **Purpose.** Declarants are the owners of that certain real property located in Teton County, Idaho, which property is more particularly described in Exhibit A attached hereto and made part hereof, and which is hereinafter referred to as "the property". The Declarant is adopting the following covenants, conditions and restrictions to preserve and maintain the natural character, value and desirability of the property for the benefit of all owners of the property or any part thereof.

2. **Declaration.** Declarant hereby declares that the property described in Exhibit A attached hereto, and any part thereof, shall be owned, sold, conveyed, encumbered, leased, used, occupied and developed subject to the following covenants, conditions, and restrictions, which are sometimes referred to hereafter as "the covenants". The covenants shall run with the property and any lot thereof, and shall be binding upon all parties having or acquiring any legal or equitable interest in or title to the property, and shall inure to the benefit of every owner of any part of the property.

3. **Definitions.** The following terms and phrases used in these covenants shall be defined as follows:

A. **Common Area.** Common Area shall include the common road, shared access, and surrounding landscaped green belt area.

B. **Common Services.** Common Services shall mean the roadway maintenance including weed control, and snow removal services, utility line maintenance or repair services for the Common Road and

Shared Access Road and the utility lines located in the right of ways of such roads. Utility lines shall include all electric, telephone, irrigation and cable TV at such time as they become available. Additional common services shall include periodic payments to Fox Creek Canal Company and Rock Road Pipeline Company for the shares owned by Windermere Subdivision in said corporation to ensure irrigation water rights and for maintenance of the fire water holding tank, well and system.

- C. **Homeowners Association.** Homeowners Association shall mean the group comprised of all the lot owners.
  - D. **Board.** Board shall mean the President, Vice President, Secretary, and Treasurer of the Homeowners Association, and shall be responsible for the administration and enforcement of these covenants and conditions and restrictions.
  - E. **Development.** Development shall mean any alteration of the natural land surface, and all building, structures or other site improvements placed on the land to accommodate the use of a lot.
  - F. **Lot.** Lot shall mean any portion of the property as shown on a recorded plat.
  - G. **Owner.** Owner shall mean the recorded owner of a lot, including a contract purchaser, but excluding anyone having an interest in a lot as security for the performance of an obligation.
  - H. **Principal Residence.** Principal residence shall mean the single family residential structure, constructed on any lot of the property, which is the principal use of such lot, and to which other authorized structures on such lot are accessory.
  - I. **Structure.** Structure shall mean anything built or placed on the ground.
4. **Homeowners Association Membership.** Every owner of a lot in Windermere Subdivision shall be a member of the Homeowners Association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

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5. **Voting Rights.** The Association shall have one class of voting membership. Members shall all be lot owners and shall be entitled to one (1) vote for each lot owned. When more than one (1) person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any lot.

6. **Board.** The Board, until fifty (50) percent of the lots are sold, shall consist of Donald W. Thompson and Carol Winder Haynes. Upon the sale of fifty (50) percent of the lots, the owners shall hold a special meeting to elect a group as their Board. Vacancies in the board caused by death, or resignation, or inability to act shall be filled by the remaining owners. All Board members shall be owners of lots within the Windermere Subdivision. The Board shall consist of four (4) members: a President, a Vice President, a Secretary and a Treasurer. The term of a member shall be two (2) years. The Board shall be elected by a majority vote of the owners of the lots. No member of the Board shall be entitled to compensation except for reimbursement of expenses.

7. **Authority and Duties.** The Board shall be responsible for the enforcement and administration of the requirements of these covenants and shall contract for and supervise common services, enforce the development and use regulations, and take all other actions necessary to administer and enforce these covenants. Neither the Board nor any member thereof shall be liable to any party for any action or inaction with respect to any provision of these covenants, provided that such Board or member thereof has acted in good faith.

8. **Meetings.** The Board shall meet from time to time as necessary to administer and enforce these covenants, and shall call and conduct an annual meeting of the Homeowners Association. The owners through the purchase of their lots, agree to serve on the Board as necessary. The Board shall adopt such rules for the conduct of its business as are appropriate.

9. **Development and Land Use Restrictions.** All development and use shall conform to the following requirements:

A. **Provisions in addition to county land use regulations.** No further subdivision of any lot will be permitted. Conformity with any and all applicable land use regulations of Teton County shall be required, in

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addition to the requirements of these covenants. In case of any conflict, the more stringent requirements shall govern.

- B. Authorized Use.** All lots and tracts are hereby restricted in use for residential purpose only, and neither the premises, nor any improvements thereon, shall be used for any commercial, industrial, public or illegal purposes. Home offices are allowed that create no vehicle traffic.
- C. Authorized Structures.** No building or structure shall be constructed, placed or maintained on any lot except one (1) primary residence, garage facilities, one (1) guest house, and associated out buildings, such as stable, barn & corral facilities not to exceed a total of four (4) buildings or structures on any one lot. All structures are to be similar in design and materials.
- D. Construction Design.** Low, rambling and informal structures are encouraged in order to relate to the terrain and physical features of the properties. All structures will be constructed of tones to blend in with the natural surroundings. Wood, brick, peeled log, stone or other similar rough textured materials are permitted for exteriors. All exposed metal shall have dull colored finish, or shall be flat-colored, anodized or painted. Used or component construction shall only be permitted when it cannot be distinguished from conventional construction, and shall have a minimum roof pitch of 6:12 and a minimum roof overhang of 16 inches. The roofs of all structures shall be constructed of cedar shake or shingle, heavy weight asphalt shingle, non-reflecting metal or built-up roof with gravel surfaces. All wood or coal burning chimneys shall have flues with approved spark screens. All construction and alteration shall comply with provisions of the following standard codes or their official amendments:
- Uniform Building Code, current edition,
  - National Plumbing Code, current edition,
  - National Electrical Code, current edition,
- and with such State of Idaho and Teton County, Idaho building, health, and safety codes as may be applicable to the subdivision.
- E. Height Limitations, Setbacks, Floor Area Requirements.** No building shall be greater than twenty five (25) feet in height. Building height shall be measured from existing grade to the highest point of the roof structure, but shall not include chimneys or vents. All structures shall

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have minimum side yard and rear yard setbacks of forty (40) feet , and a minimum front yard setback of thirty (30) feet and a maximum set back of 300 feet from the roadway. A site plan is to be submitted to the Board for review and approval in order to best preserve scenic vistas for all homes in the subdivision. the board will respond in 15 days.

The principal residence shall have a maximum floor area of five thousand (5000) square feet exclusive of garage and basement. The first floor shall have a minimum of one thousand (1000) square feet and the total minimum square footage shall be twelve hundred and fifty (1250). A guest house shall have a maximum of one thousand (1000) square feet of habitable space.

- F. **Utilities.** Electrical and telephone lines have been installed underground along the roadway and conduit will be put under the roadway. Connections to the underground utility lines shall be completed at the owners expense and shall be underground.
- G. **Prohibited Structures.** No temporary structures, such as mobile homes, campers , tents, shacks or other similar buildings shall be permitted on any lot, except during construction and no longer than one year. Trailers, recreational vehicles, campers, tents, boats, temporary structures or like improvements shall not be used for residence or habitation in the Subdivision at any time, except by visitors for fifteen (15) days per year maximum.
- H. **Maintenance.** Each lot and all improvements thereon shall be maintained in clean, safe and sightly condition. No junk or inoperative cars or trucks shall be parked on any lot. Refuse, garbage and trash shall be kept at all times in a covered container. No lumber, grass, shrub or tree or plant clippings or waste, metals, bulk materials, or scraps, refuse or trash shall be kept, stored or allowed to accumulate on any lot as to render any such property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property.
- I. **Fencing.** All fences shall be of buck and rail, pole and post, or pole and at least two strands of non-barbed wire, cable or polymer vinyl. However wood fences are encouraged, Lot owners shall maintain their lot boundary fences to assure adequate containment of their animals. Fence construction must allow for maintenance of irrigation pipe lines and canals

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- J. **Noxious or offensive activities.** No noxious or offensive activity shall be permitted on any lot. No light shall be emitted from any lot which is unreasonably bright or causes unreasonable glare for any adjacent lot owner. No odors or noise shall be emitted beyond the lot lines of any lot which are deemed noxious by adjacent lot owners.
- K. **Noxious Weeds.** Noxious weeds must be kept under control at all times at the expense of the owner, and lots should not be left in an uncared for condition. The Board shall have the right to have the lot sprayed to remove noxious weeds at the lot owner's expense.
- I. **Water system.** Each structure designed for occupancy of used by human beings shall be connected to a private water supply system at the owner's expense. Such a water system shall conform to the standards applicable for the area, including, with out being limited to, the Idaho State Public Health Department.
- M. **Waste Disposal.** Each structure designed for occupancy or use by human beings, shall be connected to a private individual waste disposal system at the owners expense. Such waste disposal system shall conform to the standards applicable for the area, including without being limited to, the Idaho State Public Health Department. No outdoor toilets shall be permitted, except during construction for temporary use. Outdoor toilets must be of a storage type and be serviced on a need basis
- N. **Excavation and Mining.** No excavation for stone, sand, gravel, or earth, shall be made on any lot, except for such excavation as may be necessary in connection with the erection of an approved improvement thereon. No oil drilling, oil development operations, quarrying, or mining operations of any kind, shall be permitted on any lot. Oil Gas and mineral rights have been reserved by previous landowners and the developers
- O. **Livestock & Pets.** Livestock and domestic pets may be kept or maintained on any lot as provided herein. Up to three (3) large or farm animals, such as horses, llamas, sheep or goats, may be maintained on the individual lots, except lots 6, 7, 8 and 9, which may have five ( 5 ) large animals. These may be maintained on the individual lots if suitable fencing and shelter is provided. Any animals permitted to be kept on a lot shall be controlled at all times so that they do not cause a nuisance to neighboring lot owners and so that the presence or activity of any such pets or livestock does not harass or endanger wildlife. Grazing activity shall be done in a good

husbandry-like manner so as not to cause the destruction of natural forage. Corrals and stables must be kept cleaned and maintained at all times. If any dog or dogs are harassing livestock, wildlife or people, the Board shall have the authority to have such animal or animals impounded at any available location, and the owners shall be responsible for any costs of impoundment. No owners of any animal or animals impounded for chasing or harassing livestock, wildlife or people shall have the right of action against the Board or any member thereof, for the impoundment of any such animal or animals. Alternatively, the Board shall be authorized to seek the assistance of Teton County Officials to control problem dogs pursuant to state law or county regulation.

- P. **Wildlife Protection.** No activity shall be allowed on any lot which disturbs or harasses wildlife. Dogs and other domestic animals shall be controlled and restrained at all times, and shall not be allowed to interfere with wildlife activity. No hunting or shooting shall be allowed on any lot.
- Q. **Easements.** Easements are, hereby, reserved for the purpose of installing and maintaining utility facilities, and for such other purposes incidental to the development of the property. These include access to irrigation pipes, the ditch which must be maintained by Fox Creek Canal personnel, and other easements shown on the plat of the property.
- R. **Irrigation Lines.** Irrigation lines have been installed and feed off a main line from the Fox Creek Canal Company and the Rock Road Pipeline Company. These lines will have a main turn off that will be controlled by the Board. It is of utmost concern that all owners use the water wisely as the intent is to conserve the water at all times. The Homeowners Association will own and administer all water rights that belong to the subdivision. The Association will designate one (1) local person as Water Master for the Subdivision who will serve as the Homeowners Association representative and voting proxy for all Subdivision shares at Fox Creek Canal Company and Rock Road Pipeline Company Stockholders' meetings. He or she will also administer the use of irrigation water within the subdivision and it shall be used for agricultural purposes only.
- S. **Parking.** No parking is allowed at any time on the common roads within the Subdivision, except in instances of temporary gatherings.

10. **Duties of Board.** The Board shall contract for maintenance of snow removal, weed spraying, and periodic maintenance services on the Common

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Road, fire tank road , fire tank, and well, irrigation lines and equipment, and make periodic payments to Fox Creek Canal Company and Rock Road Pipeline Company for irrigation water costs. The Board shall prepare an annual budget estimate for membership approval and submit annual statements to each lot owner based upon its estimate. Billing for common services shall be paid by lot owners within thirty (30) days of the billing date. Each lot owner will be responsible for and billed for their respective share of the cost of snow removal, weed spraying, and maintenance costs for the road, irrigation lines and equipment, fire well and tank , common areas and costs of irrigation water. The initial assessment for common services will commence from and after the date of closing on the lot. Any assessment not paid thirty (30) days after the due date shall incur a 10 % penalty. The Board may bring an action at law against the owner personally obligated to pay the same, or place a lien on the lot owner's property. The lien of the assessments provided herein shall be subordinate to the lien of any existing first mortgage. Sale or transfer of any lot shall not affect the assessment lien.

- A. **Assessments.** Costs for road maintenance, weed spraying, fire tank and it's water system maintenance and utility maintenance will be assessed on a per lot basis. The irrigation costs and fees will be assessed on a ratio of 1.5 units for lots 6, 7, 8, and 9, and Windermere phase two lots, and one (1) unit for each of the remaining lots.
- B. **Special Assessments.** On the approval of a majority of the voting members in person or with a proxy, the board shall have the authority to establish special assessments to meet emergency or unusual conditions that have arisen with regard to the access facilities or utilities which service the property and tank. Special assessments shall be allocated in accordance with the formula set forth for common services, and shall be payable within thirty (30) days of the billing date. Any assessment not paid within thirty(30) days after the due date shall incur a ten(10) percent penalty. The Board may bring an action at law against the owner personally obligated to pay the same, or place a lien on the lot owner's property. The lien of the assessments provided for herein shall be subordinate to the lien of any existing first mortgage. Sale or transfer of any lot shall not affect the assessment lien.
- C. **Limitation of Liability.** Neither the Board nor any member thereof shall be liable to any party for any action or inaction with respect to any provision of these covenants, provided that such Board or member thereof has acted in good faith.

**11. Violations; Enforcement; Liens; Costs.** The limitations and requirements for land use and development set forth in these covenants shall be enforceable by any owners of a lot within the property. Every owner of a lot within the property hereby consents to the entry of an injunction against him or her or his or her tenants or guests, to terminate and restrain any violation of these covenants. Any lot owner who uses or allows his or her lot to be used or developed in violation of these covenants further agrees to pay all costs incurred by the Board or other lot owners in enforcing these covenants, including reasonable attorney's fees. The Board shall have a lien against each lot and the improvements thereon to secure the payment of any billing for common services, special assessments, or penalty due to the Board from the owner of such property which is not paid within the time provided by these covenants, plus interest from the date of demand for payment at the rate of ten (10) percent penalty. The Board is authorized to record a notice of lien in the office of County Clerk of Tote County, Idaho, which shall include a description of the property and the name of the owner thereof and the basis for the amount of the lien. A copy of the notice of the lien as filed in the County Clerks' office shall be sent to the owner by certified or registered mail. Any such lien may be foreclosed in the manner provided for by the statutes of the State of Idaho. In addition to the principal amount of the lien plus interest, the Board shall be entitled to the payment of all costs incurred in the establishment or enforcement of any lien, including filing costs and attorney's fees.

**12. Amendment.** These covenants may be amended by the written consent of eighty (80) percent or more of lot owners within the property.

**13. Duration of the Covenants.** All of the covenants, conditions and restrictions set forth herein shall continue and remain in full force and effect at all times against the property and the owners and purchasers or any portion thereof, subject to the right of amendment as set forth in Article 12 thereof. Required by law, these covenants shall be deemed to automatically renew themselves at twenty (20) year intervals, unless eighty (80) percent of the owners agree otherwise in writing

**14. Severability.** Any decision by a Court of competent jurisdiction invalidating any part or paragraph of these covenants shall be limited to the part or paragraph affected by the decision of the Court, and the remaining paragraphs and the covenants, condition and restrictions therein shall remain in full force and effect.

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15. **Acceptance of Covenants.** Every owner or purchaser of a lot within the property shall be bound by and subject to all of the provisions of this declaration, and every lot owner or purchaser through his or her purchase or ownership expressly accepts and consents to the operation and enforcement of all of the provisions of this declaration.

16. **Agricultural Rights.** All potential lot owners are put on notice that there are existing agricultural operations within the neighboring areas and they are protected by Idaho's Right-to-Farm Act. Noise, odors and movements of farm machinery are recognized by lot owners as inherent activities accompanying farming and ranching operations. (See attached exhibit B Idaho Statutes 22-4501, 22-4502, 22-4503, and 22-4504.)

17. **Developer Rights.** Developers reserve the right to develop Phase Two of Windermere and access phase two through the subdivision road using the sixty foot easement between lots 7 and 8. Phase two lot owners would participate in assessments on the same basis as described in paragraph 10 A.

18. **Lot One (1).** Lot one (1) has the right to use the subdivision well as the domestic well for lot one (1). The owner of lot one (1) will share cost of well and pump maintenance on a 50/50 basis with the Homeowners' Association for as long as the well is used as the domestic well for lot one (1).

In witness whereof, Declarant has executed this declaration effective the day and year first set forth above.

STATE OF IDAHO )

COUNTY OF TETON )ss

Donald W. Thompson  
Donald W. Thompson

Carol Winder Haynes  
Carol Winder Haynes

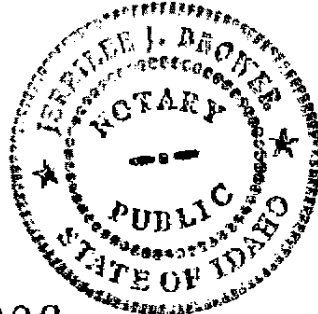
The foregoing instrument was acknowledged before me by Donald W. Thompson and Carol Winder Haynes this 21<sup>st</sup> day of August, 1997.

Witness my hand and official seal.

Jerrilee J. Brower

Notary Public

My commjssion expires: 2-27-98



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